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DOJ Continues Food Safety Indictments

FDA may have temporarily postponed its routine inspections due to COVID-19, but other areas of the federal government have remained very active in food safety pursuits, including the Department of Justice (DOJ). Last week DOJ announced the resolution of two food company criminal cases.

- In late April, [Chipotle Mexican Grill](#) agreed to a \$25 million criminal fine and three-year deferred prosecution agreement (DPA) that allows it to avoid conviction if it complies with an improved food safety program. The charges were related to the company's involvement in foodborne illness outbreaks between 2015 and 2018. It was the largest-ever fine in a food-safety case. According to the DPA, the incidents primarily stemmed from store-level employees' failure to follow company food safety protocols at company-owned restaurants. Since then Chipotle has made many changes to their food safety programs and is now one of the leading proponents for food safety with some of the best programs in the restaurant business.
- On May 1, [DOJ announced that Blue Bell Creameries](#) agreed to plead guilty to two misdemeanor counts of distributing adulterated ice cream products in the 2015 listeriosis outbreak and pay a criminal fine and forfeiture amount totaling \$17.25 million. In a related case, Blue Bell's former president, Paul Kruse, also was charged with seven felony counts related to his alleged efforts to conceal from customers what the company knew about the listeria contamination. According to the DOJ announcement, Kruse is asserted to have directed other Blue Bell employees to remove potentially contaminated products from store freezers without notifying retailers or consumers about the real reason for the withdrawal; and is alleged to have directed employees to tell customers who asked why products were removed that there had been an unspecified issue with a manufacturing machine instead of that samples of the products had tested positive for listeria.

As stated by the Agent in Charge of the DCIS field office, the Blue Bell settlement "demonstrates the commitment of the Defense Criminal Investigative Service and our law enforcement partners to hold companies accountable." – and as shown by the pending case against Kruse, it is an accountability that is continuing to be directed at individuals in management as well as the companies as a whole. And, it is an accountability that is not being lessened in the time of COVID-19.

In fact, if [Kruse were to be convicted on all charges](#), which also include six counts of wire fraud and attempted wire fraud, he could be sentenced to as much as 20 years on each count and fines totaling \$1 million. Maintaining Kruse's innocence,

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his lawyer stated that he and other Blue Bell employees “did the best they could with the information they had at the time.”

While both the Chipotle and Blue Bell outbreaks occurred prior to the pandemic, their recent indictments provide cautionary tales for facilities that are stretched thin dealing with COVID-19 controls, gradual reopenings, and food safety maintenance. While it is critical to continue to protect your employees from the virus and you seek to recover your operations, it is just as critical to ensure that you keep your eyes on the safety of the products being produced and the safety of those who will consume them, so DOJ doesn't set its sights on you.