

CRIMINAL LIABILITY OF CORPORATIONS
(Based on Conduct of Agent)
Penal Law § 20.20 (2)(c)¹

The (specify) count is (name of the charged offense).

I shall instruct you first on the definition of the crime of (charged crime). Then I shall define for you when a corporation may be found guilty of a crime. Finally, I shall put both definitions together and list for you the elements you must find have been proven beyond a reasonable doubt in order to find (specify name of corporation) guilty of the crime of (charged crime).

Note: (1) Here read the statutory definition of the offense and any defined terms as set forth in CJI for that crime. If that crime has already been defined, a cross-reference to that is sufficient.

(2) The offense must be one specified in Penal Law § 20.20(2)(c), which is reproduced in footnote 2.

Our law defines the circumstances under which a corporation may be criminally liable for the conduct of a person or persons acting on behalf of the corporation. Specifically, the law states that a corporation is guilty of an offense when the conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his or her employment and in behalf of the corporation.²

¹ The 2023 revision was for the purpose of incorporating in footnote 2 the L. 2022, c. 746 which added Penal Law § 20.20(2)(c)(iv), effective January 22, 2023 and which was amended by L. 2023, c. 61 with the same effective date.

² Penal Law § 20.20 (2) (c) (“A corporation is guilty of an offense when: . . .
(c) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation, and the offense is

The term “agent” has its own special meaning in the law.

An AGENT is any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation.”³

[Note: Add if appropriate:

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- (i) a misdemeanor or a violation, or
 - (ii) one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation, or
 - (iii) any offense set forth in title twenty-seven of article seventy-one of the environmental conservation law, or
 - (iv) is in relation to a crime involving the death or serious physical injury of an employee where the corporation acted negligently, recklessly, intentionally, or knowingly”). See *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1118 (D.C. Cir. 2009) (“Corporations may be held liable for specific intent offenses based on the ‘knowledge and intent’ of their employees. *N.Y. Cent. Hudson River R.R. Co. v. United States*, 212 U.S. 481, 495, 29 S.Ct. 304, 53 L.Ed. 613 (1909); see *United States v. A P Trucking Co.*, 358 U.S. 121, 125, 79 S.Ct. 203, 3 L.Ed.2d 165 (1958). Because a corporation only acts and wills by virtue of its employees, the proscribed corporate intent depends on the wrongful intent of specific employees. See *Saba v. Compagnie Nationale Air France*, 78 F.3d 664, 670 (D.C. Cir. 1996). Thus, to determine whether a corporation made a false or misleading statement with specific intent to defraud, we look to the state of mind of the individual corporate officers and employees who made, ordered, or approved the statement. *Southland Sec. Corp. v. INSpire Ins. Solutions Inc.*, 365 F.3d 353, 366 (5th Cir. 2004).”

Title 27 of article 71 of the Environmental Conservation Law specified above in paragraph (iii), defines the crimes of unlawful possession of hazardous waste in the first and second degree, endangering public health, safety or the environment in the first, second, third, fourth and fifth degree, and unlawful dealing in hazardous wastes in the first and second degree.

The term “employee” in paragraph (iv) is defined in Penal Law § 10(22): Employee means “any person providing labor or services for remuneration for a private entity or business within New York state, without regard to an individual's (cont.) immigration status, and shall include part-time workers, independent contractors, apprentices, domestic workers, home care and personal care workers, day laborers, farmworkers, and other temporary and seasonal workers.”

³ Penal Law § 20.20 (1) (a).

As you know, the People contend that *[the defendant corporation]* is liable based on the conduct of an agent who is not here on trial. You must not speculate on the present status of that person. You must not draw any inference from his/her absence. And, you must not allow his/her absence to influence your verdict. You are here to determine whether the People have proven beyond a reasonable doubt that *[the corporate defendant]* on trial is guilty of a charged crime.]

Note: At this point the elements of the crime charged against the corporation must be integrated with the theory of corporate liability. And wherever the reference the "defendant" appears in the elements of the charged crime, the name(s) of the alleged agent(s) should be substituted, and the requisite elements for corporate liability should be added.

An example of an appropriate charge for petit larceny follows:

In order for you to find *[the corporate defendant]* guilty of this crime, the People are required to prove, from all of the evidence in the case beyond a reasonable doubt, each of the following four elements:

1. That on or about (date), in the county of (County), (specify alleged agent) wrongfully took, obtained, or withheld (specify property) from its owner;
2. That (specify alleged agent) did so with the intent to deprive another of the property or to appropriate the property to himself/herself [or to a third person]; and
3. That (specify alleged agent) was an agent of the (specify name of corporation); and
4. That when (specify alleged agent) engaged in this conduct, he/she was acting within the scope of his/her employment and in behalf of the (specify name of corporation).

If you find the People have proven beyond a reasonable doubt each of those elements, you must find (specify name of corporation) guilty of the crime of (specify).

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find (specify name of corporation); not guilty of the crime of (specify).