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HOSPITAL AND MANAGEMENT COMPANY BOTH LIABLE FOR SAME OSHA VIOLATION AT SHARED WORKSITE: WHAT CAN YOU DO TO AVOID “SINGLE-EMPLOYER” LIABILITY?

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A recent federal appeals court ruling illustrates the risks of “single-employer” liability for OSHA citations for common business arrangements today. These involve separate companies that perform different functions but share certain commonalities, such as a worksite, corporate policies, management, or ownership. The 11th U.S. Circuit Court of Appeals’ decision last month serves as an important reminder for companies that use similar business models, which are especially prevalent in the healthcare industry. We’ll explain what happened in the Florida case and give you four steps to help avoid single-employer liability across multiple businesses.

What Happened?

The 11th Circuit [ruled on June 18](#) that a Florida psychiatric hospital and a hospital management company operated as a single employer for liability purposes under the Occupational Safety and Health (OSH) Act. This “single employer” determination allows the Occupational Safety and Health Administration (OSHA) to cite both entities for the same violation related to workplace violence under the OSH Act’s General Duty Clause.

This outcome was preceded by a long history, which began with an OSHA inspection in 2015 that revealed dozens of instances of patient-on-staff aggression and violence. The agency subsequently cited both the hospital and the

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management company for exposing employees to workplace violence in violation of the General Duty Clause.

After the companies contested the citation, an administrative law judge (ALJ) affirmed the citation and determined that the companies operated as a single employer. On appeal, the Occupational Safety and Health Review Commission (OSHRC) agreed with the ALJ on the single-employer determination.

Why Were the Hospital and Management Company Treated as a Single Employer?

The hospital and management company are two separate entities, but both have employees working at a common worksite (the hospital) and are owned by the same parent company. The parent company owns several other entities, and each of the subsidiaries' employees perform different functions. This is a common business arrangement, particularly in healthcare, for many reasons, including managing risk, liability, and tax issues.

OSHA's Single-Employer Test

To determine whether to treat two companies as a single employer, the OSHRC and courts consider several factors, including the extent to which the entities:

- share a common worksite;
- share common ownership, president, management, or supervisors; and
- have interrelated or integrated operations and policies, particularly on safety and health matters.

The 11th Circuit's Decision

The appeals court concluded that the hospital and management company could be cited for the exact same safety violations based on several factors:

- **Common Worksite and Ownership.** First, the entities shared not only a common worksite and parent company but also the same chief officers and lower-level site management.
- **Integrated Operations.** The management company provided the hospital with numerous personnel policies,

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including safety manuals and safety training materials.

- **Exposure to Hazards.** Even though the management company's employees did not personally experience patient-on-staff aggression, the court found that several of them were exposed to the hazard of workplace violence because they had offices at the hospital and would sometimes perform safety checks on each unit.

4 Steps to Help Avoid "Single-Employer" Liability Under the OSHA Act

- **Include workplace safety issues in your business planning for a worksite,** and consult counsel before setting that plan in stone.
- **Consider retaining separate outside counsel for each business** when things go wrong, and negotiate joint-defense agreements.
- **Evaluate the benefits versus risks of this type of arrangement** (common C-suite personnel, sharing of lower-level management officials, and the use of common health and safety policies). Do the benefits outweigh the risks of shared liability? It may be the case that the risks of shared general liability exposure are more important than the risk of duplicative OSHA citations.
- **Determine whether to utilize separate management officials and policies** to avoid single-employer liability across multiple businesses that share a common worksite. If you take this route, the policies should be tailored to the specific hazards each entity's functions entail. For example, the subsidiary employing your nurses should have slightly different safety policies than the subsidiary employing your janitorial staff.

Conclusion

If you have any questions about OSHA compliance, contact the author of this insight, your Fisher Phillips attorney, or any attorney on our [Workplace Safety team](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.