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Criminal Law in the Workplace

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I. [8.1] INTRODUCTION

This chapter examines criminal law and its specific application to the employment environment, particularly with respect to the termination of the employment relationship and potential lingering criminal liability. Section 8.2 below discusses the common types of employment relationships and their bearing on issues of criminal responsibility. Next, §8.3 examines corporate liability for criminal acts, including the criminal responsibility of individual corporate officers, directors, and employees, and §§8.4 – 8.7 discuss defenses to such liability. Section 8.8 then examines criminal liability that may attach to other business forms. Finally, §8.9 includes a brief examination of whether state criminal law is preempted by federal law that has for its purpose the promotion of safety in the workplace.

II. [8.2] THE EMPLOYMENT RELATIONSHIP GENERALLY

On occasion, an employee will commit, or be suspected of having committed, a crime in the work environment or outside the work site. Whether the offending or suspected employee can be terminated and/or disciplined and the manner in which such termination or discipline is carried out depend on the type of employment relationship. An employment relationship “without a fixed duration is terminable at will by either party.” *Duldulao v. Saint Mary of Nazareth Hospital Center*, 115 Ill.2d 482, 505 N.E.2d 314, 317, 106 Ill.Dec. 8 (1987). Employment relationships are presumed to be “at will.” 505 N.E.2d at 318. In Illinois, “under the employment-at-will doctrine, employers may discharge, transfer or discipline employees for any reason or for no reason at all, as long as they do not violate clearly mandated public policy.” *Vickers v. Abbott Laboratories*, 308 Ill.App.3d 393, 719 N.E.2d 1101, 1113, 241 Ill.Dec. 698 (1st Dist. 1999). Such policies include prohibited discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §2000e, *et seq.*, prohibited conduct under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101, *et seq.*, and prohibited retaliatory discharge as discussed in Chapter 4 of this handbook.

It is important to note that antidiscrimination statutes will not protect employees who engage in criminal acts. For example, in *Dauen v. Board of Fire & Police Commissioners of City of Sterling*, 275 Ill.App.3d 487, 656 N.E.2d 427, 212 Ill.Dec. 104 (3d Dist. 1995), a firefighter was terminated for the possession and use of cocaine after police searched his residence and found cocaine residue. The firefighter, at his hearing before the fire and police commissioners’ board and in the circuit court, argued that his termination violated the ADA. Specifically, the firefighter argued that he was protected under the ADA because immediately prior to the search he ended his drug use and sought counseling. The appellate court affirmed the trial court’s decision and found that the “ADA does not prohibit an employer from discharging an employee who commits a crime or otherwise engages in improper conduct when the improper conduct, rather than the alleged addiction, is the reason for discharge.” 656 N.E.2d at 431. *See also Phelan v. City of Chicago*, 226 F.Supp.2d 914 (N.D.Ill. 2002) (Caucasian employee failed to establish race discrimination when he was terminated following his indictment for mail fraud and African-American employee was placed on administrative leave pending outcome of criminal indictment). For a detailed discussion of prohibited discrimination under Title VII and the ADA, see Chapter 2 of this handbook. For a detailed discussion of the tort of retaliatory discharge in Illinois, see Chapter 4.

Many employees, however, are not merely employed at will but are employees working under an employment contract. These include employees who are parties to an individual contract of employment, union members benefiting from a collective bargaining agreement, and less frequently those whose employment handbook or other policy statement creates enforceable contract rights. *Duldulao, supra*, 505 N.E.2d at 318. In these situations, employers may be limited in their ability to discharge employees for the commission or suspected commission of criminal acts and may be required to provide the employee with a hearing and/or progressively discipline the employee.

When there is a contractual exception to the employment-at-will doctrine, the employees may argue that discharge is improper when there is an acquittal in the criminal proceeding. In *Magett v. Cook County Sheriff's Merit Board*, 282 Ill.App.3d 282, 669 N.E.2d 616, 218 Ill.Dec. 473 (1st Dist. 1996), the employee was employed as a Cook County Corrections Officer and charged with mob action. The employee was acquitted in the criminal proceeding. After the employee's acquittal, the employer commenced administrative proceedings, and the sheriff's merit board terminated the employee. The circuit court reversed the board's decision, but the appellate court determined that the board's decision was not against the manifest weight of the evidence. The plaintiff's acquittal in the criminal charge of mob action did not preclude the board from terminating the employee. Specifically, the administrative proceeding had a lower burden of proof, and the employee was not charged with mob action in the administrative proceeding. 669 N.E.2d at 620. For a detailed discussion of contractual exceptions to the employment-at-will doctrine, see Chapter 3 of this handbook.

Whether the employment relationship is at will or governed by the provisions of a contract, it behooves an employer not to take the occurrence or suspected occurrence of a crime by an employee lightly. Crime in the workplace can endanger the assets of the employer and co-employees and can also endanger the physical or emotional safety of co-employees and others in the workplace. For a detailed discussion of issues related to preemployment and employment-related investigation and testing of employees, see Chapter 12 of this handbook. Additionally, civil liability can in some instances attach for the negligent hiring or retention of a known criminal as an employee.

III. [8.3] CRIMINAL LIABILITY OF CORPORATIONS

Any business may incorporate in Illinois under the Business Corporation Act of 1983, 805 ILCS 5/1.01, *et seq.*; the Medical Corporation Act, 805 ILCS 15/1, *et seq.*; the Professional Service Corporation Act, 805 ILCS 10/1, *et seq.*; or the General Not for Profit Corporation Act of 1986, 805 ILCS 105/101.01, *et seq.* Once the Secretary of State issues the certificate of incorporation, the corporate existence begins. It is the birth, so to speak, of a legal entity with many of the same powers possessed by an individual. Like an individual, a corporation can be held responsible for its criminal acts, and an individual may be responsible for the criminal acts of a corporation.

However, criminal prosecution of a corporation is statutorily limited. Section 5-4 of the Criminal Code of 1961 (Criminal Code), 720 ILCS 5/1-1, *et seq.*, describe the terms under which a corporation may be prosecuted, and §5-5 describes the conditions under which an individual may be accountable for the criminal acts of a corporation. Section 5-4(a) provides:

A corporation may be prosecuted for the commission of an offense if, but only if:

(1) The offense is a misdemeanor, or is defined by Sections 11-20, 11-20.1 or 24-1 of this Code or Section 44 of the “Environmental Protection Act” [415 ILCS 5/44] or is defined by another statute which clearly indicates a legislative purpose to impose liability on a corporation; and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his or her office or employment and in behalf of the corporation, except that any limitation in the defining statute, concerning the corporation’s accountability for certain agents or under certain circumstances, is applicable; or

(2) The commission of the offense is authorized, requested, commanded, or performed, by the board of directors or by a high managerial agent who is acting within the scope of his or her employment in behalf of the corporation.

In substance, a corporation may be prosecuted only if the offense is a misdemeanor or is defined by §§11-20, 11-20.1, or 24-1 of the Criminal Code, §44 of the Environmental Protection Act, or another statute that clearly indicates legislative intent to impose liability and the proscribed conduct is performed by an agent of the corporation while acting within the scope of employment and on behalf of the corporation. Further, a corporation may be prosecuted for any offense described in the Criminal Code or other applicable statute when the offense is committed by the board of directors or a high-ranking agent while acting within the scope of employment in behalf of the corporation.

In *McCaleb v. Pizza Hut of America, Inc.*, 28 F.Supp.2d 1043 (N.D.Ill. 1998), the court held that there was a legislative intent to impose liability on a corporation under the Illinois hate crime statute, §12-7.1(c) of the Criminal Code. In that case, the African-American plaintiffs stated causes of action under 42 U.S.C. §1981 and the hate crime statute. The defendant argued that it was not liable under the hate crime statute because that statute applied only to a “person.” Specifically, the court held:

The Illinois General Assembly has promulgated rules of statutory construction, see 5 ILCS 70, that are to be applied “unless such construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute.” 5 ILCS 70/1. One of the rules provides: “ ‘Person’ or ‘persons’ as well as all words referring to or importing persons, may extend and be applied to bodies politic and corporate as well as individuals.” 5 ILCS 70/1.05. When the word “person” is used in a statute, it is construed as applying to corporations and bodies politic as well unless the context, language, or legislative history indicates otherwise. 28 F.Supp.2d at 1049.

When an individual performs a criminal act on behalf of the corporation, that person is legally accountable as though the conduct was in his or her own name or behalf. The individual is subject to the full penalties provided by law for the offense, even if lesser penalties may be authorized for the corporation.

However, for an individual to be guilty of such a crime, he or she must act in a manner that would lead to his or her guilt if acting on his or her own behalf and not for the corporation. *See, e.g.*,

People v. Runner, 266 Ill.App.3d 441, 640 N.E.2d 651, 203 Ill.Dec. 731 (4th Dist. 1994) (conviction reversed when defendant's conduct in violation of former Illinois Purchasing Act not criminal if performed by one not subject to Act acting on his or her own).

Section 5-5 of the Criminal Code provides:

(a) A person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed, to the same extent as if the conduct were performed in his own name or behalf.

(b) An individual who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of such offense, although only a lesser or different punishment is authorized for the corporation.

However, there are some situations in which an individual officer or director will not be held accountable for the criminal act of a corporation. Illustrative is *People v. Bohne*, 312 Ill.App.3d 705, 728 N.E.2d 509, 245 Ill.Dec. 427 (1st Dist. 2000), in which the state charged both the offending corporation and its president with failure to file a use tax return arising out of the corporation's purchase of machinery (a Class 3 felony under 35 ILCS 105/10). The state sought to hold the corporate president liable under general theories of criminal accountability. The appellate court affirmed the trial court's dismissal of the indictment against the corporate officer, holding that the officer's failure to file when the offense was "so defined that [the officer's] conduct was inevitably incident to" commission of the offense. 728 N.E.2d at 510, quoting 720 ILCS 5/5-2(c)(2).

In the imposition of corporate liability for offenses characterized as "regulatory crimes," the intent of the legislature, in part, is to provide an inducement for high managerial officers to supervise the behavior of employees in order to avoid criminal conduct. The corporation may be held liable for the acts of its employees, and the employees are individually accountable for their own acts. The criminal conduct of a corporation, however, cannot be imputed to the individual in the absence of criminal activity on his or her part.

The liability of a corporation for more serious offenses as covered in §5-4(a)(2) of the Criminal Code is restricted to conduct by the "board of directors" or a "high managerial agent." The impact of this restriction is to prevent criminal prosecution of a corporation unless someone in the control group participated in or performed the criminal conduct.

These restrictions do not in any way relieve the individual from criminal liability for his or her own acts. Direction of the criminal prosecution to the individual will generally be more effective in the enforcement of regulatory statutes. The difficulty is the identification of the purportedly guilty party. Nevertheless, the possibility of prosecution acts as a deterrent to criminal conduct by an individual. In those instances in which identification cannot be made, the recourse is against the corporation, and the only sanction is a fine in the amount specified in the statute defining the offense. 730 ILCS 5/5-9-1(a)(5).

The effect of §5-4 on a civil action is demonstrated in *Morris v. Ameritech Illinois*, 337 Ill.App.3d 40, 785 N.E.2d 62, 271 Ill.Dec. 411 (1st Dist. 2003), in which an employee sued his employer, asserting claims for eavesdropping and invasion of privacy, arising out of the employer's investigating the employee's failure to work during work hours. The eavesdropping of which Morris complained is codified as a crime in Article 14 of the Criminal Code. In discussing the issue, the court, after quoting §5-4(a), stated:

[A] corporation can commit a misdemeanor through the acts of its agents, but it can commit a felony only through the acts of high managerial agents. Eavesdropping is a felony. . . . Therefore, Ameritech can be criminally liable for eavesdropping only through the acts of high managerial agents.

A high managerial agent is “an officer of the corporation, or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.” . . . Barrett, who is not an officer of Ameritech, had no supervisory authority over any other Ameritech employee. Morris presented no evidence that Barrett formulated corporate policy. Thus, the evidence presented demands the conclusion that Barrett is not a high managerial agent of Ameritech. [Citations omitted.] 785 N.E.2d at 66.

Because the employee presented no competent evidence that Ameritech's high managerial agents authorized the eavesdropping and because there was insufficient knowledge of the acts of an agent under the eavesdropping statute, summary judgment in favor of Ameritech was affirmed. 785 N.E.2d at 66 – 68.

The courts have occasionally invoked §5-4 when other statutes more properly govern the matter of a defendant's liability for a crime. For instance, in *People v. Ward*, 302 Ill.App.3d 550, 707 N.E.2d 130, 236 Ill.Dec. 285 (1st Dist. 1998), the court cited §5-4 in support of its analysis of the sufficiency of the evidence to support a murder conviction. However, the facts of the case reveal that the defendant was a member of a street gang, not an agent, officer, or director of a corporation. 707 N.E.2d at 132. Moreover, the court's discussion of the defendant's guilt fits the elements of guilt under an accountability theory under §5-2 of the Criminal Code. 707 N.E.2d at 139.

It is not necessary that an indictment against a corporation set forth the basis of a corporation's criminal responsibility in the indictment or information. In *People v. East-West University, Inc.*, 163 Ill.App.3d 44, 516 N.E.2d 482, 114 Ill.Dec. 327 (1st Dist. 1987), East-West University and three of its employees were charged in seven separate indictments with conspiracy to commit theft, theft, and forgery. The forgery counts alleged “that defendants, with the intent to defraud, knowingly made documents apparently capable of defrauding another in such manner that they purported to have been made with different provisions.” 516 N.E.2d at 483. The documents were generally described as “Basic Educational Opportunity Grants” and “documentation required to receive Illinois Board of Higher Education Grant funds.” *Id.* East-West University alleged that the indictment failed to properly charge the commission of a felony. More specifically, East-West argued that under §5-4(a)(2) the indictment was insufficient to charge it with a felony because it did not allege that the criminal acts were “authorized, requested, commanded, or performed, by the board of directors or by

a high managerial agent who is acting within the scope of his employment in behalf of the corporation.” 516 N.E.2d at 485. The court held that the “basis of a corporation’s criminal liability is a matter of evidence to be proved at trial and not an element of the offense which must be set forth in the charging instrument.” *Id.*

The process by which a corporation is charged with an offense is the same as that used to charge an individual with a criminal offense. A misdemeanor is charged by filing a complaint (725 ILCS 5/111-2); a felony must be charged by an information, which is filed by the prosecutorial authority after a finding of probable cause at a preliminary hearing (725 ILCS 5/109-3), or an indictment may be returned by a grand jury (725 ILCS 5/112-1 through 5/112-7).

Both an individual and a corporation are entitled to counsel at the grand jury proceeding. Counsel’s role is limited to advising the client of rights. 725 ILCS 5/112-4.1. If an individual is the target of a grand jury investigation, that person may invoke the Fifth Amendment right against self-incrimination; however, a corporation may not do so. Therefore, it is important to determine in which capacity the individual has been subpoenaed before the grand jury, target or agent of the corporation.

When a corporation is charged with a criminal offense, the requisite mental state is imputed to the corporation from its agents, managers, officers, or board of directors. The corporation has no “mental state” of its own; therefore, none can be imputed to the individual from the corporation. In order to prosecute a corporation successfully, one or more of the requisite mental states must be proved. The only exception to this occurs when the offense involves absolute liability. 720 ILCS 5/4-3. The four mental states recognized in Illinois are intent, knowledge, recklessness, and negligence. 720 ILCS 5/4-4 through 5/4-7.

The criminal offenses with which the corporation or individual may be charged are set out in the Criminal Code. The most commonly charged offenses are for death or great bodily harm, as well as property damage, public nuisance, and financial crimes. Additionally, criminal charges may be brought under any other state or federal statute enacted for the regulation of industry, the protection of the health and safety of the individual employee and the public, the protection of the environment, or any other purpose relating to the public, public lands, or commerce. The Illinois Compiled Statutes and the United States Code should be consulted for the specific offense that is charged. For example, in *People v. O’Neil*, 194 Ill.App.3d 79, 550 N.E.2d 1090, 141 Ill.Dec. 44 (1st Dist. 1990), numerous individual defendants and corporations were all charged with first degree murder arising out of the death of an employee caused by cyanide poisoning. The court found several defendants guilty of first degree murder and reckless conduct and two of the corporations guilty of involuntary manslaughter. 550 N.E.2d at 1091 – 1092. Analyzing §5-4 of the Criminal Code and the mental states required by the crimes involved, the appellate court ordered a new trial because the individuals’ murder convictions were legally inconsistent with their reckless conduct convictions, and the murder convictions were legally inconsistent with the corporate defendants’ convictions for involuntary manslaughter. 550 N.E.2d at 1098, 1101 – 1102.

A broad range of regulatory statutes touch on most human endeavors and provide for criminal prosecution and sanctions, such as the Environmental Protection Act, 415 ILCS 5/1, *et seq.*; the Illinois Banking Act, 205 ILCS 5/1, *et seq.*; the Nursing Home Care Act, 210 ILCS 45/1-101, *et seq.*;

and the Illinois Insurance Code, 215 ILCS 5/1, *et seq.* The application of the statutes will reach the large corporation as well as the small “mom and pop” corporation. The provisions and penalties are applied equally whether the corporation has a multibillion-dollar net worth or a net worth of two thousand dollars. The fines may differ, but the potential for incarceration remains the same.

It is important to advise the principals of corporations as to what specific statutes govern the type of business being operated. Corporate policy should be developed in accordance with the industry standards and the regulatory statutes. Such advice will assist the corporate client in avoiding criminal prosecution.

IV. [8.4] DEFENSES TO CRIMINAL LIABILITY

Every defense to a criminal offense set out in the Criminal Code (720 ILCS 5/6-1 (infancy); 5/6-2 (insanity); 5/7-1 (self-defense); 5/7-2 (defense of dwelling); 5/7-3 (defense of property); 5/7-11 (compulsion); 5/7-12 (entrapment); 5/7-13 (necessity)) and by common law may be asserted. Such defenses are affirmative in nature and must be disclosed to the prosecuting authority during the discovery process. Corporate clients must be advised of every aspect of the criminal process and about any defenses that may be available to them.

In addition to the defenses contained in the Criminal Code, certain exceptions, exemptions, or defenses may exist in the regulatory or other statutes under which the offense is charged. The corporation or individual may assert these defenses; it must be determined whether the defenses are affirmative in nature — that is, whether they must be disclosed to the state.

A. [8.5] Due Diligence

The section of the Criminal Code governing corporate responsibility for criminal conduct contains the defense of due diligence. 720 ILC 5/5-4(b). It should be noted that the burden of establishing due diligence is on the corporation.

Section 5-4(b) provides:

A corporation’s proof, by a preponderance of the evidence, that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense, is a defense to a prosecution for any offense . . . for which absolute liability is imposed. This Subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this Subsection.

A high managerial agent may expose the corporation to criminal liability and, conversely, may negate the criminal intent if it is established that due diligence was exercised to prevent the offense.

Due diligence must reflect the corporate policy, not just that of the individual. When there are state or federal guidelines, they should be incorporated into company policy. The company policy

should reflect an overall concern relating to the adoption and implementation of policies and provide appropriate measures to enforce these policies with the imposition of penalties for violation by employees when warranted.

Due diligence, as defined by BLACKS LAW DICTIONARY, p. 4 (5th ed. 1979), is “Such a measure of prudence, activity, or assiduity, as is properly expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances.” Due diligence is not measured by an absolute standard but depends on the relative facts of the case. The “reasonable person standard” is used on a case-by-case basis, and the subjective intent of the individual is probative to the issue of due diligence only when that intent is manifested in observable and articulable action. The objective standard is applied to the facts to infer the presence or absence of due diligence. Due diligence begins with the adoption of appropriately conscientious corporate policy, continues with the implementation and enforcement of such policy, and ends with the proper training and supervision of employees to ensure that such policies are followed by employees at all levels.

In *State v. Steenberg Homes, Inc.*, 223 Wis.2d 511, 589 N.W.2d 668 (App. 1998), the court found that the corporation could be charged with and convicted of homicide by negligent operation of a vehicle because it failed to use due diligence. In that case, an employee was driving a tractor-trailer truck when the trailer disconnected and killed two bicyclists. State and federal laws provided that safety chains be attached when a trailer was being pulled on a highway. Despite these regulations, the employer had no safety procedures in place to ensure that its employees used safety chains. The court found that the employer did not use due diligence to ensure that its employees properly coupled the tractor-trailers and attached safety chains, and the evidence was sufficient to convict the employer of homicide by negligent operation of a vehicle. 589 N.W.2d at 673 – 674.

B. [8.6] Foreseeability

A result that was not foreseeable by the corporation or its agents vitiates the requisite mental state for criminal liability.

If a result was not foreseeable, then intent, knowledge, recklessness, or negligence will be difficult if not impossible to establish. The totality of the facts and circumstances will be considered by the trier of fact in order to determine whether a result was foreseeable to the corporation or its agents. Again, this particular defense is determined objectively on a case-by-case basis using the reasonable person standard. See *People v. Warner-Lambert Co.*, 51 N.Y.2d 295, 414 N.E.2d 660, 661, 434 N.Y.S.2d 159 (1980) (corporation not held criminally liable for homicide when explosion that caused death neither foreseen nor foreseeable); *Commonwealth v. Godin*, 374 Mass. 120, 371 N.E.2d 438, 443 (1977) (corporation should have been aware of “probable harmful consequences and loss of life” in storage of excessive fireworks in factory and was held criminally liable for homicide of three individuals).

C. [8.7] Established Policy

When a corporation has a clearly established policy that the corporation rigorously enforces, it may raise this policy as a defense.

If an employee violates the established policy without the knowledge of his or her superiors and the violation results in a criminal offense, then the corporation may assert these facts as a defense. Of course, the corporation must prove it had no knowledge of the specific conduct and had disciplined all such previous violations.

Although available, this defense is not generally successful. Even when acts were against corporate policy or express instructions, a corporation may be held criminally liable if such acts were for the benefit of the company. *United States v. Basic Construction Co.*, 711 F.2d 570, 573 (4th Cir. 1983); *United States v. Automated Medical Laboratories, Inc.*, 770 F.2d 399 (4th Cir. 1985).

V. [8.8] CRIMINAL LIABILITY OF BUSINESSES OTHER THAN CORPORATIONS

A sole proprietor, as an individual conducting business in a manner not prescribed by statute, is subject to criminal liability just as any individual is. Thus, a sole proprietor can be charged with and convicted of a crime when he or she possesses the requisite criminal intent and causes the prohibited result. The sole proprietor benefits from the protections that the United States and Illinois Constitutions afford and has access to any valid criminal defense. See FEDERAL CRIMINAL PRACTICE (IICLE, 2005).

The general rule that criminal guilt is personal applies to partnerships, and thus, in the absence of contrary legislation, neither a partnership nor its individual members bear criminal responsibility for the acts of another partner merely by reason of the partnership relationship. In the absence of personal participation in or knowledge of a criminal act, criminal liability will not attach to a partner. 68 C.J.S. *Partnership* §172 (1998). See also *United States v. Ansani*, 138 F.Supp. 454 (N.D.Ill. 1956). When, however, a partnership acts illegally with the knowledge of the partners, all are chargeable with criminal responsibility. 68 C.J.S. *Partnership* §172 (1998). When a partnership has engaged in criminal conduct, it is the offending partners individually who are indicted and not the firm. *People v. Stills*, 302 Ill.App. 302, 23 N.E.2d 822 (4th Dist. 1939).

It should be noted that the state's attorney is authorized to institute civil legal proceedings (including seeking an injunction that shuts down the operations of a business other than a corporation) to forfeit the charter or revoke the certificate of an offending business when the business is engaged in illegally causing other businesses to do business with the offending business. 720 ILCS 5/38-1, *et seq.*

VI. [8.9] PREEMPTION BY FEDERAL LAW

Occasionally, a corporation or its officers have argued that the federal Occupational Safety and Health Act of 1970, 29 U.S.C. §651, *et seq.*, which has the purpose of promoting and ensuring workplace safety and provides for sanctions in the event its standards are violated, preempts state criminal law. In *People v. Chicago Magnet Wire Corp.*, 126 Ill.2d 356, 534 N.E.2d 962, 128 Ill.Dec. 517 (1989), the criminal indictment charged both a corporation and corporate officials with aggravated battery and reckless conduct arising out of the exposure of workers to phosgene gas,

among other substances, during the manufacturing process. The Illinois Supreme Court held that the Act does not preempt state criminal prosecution of companies and their officers or executives who kill or injure employees when a state does not have its own specific occupational health and safety plan.

VII. [8.10] CONCLUSION

All business entities have an impact on commerce and the individual, both public and private. Criminal laws are enacted to protect citizens from harm and to ensure the flow of commerce. The corporation, partnership, or sole proprietorship has many of the same powers, duties, and responsibilities as the individual in society, and the best defense to criminal prosecution is to avoid it entirely. A properly managed business can accomplish this with comprehensive policy measures, appropriate supervision and regulation of employees, implementation and enforcement of its policies, disciplinary procedures for violations of policies, and thorough investigation and remediation of any violations to prevent infractions in the future. The prevention, detection, remediation, and defense of prosecution of crime in the workplace are vitally important aspects of the operation of any business.