

Safeguard Your Company: Understand the Recent Changes in Corporate Criminal Law

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Just as Sarbanes-Oxley did when it became law in 2002, the recent changes in federal corporate criminal law have executives and boards of directors taking a hard look at internal practices – making sure corporate integrity is upheld. To Miller Canfield, which has a client list that includes seven of the top 10 Fortune 500 companies, making sure executives are aware of their new responsibilities is important.

In January 2005, a U.S. Supreme Court ruling made sentencing guidelines advisory, not mandatory; in November 2004, amendments to the sentencing guidelines set forth how an organization may lessen its criminal exposure in the event that it is convicted of a crime; and earlier, the Department of Justice gave federal prosecutors factors to consider when making charging decisions concerning corporate offenders.

Importantly, there are significant areas of overlap between the factors that prosecutors consider and those factors listed in the amended sentencing guidelines that courts should consider when imposing a criminal sentence. Organizations both large and small and their corporate leaders should assume that the application of the sentencing guidelines will remain an important aspect of the federal sentencing process, and they should be aware of what prosecutors consider when determining whether to seek criminal charges.

“Organizations are facing increased challenges to prevent and detect unlawful conduct,” said Thomas W. Cranmer, Miller Canfield attorney and incoming president of the State Bar of Michigan. “In court actions involving charges of corporate wrongdoing, judges and prosecutors look more favorably on companies that have a compliance and ethics program in place and are implementing them effectively.”

“Preventative measures, such as communications and training programs outlining unacceptable behavior and a system that allows employees to report misconduct without fear of retribution, can point to intent and demonstrate that a company is taking proper steps to control fraud or other abuse and may help mitigate charges or sentences,” said Matthew F. Leitman, attorney in Miller Canfield’s criminal defense practice.

On April 19, Thomas W. Cranmer and Matthew F. Leitman will discuss the recent changes to corporate criminal law and how they influence the charging and sentencing of organizations and corporate executives. For more information on Miller Canfield’s briefing for executives, contact Virginia Herrick at (313) 496-7548 or herrick@millercanfield.com.

The 340-attorney law firm of Miller, Canfield, Paddock and Stone, P.L.C. was established in Detroit in 1852 and has offices in Ann Arbor, Detroit, Grand Rapids, Howell, Kalamazoo, Lansing, Monroe, and Troy, Michigan. Other offices are located in New York City, Pensacola, Florida, Washington, D.C., Windsor, Ontario, and in Gdynia, Katowice, and Warsaw, Poland.