



DUTY OF CARE OF EMPLOYERS FOR PROTECTING INTERNATIONAL ASSIGNEES

Car accident after an overnight flight — An American businesswoman landed in London after an 11-hour overnight flight from San Francisco. She drove her rental car from the airport to her mid-morning business meeting in Wimbledon. Tired from the overnight travel and unfamiliar with driving on the left side of the road, she was involved in a serious car accident.



By LISBETH CLAUS,
Professor of Global Human Resources,
Willamette University

Conference

*Les risques des employés
en mission internationale et le devoir
de protection de l'employeur*

What is the employer's Duty of Care in this situation? International work and travel are an integral part of the daily operations of a multinational company. But this travel is not without risk for both the employer and the employee. Inherent in the employer/employee relationship is the employer's Duty of Care for its employees' health, safety and security. This obligation applies to employees and their dependents when they are on business trips or on short- or long-term international assignment. In a recent study entitled *Duty of Care of Employers for Protecting International Assignees, their Dependents, and International Business Travelers*, we reviewed employers' Duty of Care responsibilities for their employees who cross borders as part of their work. Based on this study, this article will help employers fully assess their Duty of Care for protecting their employees working abroad and address this issue on a permanent basis.

THREATS AND RISKS FACED BY INTERNATIONAL BUSINESS TRAVELLERS

- ⚡ Terrorism, kidnapping, highjacking, piracy.
- ⚡ Lawlessness, violent crimes, threats, opportunistic crime, organized crime, imprisonment
- ⚡ War, insurgency, political upheaval, coups, and civil unrest
- ⚡ Natural disasters (hurricanes, floods, tornados, storms, mudslides, earthquakes, tsunamis, snowstorms, extreme weather conditions, drought, volcanic clouds).
- ⚡ Infectious diseases and pandemics such as influenza, SARS and Avian flu.
- ⚡ Travel-related infections such as malaria, respiratory infections, hepatitis, typhoid fever, dengue fever and other medical emergencies.
- ⚡ Lack of air quality, rural isolation, and language and cultural estrangement.
- ⚡ Vehicle accidents and airline catastrophes.
- ⚡ Hotel fires and terrorist attacks.
- ⚡ Lack of legal/administrative compliance (immigration and visa challenges).

The legal concept of Duty of Care presumes that individuals and organizations have legal obligations to act toward others in a prudent and cautious manner to avoid any risk of foreseeable injury to others. When viewed from a broader human resource (HR) perspective, employers have a variety of Duty of Care responsibilities for their employees. They are expected to take practical steps to safeguard their employees against any reasonably foreseeable danger in the workplace. When employees work across borders, the employer's Duty of Care involves risk management extending beyond the usual requirements imposed by the environment in the employee's home country. Whether employees are on short-term business travel or serving as long-term expatriates, they encounter unfamiliar environments and their exposure to risk and potential harm is increased.

EMPLOYER DUTY OF CARE AND LEGAL COMPLIANCE

A number of Western countries have developed legislation and case law that reflects employers' growing Duty of Care responsibilities towards their international assignees. In general, the courts tend to increasingly favour employees. Internationally, the legal issues are more complex. When doing business in different countries, multinationals are required to comply with national legislation. Some countries have more stringent employer Duty of Care statutes, such as the *Corporate Manslaughter and Corporate Homicide Act* in the United Kingdom and the Labour Code in France. Others, like the United States, rely more on statutory obligations and case law that impose more general Duty of Care. Currently, emerging markets such as China, India and Brazil do not take the issue of employer's Duty of Care seriously and have not yet articulated or enforced Duty of Care legislation. Employers should nonetheless be concerned.

Employers' legal liabilities usually include:

- assessing the risk inherent in the job, site and tools;
- taking steps to secure the work site;
- warning employees of the dangers;
- communicating, training and providing assistance.

A rule of thumb for the employer is to standardize their Duty of Care responsibilities at the highest and most stringent level. This equates legal compliance to the level of moral and corporate social responsibility.

EMPLOYER DUTY OF CARE AND CORPORATE SOCIAL RESPONSIBILITY

There is a trend in corporations with regard to the overall well-being and behaviour of their employees to shift emphasis from simple legal compliance to a more comprehensive approach in line with the organization's social responsibility efforts. Corporate social responsibility, in its broader sense, embodies the notion of a sustainable social contract between the employer and the employee and their respective duties of care and loyalty. As a result, organizations are taking specific actions, such as developing more integrated strategic approaches to Duty of Care issues, managing their responsibilities at the senior management levels, and using more globally-based best practices.

Employers have an overall stake in meeting their Duty of Care obligations, yet they often encounter many challenges in doing so successfully. Various decision makers, such as members of senior management, managing directors, general secretaries, corporate security managers, risk managers, travel managers, medical directors, insurance managers, legal managers, heads of HR, and global HR, all share responsibility for the organization's Duty of Care.

HOWEVER, THE REAL PROBLEM
MAY RESIDE IN MANAGEMENT'S
LACK OF AWARENESS OF THE FULL
EXTENT OF THEIR INTERNATIONAL
DUTY OF CARE.

Yet their objectives may clash. Senior management's financial objectives are likely to focus on reducing costs. Security requirements imposed by the risk management function may interfere with achieving the assignment objectives desired by line managers or with the international assignment management priorities of HR. These different decision makers are also often organized in functional silos, in direct contrast to the integrated team approach required by Duty of Care. Rarely do all of these internal constituencies work together in a concerted manner to deal with their organization's Duty of Care obligations. However, the real problem may reside in management's lack of awareness of the full extent of their international Duty of Care.

**AN INTEGRATED, STRATEGIC APPROACH
TO DUTY OF CARE**

How can employers meet their legal and ethical Duty of Care obligations? Risk management interventions must be integrated into corporate strategy. The critical success factors of such a strategic intervention lie in the awareness of, commitment to, and responsibilities of the different stakeholders within the organization. It is therefore important to identify what these Duty of Care responsibilities specifically mean for each stakeholder. Any successful strategic change initiative must have the support, i.e. commitment and resources, of senior management. This support is more likely to be obtained when a solid business case (return on investment) can be made to justify the development of an employer's Duty of Care strategy.

Global HR plays a specific role in making sure that the organization is meeting its Duty of Care responsibilities to employees as identified. Global HR has a unique, enterprise-wide perspective, as well as a better sense of how risks may vary among locations and how local laws and culture may both contribute to the creation of risk and influence risk management.

The responsibility for communicating with traveling employees and their families during a crisis often falls upon HR professionals. HR also plays a vital role in successful planning and implementation of emergency planning management, and must also anticipate and respond to the emotional toll on the workforce as a result of a crisis. The crisis management role of HR also includes taking proactive steps to respond quickly to developing situations, providing employee support/counselling services, and managing leave and privacy issues so that interruptions to business operations are minimized.

Finally, line managers (both at home and in host countries) who deal directly with expatriate and travelling employees play an important role in managing work responsibilities and ensuring compliance with company policies.

The prevention and reduction of risks incurred by expatriate employees are the employer's responsibility and call for joint and coordinated efforts from senior management, line management, risk managers and global HR. The responsibility for developing an integrated risk management strategy is embedded in the corporate culture and cannot be delegated or outsourced. It is the legal, fiduciary, and corporate social responsibility of the corporation, and the result of concerted and cooperative action of senior management, line management, risk managers and global HR professionals to prevent and manage the risks of their international assignees. 