

DOJ's Focus on Food Safety and Corporate Executives

On April 29, 2016, Dole Foods Company [announced](#) that the Department of Justice (DOJ) had launched an investigation concerning listeria outbreaks at certain Dole plants. The investigation comes on the heels of a number of high profile DOJ probes into outbreaks of food-related illnesses, most recently [Blue Bell Creameries](#), and continues the DOJ's recent trend towards aggressive pursuit of food safety violations and [criminal charges against corporate executives](#). The federal Food, Drug, and Cosmetic Act (FDCA) creates a strict liability criminal offense arising from the introduction of adulterated food into interstate commerce. The DOJ may elect to pursue misdemeanor or felony charges based on the nature and seriousness of the violation and the scope of the outbreak. If the outbreak is a first-time offense or is the result of an unintentional violation, then the DOJ is more likely to pursue misdemeanor charges. If, on the other hand, the company responsible for the outbreak has repeatedly violated the FDCA or has introduced the adulterated food intentionally or knowingly, the DOJ has not hesitated to bring felony charges. Importantly, both companies and individual executives may face liability for outbreaks, and **company executives may be held vicariously liable and face criminal charges even if they were *unaware of the contamination***. Two examples illustrate the DOJ's past approach to criminal enforcement of the FDCA, both of which arose prior to the Department's current renewed focus on food safety. First, in 2010, a salmonella outbreak was traced to eggs produced and distributed by Quality Egg LLC. The outbreak resulted in almost 2,000 reported infections. After an investigation, the DOJ [entered into plea agreements](#) with the company, its owner, and its CEO. Quality Egg pleaded guilty to misdemeanor and felony violations of the FDCA as well as to bribery of a public official, paid a \$6.79 million fine and received three years' probation. The owner and the CEO both pleaded guilty to a misdemeanor violation and were sentenced to three months in prison, one year of supervised release, and a \$100,000 fine each. *Though neither was aware of the violation when it occurred*, each exercised control over Quality Egg's operations and its production and distribution of eggs and were therefore liable for the introduction of the contaminated eggs into interstate commerce. In 2008, Peanut Corporation of America (PCA) products were linked to a salmonella outbreak that resulted in 9 deaths and over 700 reported infections. The DOJ [alleged](#) that PCA executives misrepresented PCA's testing procedures, in some cases even falsely claimed that untested products had been tested for salmonella. In addition, the executives hid the fact that some PCA products had tested positive for salmonella, made no attempt to eliminate the causes of the contamination, and continued to manufacture and distribute their products. The executives were found guilty on multiple felony counts, including FDCA violations, after a seven-week trial. Though the DOJ sought a life sentence for the former president, he was sentenced to 28 years in prison. Two other defendants were sentenced to 20 and 5 years. In light of the significant criminal penalties that both companies and their executives could potentially face under the FDCA, food companies are well-advised to both bolster their food safety processes and compliance programs. Given the DOJ's [professed](#) and demonstrated commitment to food safety, coupled with the Department's current focus on executive liability, criminal prosecution of food safety violations is expected to continue.

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