

“Hide No Harm Act Of 2015” Targets Employers, Directors And Officers

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The 114th Congress has now taken up the policy recently announced by the Department of Justice (DOJ) through the Yates Memo. [The Hide No Harm Act \(S.2140\)](#) would impose criminal penalties upon corporate officers who fail to advise an appropriate federal agency of “serious danger associated with a product, service or business practice.” Corporate officers who fail to notify an appropriate agency of the federal government regarding any serious danger associated with a covered product, service or business practice within twenty-four hours of the individual receiving notice of such dangers could be punished by a fine and imprisonment for up to five (5) years. A fine imposed upon an individual for violating the Act “may not be paid, directly or indirectly, out of the assets of any business entity...” Introduced on Oct. 6, 2015, by U.S. Senators Richard Blumenthal (D-Connecticut) and Robert Casey (D-Pennsylvania), this legislation, if enacted, would severely ratchet up the stakes for high level executives. The proposed legislation is in keeping with DOJ’s recently announced new guidance related to the prosecution of corporate wrongdoers. Under the proposed Act, “corporate officer” is defined as an “employer, director, or officer of a business entity” who “has a responsibility and authority, by reason of his or her position in the business entity and in accordance with the rules or practice of the business entity, to acquire knowledge of any serious danger associated with a covered product.” The terms “business practice,” “covered product” and “covered service” are broadly defined. In practice, the Act would cover a wide swath of business practices from research and design through distribution of a product, whether manufactured domestically or imported into the United States, so long as it enters interstate commerce. Any “service conducted or provided by a business entity that enters interstate commerce” would also come under the proposed Act’s umbrella. The broad sweeping language contained in the Act, if passed, stands to significantly expand the scope of potential criminal liability in both the service and product manufacturing industries. If this alone was not enough to send chills down the spine of corporate America, the Act includes sweeping protections for whistleblowers. So, if you do not report something about which you are aware – even a possibility of harm – it could be that one of your employees will try to use the opportunity to profit as a whistleblower or legitimately provide information that could lead to a criminal action.

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