

## **Bosses, don't roll the dice with your employees. You could be personally liable.**

By [Frank Shuster](#)

[Atlanta Office](#)

**11.06.2024**

You have probably heard about the plight of Rudy Giuliani.

Once known as “America’s Mayor” for his handling of the attack on the Twin Towers on September 11, 2001, Mr. Giuliani has fallen on hard times.

Because of a \$148 million jury verdict against him for defaming two poll workers in the last Presidential election, Mr. Giuliani has been ordered to give the poll workers the keys to his \$5.6-million apartment in New York City, a Mercedes Benz once owned by actress [Lauren Bacall](#), and lots of jewelry, including some serious World Series bling.

Still up for grabs is Mr. Giuliani’s condo in Miami. If he can’t keep that, his lawyers say he will join the ranks of America’s homeless.

I will not comment on whether this monstrous fall from grace is justified. That would distract from what I do want you to know, which is....

### **Supervisors, managers, and owners of businesses can be personally liable for violations of federal and state employment protection laws.**

Being personally liable means that when the dust settles on a jury verdict against you, the sheriff can seize your property to satisfy the judgment. Just like Rudy.

Do I have your attention now?

While some federal employment protection statutes, like Title VII and the Americans with Disabilities Act, do not allow for individual liability, others do. The Fair Labor Standards Act, the Family and Medical Leave Act, Section 1981 of the Civil Rights Act of 1991, and numerous state anti-discrimination laws all allow for recovery of damages from supervisors, managers, and business owners.

The basis for the liability under the FLSA and FMLA is that both statutes permit recovery from “*any person* acting directly or indirectly in the interest of an employer in relation to an employee.” (Emphasis added.)

The reference to “any person” means exactly what it says and opens the door for recovery from “persons” like you.

Depending on the nature of the employee’s claim, the requirement that you be “acting in interests of the employer” could be met if you (1) had the power to hire or fire the employee; (2) supervised and controlled the employee’s work schedule, pay rates, or conditions of employment; or (3) were involved in making the decision at issue.

In contrast, individual liability under Section 1981, which prohibits some forms of discrimination in the making, performance, modification, and termination of contracts, is a function of court-created common law.

One court [summed up the rationale](#) as follows:

Directors, officers, and employees of a corporation may become personally liable... [for the] infringement of rights protected by [the Civil Rights Act of 1991] ... so long as they authorized, directed, or participated in the alleged discriminatory conduct.

Personal liability under state employment protection statutes is based on the text of the statute in some cases, and on the state’s common law in others.

Regardless of the rationales, here’s the bottom line – if you participate in the decision that gives rise to an employee’s claims under one of these laws, your life savings could be at risk.

Most Employment Practices Liability Insurance policies exclude coverage of wage claims, and even if you have insurance coverage or indemnification rights from an employer, the risk is not imaginary.

Just ask the business owner who got tagged with a multi-million-dollar judgment 20 years ago in an FLSA class action, the HR manager who got hit with a \$40,000 judgment 10 years ago for violating the FMLA, or [the business owner who just learned that he faces a jury trial seeking to hold him personally liable for FLSA violations](#). They’ll tell you the risk is real.

**It’s not just your personal assets at stake. Criminal prosecution for “wage theft” has occurred and is likely to continue.**

Earlier this year, Manhattan District Attorney Alvin Bragg indicted the owner of famed New York City pizzeria Grimaldi, and one of its managers, for “stealing” \$30,000 from their employees’ wages in violation of New York’s wage theft act.



The conduct alleged includes paying employees with checks that bounced, issuing IOUs for unpaid wages, failing to make good on those IOUs, and telling the employees “the state is not going to do a thing” to help them.

*Yahtzee!* That was sure to get DA Bragg’s attention.

It would be a mistake to consider this a “one off” situation. The District Attorneys for Boulder, Colorado, and San Diego, California, have also made wage theft claims a priority.

As the Boulder DA explained, if someone went into another person’s desk and stole \$1,000, it would be theft and no one would bat an eye when the thief was criminally charged. But if someone earned \$1,000 and the boss intentionally failed to pay all of it to the employee on time, the situation would typically be treated differently.

Well, that’s no longer the case, and the list of jurisdictions pursuing wage theft claims is likely to grow.

As with any criminal prosecution, it’s all about intent and whether you knew what you were doing and intended to do it.

**Be careful out there, take care with the decisions you make, and don’t end up like Rudy.**

If you intend to steal – or “steal” – your employees’ wages, shame on you. No one (other than your family) will lose much sleep over your being prosecuted.

If you are involved in making decisions about an employee’s wages, hours, working conditions, or employment status, don’t roll the dice. Take the time to confirm that the decision is appropriate and not in violation of any employment law protections owed to the employee.

Be curious. Ask questions. When in doubt, get advice and counsel from someone knowledgeable about the applicable laws.

Regardless of whether you own a penthouse or a pup tent, a Mercedes or a Chevy, take care with your employment decisions, or it could cost you dearly.

### **Postscript**

As for the importance of being curious, asking questions and not pre-judging situations, you may want to watch [the darts scene](#) from the Apple TV series *Ted Lasso*. It’s a gem.