

[Avoiding Joint Liability for a Subsidiary's Payroll Obligations: Brief Your CEO](#)



The common employer doctrine may make you responsible for the payroll debts of your subsidiaries.

As HR director, it's incumbent on you to brief your C-Suite executives about potential liability risks to your organization. Here's a briefing addressing a significant but often overlooked risk faced by companies made up of related corporate subsidiaries and entities.

The Situation

A medical services corporation that conducts non-profit business in Saskatchewan creates a for profit subsidiary to make sales outside the province. A sales consultant who works for the parent company also does some work for the subsidiary. The subsidiary doesn't pay the consultant for these sales. So, the consultant sues the parent for payment. We're a separate entity from the subsidiary, the parent responds. If you made sales for the subsidiary, sue them for payment, not us. But the labour board doesn't buy it. The consultant is an employee of both companies, it says. So, it issues a wage assessment against the parent. An appeals court upholds the assessment [[Group Medical Services \(GMS\) v. Saskatchewan](#), 2007 SKQB 345].

The Problem

Many companies consist of a number of related corporate subsidiaries or entities (which we'll refer to collectively as "entities"). It's not unusual for the same person to provide services to 2 or more of these entities at the same time. This situation can create tricky payroll challenges. One of the thorniest problems: Figuring out which entity pays for which services rendered. If payment isn't sorted out properly, the court may step in and hold all of the entities jointly and severally liable to the employee. In other words, the employee can get some or all of the money from any one or group of entities. That's precisely what happened in the *GMS* case.

The Legal Explanation

In theory, a corporation is a sovereign entity with its own unique legal identity. What might sound like an abstract principle has important practical ramifications. It means that each entity is responsible for its own debts. **Result:** A person owed money by one entity can't sue one of the other entities for payment even if the entities are related.

But insulation from liability for the debts of a related entity only goes so far. If the business operations of the entities are indistinguishable from each other, the court may disregard the distinct legal personality as a fiction and [hold one entity responsible for the debt of another](#). In the payroll context, a court can do this by using a theory called the [common employer doctrine](#) like the court did in *GMS*. Although they were ostensibly separate legal entities, the court found that the parent and subsidiary's operations were so tightly "intertwined" that they were indistinguishable from each other. In essence, the court concluded that the parent and the subsidiary were really the same employer. So, the consultant was an employee of both and could collect its money from both or either company.

The Compliance Solution

To [avoid joint and several liability for employees' wages](#) under the common employer doctrine, related entities must carefully segregate their payroll and employee management operations, systems and processes. The *GMS* case is useful because it illustrates some of the things companies should **not** do, including:

- **Using the same corporate name:** The *GMS* entities had nearly identical corporate names;
- **Sharing supervisors:** When he did sales work for the subsidiary, the consultant in *GMS* was supervised by the same person he worked under when he made sales for the parent;
- **Sharing the same administration:** The parent and subsidiary had the same administrative staff and vice president;
- **Using the same legal agreements:** In *GMS*, employees of the parent had to sign the exact same contracts and confidentiality agreements as employees for the subsidiary; and
- **Calculating compensation for services provided to each company jointly:** Both companies used the same document as a joint compensation plan for the employee.

The specific measures required to maintain the integrity of separate payroll operations may vary according to circumstances. But when related entities share employees, those measures must be taken to protect both companies against joint and several liability.