# Must Companies Pay Wages Owed by their Subsidiaries?

**QUESTION**

*A consultant who works with us was also hired by one of our subsidiaries in another province to do some work for them. The sub didn't pay the consultant for that work. So now he's suing us for the money. Are we on the hook?*

– Name withheld

**ANSWER**

It depends on whether you'd be covered by the so called "single employer" rules of your province:

- You're not liable for the sub's debt if you and the sub are truly independent entities; BUT
- You are liable if you and the sub are found to be essentially the same entity and thus a single employer.

**EXPLANATION: THE 'SINGLE EMPLOYER' RULE**

The situation you describe is a lot like a case called *Group Medical Services v. Saskatchewan*, 2007 SKQB 345 (Sept. 28, 2007). Here's what happened.

A non-profit medical services corporation doing business in Saskatchewan created a for profit subsidiary to make sales outside the province. A consultant who worked for the parent company also did some sales work for the subsidiary. The subsidiary didn't pay the consultant for these sales. So the consultant sued the parent for payment.

We're a separate entity from the sub, the parent responded. If you made sales for the subsidiary, sue them for payment, not us. But the labour board didn't buy it. The consultant was an employee of *both* companies, it ruled and ordered the parent to pay.

TODAY'S EXPERT

**Glenn Demby** is an attorney and award winning journalist specializing in many aspects of Canadian law. Glenn has a track record of developing plain English products that tell business professionals who aren't lawyers how to comply with the parts of the law that affect their day-to-day operations.

**Liability of Parent Companies for Wages Owed by their Subsidiaries**

In theory, a corporation is a sovereign entity with its own unique legal identity. Although this might sound like an abstract principle, it 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 the insulation against 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 compensation and benefits context, a court can do this by using a theory called the common employer doctrine like the court did in the *GMS* case above. 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.

Although the *GMS* case comes from Saskatchewan, so called "single employer" rules apply in all parts of Canada. Click here to find out about your province's single employer rules.

## HOW TO PROTECT YOURSELF

To avoid what's called joint and several liability for employees' compensation 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. In *GMS*, both companies used the same document as a joint compensation plan for the employee.

**Bottom Line:** The specific measures required to maintain the integrity of separate

payroll and benefits operations will vary according to circumstances. But when related entities share employees, those measures must be taken to protect both companies against joint and several liability under the “single employer” rule.