

# LEGAL PERSPECTIVE ON THE HEALTH, SAFETY & SECURITY RESPONSIBILITIES FOR US MOBILE WORKFORCE

Employer Best Practices and Travel Risk Management Checklist



AMERICAN COLLEGE OF  
OCCUPATIONAL AND  
ENVIRONMENTAL MEDICINE

*International SOS*  
**Foundation**

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## International SOS Duty of Care White Paper U.S. Legal Perspective

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### INTRODUCTION

Ebola. Terrorism. H1N1 influenza. Civil unrest. *SARS*. Tsunamis. The Zika Virus. Sound familiar? These are all global issues that have become commonly understood terms in the United States. While these are now commonly understood terms, however, understanding how to prevent issues like these from happening is not so commonly understood.<sup>1</sup> In particular, understanding how employers can protect their employees both domestically and their workers abroad from these global issues, among others, is becoming a rising concern.

With this rising concern comes an increased focus on an employers' Duty of Care to its employees both domestically and abroad, including the employer's duty to understand the threats its employees may face and how to respond to these threats from a preventative standpoint. It is no longer sufficient for an employer to be familiar and compliant only with United States laws and regulations (i.e., OSHA, workers' compensation, etc.) affecting its workforce. Indeed, employers need to be familiar with and sufficiently address the issues facing their workers who travel and/or perform work abroad.

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<sup>1</sup> See, e.g., [United Nations, Protecting Humanity from Future Health Crises, Report of the High-level Panel on the Global Response to Health Crises, Jan. 25, 2016.](#)





It may seem like an impossible feat for employers to uphold their Duty of Care obligations in a world where new global issues and threats emerge each day, but it would behoove an employer to understand and address its legal, moral, ethical, and financial Duty of Care responsibilities. Understanding the legal obligations and preventing the risks associated with employee foreign travel and work assignments is imperative for employers, exclusive of size or industry.

## EXECUTIVE SUMMARY

This paper explores the evolving legal framework that governs the Duty of Care United States employers owe their United States workers who travel and/or work abroad.

Workplace health and safety is a paramount concern in the United States, as evidenced by the Occupational Safety and Health Administration Act of 1970 (“OSHA”) and workers’ compensation laws. Once a United States worker steps outside United States borders, however, the worker is no longer protected by these regulations and may find himself or herself outside the confines of the workers’ compensation policies governing his or her employment. To the extent the employee suffers, for example, a workplace injury while working on a project for his U.S. employer in Istanbul, the employee has no means of legal redress other than to allege that his or her employer breached the Duty of Care, or, in other words, was negligent.

Employers then find themselves litigating negligence-type claims in a foreign jurisdiction, which is often very unpredictable and costly, something that the workers’ compensation system was instituted to avoid domestically.

In light of this issue, an employer should strive to understand its legal obligations and to mitigate its liability risk through a travel risk management plan that involves assessing company-specific risks and developing policies and procedures, communicating to and training of employees, and documenting and analyzing incidents.

This paper will first provide an overview of the regulations and rules governing work performed domestically, which, while often times are not applicable to work performed overseas, provides a framework within which employers should assess its obligations to its workers abroad. Second, this paper will provide an analysis of the Duty of Care concept applied in negligence actions in the United States. Third, this paper will provide an analysis of the Duty of Care obligations in the United Kingdom and Canada, which can provide useful insight on how this concept is evolving internationally. Finally, this paper explores the best practices all employer should take in developing a strong and effective travel risk management plan.

## ORGANIZATION HIGHLIGHTS

### Fisher Phillips

Fisher Phillips attorneys are ready to help you take a stand: in court, with employees and unions, or with competitors. Fisher Phillips has the experience and resolve to back you up. That's why some of the savviest employers come to the firm to handle their toughest labor and employment cases.

The firm has more than 350 attorneys in 33 offices. The offices are in Atlanta, Baltimore, Boston, Charlotte, Chicago, Cleveland, Columbia, Columbus, Dallas, Denver, Fort Lauderdale, Gulfport, Houston, Irvine, Kansas City, Las Vegas, Los Angeles, Louisville, Memphis, New Jersey, New Orleans, New York, Orlando, Philadelphia, Phoenix, Portland, Sacramento, San Antonio, San Diego, San Francisco, Seattle, Tampa, and Washington, D.C.

[www.fisherphillips.com](http://www.fisherphillips.com)

### American College of Occupational and Environmental Medicine (ACOEM)

Founded in 1916, the American College of Occupational and Environmental Medicine (ACOEM) is the nation's largest medical society dedicated to promoting the health of workers through preventive medicine, clinical care, research, and education. A dynamic group of physicians encompassing specialists in a variety of medical practices is united via the College to develop positions and policies on vital issues relevant to the practice of preventive medicine both within and outside of the workplace. The College is headquarter in Elk Grove, Illinois.

[www.acoem.org](http://www.acoem.org)

### International SOS Foundation

Launched in March 2012, the International SOS Foundation has the goal of improving the safety, security, health and welfare of people working abroad or on remote assignments through the study, understanding and mitigation of potential risks.

The escalation of globalization has enabled more individuals to work across borders and in unfamiliar environments; exposure to risks which can impact personal health, security and safety increases along with travel. The Foundation is a registered charity and was started with a grant from International SOS. It is a fully independent, not-for-profit organization.

## OSHA

OSHA establishes the primary standards for workplace health and safety. <sup>2</sup> The Mine Safety and Health Administration (MSHA) regulates employers participating in mining-related activities, <sup>3</sup> and the U.S. Coast Guard and other Federal entities regulate or share responsibility with OSHA to guarantee employee safety.

Virtually all non-mining employers are covered by OSHA with the exception of certain state and municipal employees and certain small business entities. In short, OSHA applies to any employer "engaged in a business affecting commerce who has employees, but does not include the United States or any state." <sup>4</sup> While OSHA's powers are broad, its authority is limited to employment performed within the geographical boundaries under the jurisdiction of the United States and does not extend to employment performed overseas. <sup>5</sup>

OSHA has expansive powers and promulgates numerous requirements with which an employer must comply. While there are general requirements that an employer must meet, as outlined below, there are also numerous specific requirements.

#### a. General Duty of Care and Preventative Focus

The OSHA Act establishes a general Duty of Care which requires that each employer:

- » **Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.**
- » **Shall comply with occupational safety and health standards promulgated under this [Act].** <sup>6</sup>

Under this general Duty of Care umbrella, employers are subject to upholding many specific key responsibilities, including by way of example only, establish or update operating procedures and communicate them so that employees follow safety and health requirements, provide safety training in a language and vocabulary workers can understand, and examine workplace conditions to ensure they conform to applicable OSHA regulations which are known as "Standards." <sup>7</sup>

## OSHA (Continued)

In addition to OSHA's many Standards, the Agency will cite employers for exposing employees to a hazard which is recognized by their industry, which is the basis for recent OSHA citations for hazards relating to combustible dust, workplace violence, and ergonomics despite the absence of an applicable Standard. Increasingly, OSHA is relying upon its own voluntary guidelines and outreach efforts in determining whether a hazard is recognized by an industry.

Federal OSHA has delegated certain enforcement responsibilities to over 20 State OSHA Plans, which must be "at least as effective" as federal OSHA standards.<sup>8</sup> Some State OSHA Plans have enacted more demanding standards than Federal-OSHA.<sup>9</sup>

OSHA utilizes a more punitive approach than most European safety administrations, but the focus of its Standards are preventive in nature. For example, OSHA encourages employers to adopt an Injury and Illness Prevention Program or safety health Management Program, which focuses on identifying and eliminating hazards regardless of whether OSHA maintains a Standard covering the hazard. According to OSHA, the most successful programs are based on a common set of key elements: management leadership, worker participation, hazard identification, hazard prevention and control, education and training, and program evaluation and improvement.<sup>10</sup> OSHA has recently indicated that it may use its program guidelines to evaluate employer safety efforts during investigations.

<sup>2</sup> 29 U.S.C. § 651, et seq.

<sup>3</sup> United States Department of Labor, Mine Safety and Health Administration, <https://www.msha.gov/>.

<sup>4</sup> 29 U.S.C. § 652.

<sup>5</sup> Occupational Safety and Health Administration, United States Department of Labor, Francis Yebesi, Acting Director, Directorate of Evaluation and Analysis, February 10, 2015, Standard Interpretation Letter 1904.3, Feb. 10, 2015, [http://www.crsledge.com/news/documents/Interpretations/Interpretation\\_5-5-11-15.pdf](http://www.crsledge.com/news/documents/Interpretations/Interpretation_5-5-11-15.pdf); see Section 4(a), 29 U.S.C. § 653(a).

<sup>6</sup> 29 U.S.C. § 654.

<sup>7</sup> Occupational Safety & Health Administration, United States Department of Labor, Employer Responsibilities Memorandum, <https://www.osha.gov/as/opa/worker/employer-responsibility.html> (hereinafter "Employer Responsibilities Memorandum").

<sup>8</sup> 29 U.S.C. § 667(c)(2).

<sup>9</sup> See id.

<sup>10</sup> Id.

Thirty-four states have some type of program initiatives for worker safety and health protection.<sup>11</sup> According to OSHA, for every dollar spent on an Injury and Illness Prevention Program, an employer can expect up to six times a return on its investment and will also help American businesses remain competitive in a global market.<sup>12</sup>

OSHA has not developed many standards which affect working abroad, but does expect employers to evaluate the hazards associated with sending Americans abroad and to develop processes to eliminate those hazards, perhaps through the employer's Injury and Illness Prevention Plan. OSHA will cite an employer under Section 5(a)(1) of the OSHA Act where the employer's industry recognizes a hazard in the absence of an OSHA standard.<sup>13</sup>

Even where OSHA cannot cite an employer for hazards encountered by employees outside of US borders, a civil court may consider OSHA standards, interpretations, and guidance in determining whether the employer followed a general duty of care and was not negligent in its protection of employees. Courts do not, however, typically treat OSHA Standards as per sé proof of negligence. For all of these reasons, employers should include hazards associated with travel and work overseas into their Injury and Illness Plan efforts.







Because new workplace hazards are emerging constantly, OSHA regularly publishes Technical Advisory Bulletins or other guidance documents. These guidance documents are not OSHA Standards but will be given deference by courts, and are designed to assist employers to identify and respond to hazards that could be covered by the general Duty of Care. One relevant Technical Advisory Bulletin entitled “Safety and Health During International Travel” focused on the risk of contracting, among other things, certain infectious diseases.<sup>17</sup> The Bulletin had the purpose of informing employees and employers of the availability of specific travel health information including preventive measures and immunizations for employees whose work requires international travel, providing informational resources about travel health with the goal of protecting the health of workers who travel internationally, and informing both employees and employers of the availability of country-specific safety and health information.<sup>18</sup>

Finally, OSHA will issue citations and penalties if it finds that an employer violated OSHA’s health and safety standards and will require abatement of hazards.<sup>19</sup> OSHA penalties increase over 70% on August 1, 2016, but can be retroactive to inspections begun in February 2016, and where citations were issued after August 1.<sup>20</sup>

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<sup>11</sup> Occupational Safety & Health Administration, United States Department of Labor, Injury and Illness Prevention Programs – Good for Workers. Good for Businesses. Good for America, <https://www.osha.gov/dsg/topics/safetyhealth/index.html> (hereinafter “Injury and Illness Prevention Programs Article”).

<sup>12</sup> Id.

<sup>13</sup> See Section 5(a), 29 U.S.C. § 654; see also Introduction to OSHA, Instructor Guide, OSHA Directorate of Training and Education April 2011, [https://www.osha.gov/dte/outreach/intro\\_osh/intro\\_to\\_osh\\_guide.html](https://www.osha.gov/dte/outreach/intro_osh/intro_to_osh_guide.html).

<sup>14</sup> Occupational Safety & Health Administration, United States Department of Labor, OSHA Fact Sheet, Planning and Responding to Workplace Emergencies, [https://www.osha.gov/OshDoc/data\\_General\\_Facts/factsheet-workplaceemergencies.pdf](https://www.osha.gov/OshDoc/data_General_Facts/factsheet-workplaceemergencies.pdf).

<sup>15</sup> B. Raisch, M. Statler, and D. Binder, *The Legal Obligation for Corporate Preparedness*, New York University, 2006; 29 C.F.R. § 1910.38.

<sup>16</sup> Occupational Safety & Health Administration, United States Department of Labor, *Principal Emergency Response and Preparedness: Requirements and Guidance*, 2004, <https://www.osha.gov/Publications/osh3122.pdf>.

<sup>17</sup> Occupational Safety & Health Administration, United States Department of Labor, *Safety and Health During International Travel*, Technical Information Bulletin, Feb. 4, 2012, [https://www.osha.gov/dts/tib/tib\\_data/tib20020412.html](https://www.osha.gov/dts/tib/tib_data/tib20020412.html).

<sup>18</sup> Id.

<sup>19</sup> Occupational Safety & Health Administration, United States Department of Labor, *All About OSHA*, OSHA U.S. Department of Labor, 2015 at 16, [https://www.osha.gov/Publications/all\\_about\\_OSHA.pdf](https://www.osha.gov/Publications/all_about_OSHA.pdf).

<sup>20</sup> Shaun Donovan, Director, Executive Office of the President, Office of Management and Budget, *Memorandum for the Heads of Executive Departments and Agencies*, Feb. 24, 2016, <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

## OSHA (Continued)

The increasing concern about workplace violence suggests how OSHA might view the hazards associated with overseas work, at least for purposes of OSHA guidance. Although OSHA does not maintain a Standard devoted to the prevention of workplace violence or the response to active shooters, OSHA has developed extensive guidelines and recommendations and issues citations under section 5(a)(1). Many of the precautions and training associated with the prevention of workplace violence would be applicable to employees traveling and working abroad. In particular, OSHA emphasizes evaluating work-sites, maintaining situational awareness, training employees and supervisors to recognize hazards, and developing programs to respond to workplace violence incidents.

Similarly, OSHA Standards require employers to engage in certain emergency preparedness efforts depending upon the industry.<sup>14</sup> For most businesses, the requirements include a written Emergency Action Plan (“EAP”) dealing with emergencies ranging from fires and tornadoes to terrorism. The EAP addresses evacuation procedures, fire extinguisher use, emergency reporting, critical plan operations, employee accounting, rescue, medical duties, applicable employee duties under the plan, and alarm notification systems and training.<sup>15</sup>

OSHA expects employers to analyze the emergency and evacuation needs of employees working away from the employer’s site, and to develop applicable training and procedures. Additional requirements are imposed under Hazardous Waste Operations and Emergency Response (HAZPOWER) and the Process Safety Management (PSM) of Highly Hazardous Chemicals standard.<sup>16</sup>

## OSHA (Continued)

### b. Record Keeping

Employers with ten (10) or more employees are required to prepare and maintain records of serious occupational injuries and illnesses, using the OSHA 300 Log.<sup>21</sup> A new injury and illness reporting rule went into effect on January 1, 2015 which updates the list of industries exempt from OSHA's requirement.

All employers must report all work-related fatalities within eight (8) hours and all work-related inpatient hospitalizations, all amputations, and all losses of an eye within 24 hours.<sup>22</sup> The Injury and Illness Incident Report (Form 301) is one of the first forms an employer must fill out when a recordable work-related injury or illness has occurred. The Log of Work-Related Injuries and Illnesses (Form 300) is used to record and classify work-related injuries and illnesses and to note the extent and severity of each case. The Summary (Form 300A) shows the totals for the year in each category.<sup>23</sup> OSHA issued a new Electronic Injury Record keeping Rule in May 2016 which requires many employers to electronically submit injury data for public posting beginning on a phased-in basis on January 2017.

### c. Worker Training

OSHA Standards impose many differing highly specific training requirements depending upon the employee's industry and job. Construction, in particular, emphasizes training employees to recognize hazards of a specific task or job, although this principle carries over into general industry settings.<sup>24</sup> Indeed, one of the first questions an OSHA investigator will ask – and employers should be prepared to answer – is whether the employee who was injured received adequate training to perform the task. OSHA states that “[t]raining in the safe way for workers to do their jobs well is an investment that will pay back over and over again in fewer injuries and illnesses, better morale, lower insurance premiums and more.”<sup>25</sup> Failure to document task-specific safety training is related to the vast majority of OSHA citations.

## WORKERS' COMPENSATION

While OSHA is focused on preventing workplace injuries by imposing obligations upon employers to maintain a safe work environment, Workers' Compensation laws, which have been in effect for over 100 years, impose responsibilities on an employer to financially compensate an employee who actually suffers an injury or occupational disease suffered in the course of employment. There is no universal federal act governing workers' compensation coverage; rather, workers' compensation coverage is State-specific.

Prior to the advent of the modern workers' compensation system, workers could recover both economic and non-economic losses (e.g., pain and suffering, emotional distress, punitive damages, etc.), which could prove to be quite costly for employers.<sup>26</sup> Employees now receive compensation for economic losses associated with employment-related injuries, illnesses, and deaths, without regard to fault.<sup>27</sup> The major benefit tied to an employer having workers' compensation insurance is that the injured worker's only remedy against his or her employer is, in the overwhelming majority of scenarios, via a workers' compensation claim – the employee cannot later bring a suit against the employer or its officers and directors for the same injury.

<sup>21</sup> 29 C.F.R. § 1904.

<sup>22</sup> Occupational Safety & Health Administration, United States Department of Labor, OSHA's Record keeping Rule, <https://www.osha.gov/recordkeeping2014/index.html>.

<sup>23</sup> Occupational Safety & Health Administration, United States Department of Labor, Injury & Illness Record keeping Forms 300, 300A, 301, <https://www.osha.gov/recordkeeping/RKforms.html>.

<sup>24</sup> Occupational Safety & Health Administration, United States Department of Labor, Training Requirements in OSHA Standards, 2015, <https://www.osha.gov/Publications/osha2254.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> Scott Szymendera, Analyst in Disability Policy, *Reviewing Workers' Compensation for Federal Employees*, May 12, 2011 at 1.

<sup>27</sup> *Id.* at 2.

## WORKERS' COMPENSATION (Continued)

There are certain categories of workers who are, however, not covered by the workers' compensation laws. Workers' compensation laws cover only employees, typically not independent contractors or volunteers. There are also certain circumstances where a state's workers' compensation law does not cover injured workers, for example, executive officers or third party claims.

Being a "covered employee" in the United States does not automatically mean an employee who is assigned to work abroad is covered by workers' compensation. Generally, Workers' Compensation laws do not have extra-territorial application, but there are certain exceptions such as the business traveler exception and the short-term assignee exception.<sup>28</sup> Employers can also purchase Foreign Voluntary Workers' Compensation (FVWC), which is "insurance for bodily injury from accidents or diseases that occur while your employees are working outside of their home country, subject to the applicability of any state workers compensation statutory requirements."<sup>29</sup> The FVWC can be beneficial, but it can also prove to be expensive for employers to maintain.<sup>30</sup>

Failing to obtain statutory workers' compensation coverage or not having coverage that extends to employees working abroad exposes the employer to potential tort damages, including, by way of example only, claims for negligence, unsafe working conditions, and improper training, which could result in the employer paying significant damages to an employee, as outlined further below. Thus, employers need to be cognizant of what these consequences are.

<sup>28</sup> Dr. Lisbeth Claus, SPHR, GPHR, Professor of Global HR at the Atkinson Graduate School of Management of Willamette University in Salem, Oregon, Duty of Care of Employers for Protecting International Assignees, their Dependents, and International Business Travelers, 2009 at 18-19 (hereinafter "Claus Article").

<sup>29</sup> See, e.g., Chubb Group of Insurance Companies, Protecting Your Employees Traveling Internationally, <http://www.chubb.com/businesses/cci/chubb2613.html>.

<sup>30</sup> Zurich American Insurance Company, Insurance protection for employees abroad, 2011, <http://hpd.zurichna.com/Whitepaper/Zurich-insurance-protection-employee-abroad.pdf>.

There are certain ways employers have tried to protect themselves from claims brought by employees working abroad that may fall outside of the employer's workers' compensation coverage:

- » Assumption of the risk waivers, and;
- » Arbitration clauses

Assumption of the risk waivers may seem like a good idea in theory for employers sending their employees abroad as a way to avoid liability. The thought is, if the employee waives their rights to sue the employer, then what could be clearer than that? However, it is not that simple.<sup>31</sup> First, there is a large body of case law indicating that assumption of the risk waivers in the employment context are disfavored.<sup>32</sup> Indeed, the Restatement of Torts specifically says that where there is an employer/employee relationship and the assumption of the risk waiver relates to injury to the employee in the course of his employment, "the courts are generally agreed that it will not be given effect."<sup>33</sup> Second, employees can often get around the assumption of the risk waiver by arguing that there was some intervening bad act or recklessness on the part of the employer.<sup>34</sup>

Another protection employers have taken to safeguard themselves against the risks associated with sending its employees abroad is the use of an arbitration clause within an employment contract. While most American employees who travel internationally for business do not have employment contracts,<sup>35</sup> for those employees who do, arbitration clauses in those contracts may give an employer peace of mind believing that any personal injury claims not covered by the United States workers' compensation system will be arbitrated.<sup>36</sup>

<sup>31</sup> Donald C. Dowling, Jr., White & Case LLP, Lexology, Overseas business travel liability and the duty of care in times of Ebola, Dec. 3, 2014, <http://www.lexology.com/library/detail.aspx?g=7503d132-1d84-48df-8dd1-c25cd9a3a8f8> (Dowling Article).

<sup>32</sup> See, e.g., *Brown v. Soh*, 909 A.2d 43, 50 (Conn. 2006) (finding that exculpatory agreements in the employment context violate public policy); *Norris v. ACF Industries, Inc.*, 609 F. Supp. 549, 552 (S.D.W.V. 1985) (expressly outlining the "employer/employee exception" to assumption of the risk).

<sup>33</sup> Restatement (Second) of Torts § 496B, Express Assumption of Risk (1965).

<sup>34</sup> Dowling Article.

<sup>35</sup> Aaron Schindel and Daniel L Saperstein, New York State Bar Association, International Section, 2010 Seasonal Meeting, Sydney, Australia, Global Executives: Legal Headaches for International Employers The Multinational Executive: Whose Law Governs?, Oct. 29, 2010.

<sup>36</sup> Dowling Article.



## “DUTY OF CARE” OBLIGATIONS

OSHA cannot cite employers for hazards to which employees are exposed abroad, although other courts and tribunals may consider what duties OSHA would have imposed on those workers in the U.S. or recommended as part of OSHA’s Guidelines and recommendations. The application of workers’ compensation laws and related insurance coverage to these workers is questionable. Neither legal scheme alone determines the employer’s obligations. Therefore, employers must recognize what has come to be known as their “Duty of Care” obligations – in other words, employers have an obligation to act in a prudent and cautious manner to avoid the risk of reasonably foreseeable injury to their employees. The Duty of Care concept can be best understood when viewed through the lens of a common law negligence claim with four commonly understood elements: duty, breach of the duty, causation, and injury. <sup>37</sup>

With regard to international business travelers and assignees traveling in furtherance of the employer’s business, a United States employer would be remiss if it did not understand the potential for a negligence action to be filed and the costly ramifications of such a suit. Unfortunately, there is no clear line of case law on which an employer can rely when evaluating the risks of sending its employees abroad.

The following examples of cases outline the various potential consequences an employer may face, which can often be fact specific and dependent upon the state laws that govern the employer’s duties:

<sup>37</sup> Dr. Lisbeth Claus, SPHR, GPHR, Professor of Global HR at the Atkinson Graduate School of Management of Willamette University in Salem, Oregon has written, and International SOS Assistance, Inc., has published, seminal work on the Duty of Care topic. See, e.g., Claus Article supra.

<sup>38</sup> Dr. Daniel Diermeier, The Multiple Facets of the Traveler Protection Problem, URMI Insights, <http://my.urmia.org/enews/blogs/urmia-national-office/2014/12/15/the-multiple-facets-of-the-traveler-protection-problem> (hereinafter “Diermeier Article”).

<sup>39</sup> Sam Howe Verhovek, In Houston, Tears for Four Who Roamed Far Afield, New York Times, Nov. 13, 1997, <http://www.nytimes.com/1997/11/13/world/in-houston-tears-for-four-who-roamed-far-afield.html>.

### CASE

### SUMMARY

#### Enlow v. Union Texas

December 21, 1999, U.S. Federal Court, Fifth Circuit (Houston) (unreported jury trial). <sup>38</sup>

A team of four Houston-based auditors who spent about half of their work time each year checking the books of Union Texas Petroleum’s overseas operation were killed in Karachi, Pakistan in November 1997 while traveling from their hotel to finish up an auditing project for the company. <sup>39</sup> Survivors of the auditors brought suit against the company alleging a breach of the Duty of Care by sending the auditors to Pakistan during a time of strife and anti-U.S. sentiment, and by failing to provide the necessary level of security. The jury found in favor of the company, finding that the company took adequate security measures (including the hiring of a private risk management firm) and that the risk of murder was not reasonably foreseeable.



## “DUTY OF CARE” OBLIGATIONS (Continued)

CASE	SUMMARY
<p><b>Khan v. Parsons Services</b></p> <p>Ltd., 428 F.3d 1079 (D.C. Cir. 2005).</p>	<p>An employee and his wife brought tort claims (negligence and intentional infliction of emotional distress) in state court against Parsons and its agents to recover for injuries sustained as a result of the company’s alleged mishandling of ransom demands of employee’s kidnappers (the employee was kidnapped, held for three weeks while ransom negotiations took place, and the employee’s ear was chopped off after the company delayed ransom payments). The employee was coming back from dinner on a non-business day when the kidnapping occurred. The employee had been hired to work as an accountant in Manila, the Philippines, for a two-year term.</p> <p>The United States District Court for the District of Columbia granted summary judgment for the company, ruling that the employee’s tort claims were barred by the employee’s contractual agreement with the company to accept workers’ compensation insurance as the exclusive remedy for injuries arising out of and in the course of his employment. On appeal, the decision was reversed and remanded to determine the negligence issues after the appeals court ruled that the workers’ compensation laws were not applicable. The company had considered the employee to have been a “traveling employee” at the time of his kidnapping and therefore his workers’ compensation was his sole remedy under the D.C. Workers’ Compensation Act. However, the appeals court determined that the “traveling employee” exception is a narrow exception to the exclusion of coverage, and, therefore, the case was reversed and remanded. The employee argued that his injuries did not arise out of or occur in the course of his employment because the travel involved in his relocation was completed several days before the kidnapping, his job as an accountant did not involve travel, and the kidnapping occurred on a non-working day after a non-business dinner. The company argued that “the [workers’ compensation] statute covered every minute of every day of [the employee’s] time in the Philippines.”</p> <p>The District Court then ruled that the employee’s negligence claim was subject to an arbitration clause in the employee’s contract, but that ruling was reversed.</p>
<p><b>Vance v. CHF International</b></p> <p>914 F. Supp. 2d 669 (D. Md. 2012).</p>	<p>Employee was murdered while he was performing aid work in Pakistan and was on his way to his employer’s office. Because the employee’s injuries were covered under the Defense Base Act insurance coverage, the employee’s beneficiaries were precluded from pursuing a tort claim against his employer to recover for the same injury. The court noted that “[e]mployers relinquish their defenses to tort actions in exchange for limited and predictable liability, and employees accept the limited recovery because they receive prompt relief without the expense, uncertainty, and delay that tort actions entail.”</p>

## “DUTY OF CARE” OBLIGATIONS (Continued)

CASE	SUMMARY
<p><b>Munn v. The Hotchkiss Sch.</b></p> <p>24 F. Supp. 3d 155 (D. Connecticut 2014). <sup>40</sup></p>	<p>A fourteen-year-old freshman student who contracted a disease called tick-borne encephalitis (TBE) on a one-month school trip to China and suffered permanent brain damage brought a negligence action against the boarding school. The jury awarded plaintiff \$450,000 in past economic damages, \$9,800,000 in future economic damages, and \$31,500,000 in non-economic damages. Prior to the trial, the student’s motion in limine to preclude introduction of pre-trip release of liability was granted. On a weekend excursion to the Great Wall, the students took a hike at Mount Panshan. The school had not warned the students that they should dress for a serious hike or wear bug spray. The student took the hike and, upon receiving permission from her teacher, walked down the mountain with her friends. During her walk down the mountain, a tick bit her and ultimately led to TBE.</p> <p>The court found that the following issues under a negligence theory, among others, were proper for the jury to decide: (1) whether the school had a Duty of Care to the students to warn of potential risks of insect-borne diseases, and to advise student of precautions against contract insect-borne disease; and (2) whether the school should have foreseen threat that insect-borne disease posed to student.</p>
<p><b>Boisson v. Arizona Bd. of Regents</b></p> <p>343 P.3d 931 (Ct. of Appeals Ariz. 2015).</p>	<p>Wrongful death action against state, Arizona Board of Regents, and Chinese University on behalf of student who died of altitude sickness while on student-organized trip in Tibet during a study-abroad program in China. The court granted the school’s motion for summary judgment because the trip was not an off-campus school activity for which defendants owed a duty of reasonable care to the student.</p>

The above-cited examples illustrate that an employer who sends its employees abroad to perform projects or even to work for a longer period of time can no longer avoid its Duty of Care obligations. Although the results of the cases are varied, employers can no longer take the “out of sight, out of mind” approach to its Duty of Care obligations as it applies to their employees. Rather, there needs to be a concerted effort on behalf of the employer to mitigate the company’s risks and protect the employees.

<sup>40</sup> There has been an increased focus on the duty of care universities owe to their students as well as the teachers going abroad for study abroad programs. See, e.g., Terra Dotta, *Three Things Every College or University Must Know About Duty of Care*, <http://www.terradotta.com/articles/article-duty-of-care.pdf>.



## REPUTATIONAL RISK FACTORS

An employer not only faces legal consequences that can be quite expensive, the employer also faces reputational risks that can come at a significant cost. There are certain factors that increase the reputational risk:

- » **The international travel involves a high-risk, high-profile region (e.g., the Middle East or certain parts of Africa);**
- » **The international travel involves a high-profile, risky event (e.g., foreign reporters attacked during the violent protests in Cairo’s Tahrir Square in 2011); and**
- » **Whether the company’s core mission or business involves travel, tourism, or security (e.g., tourism business will come under greater media scrutiny for traveler protection than consumer goods firms).** <sup>41</sup>

These reputational risks can also be minimized through the employer’s efforts to mitigate the company’s risks and protect the employees.

## EMERGING INTERNATIONAL TRENDS

The Duty of Care concept is certainly not evolving in a vacuum within the United States only; indeed, the Duty of Care concept is evolving worldwide. Moreover, while the general rule is that the local employee protection laws of the place where a given employee currently works usually apply, this general rule is subject to certain nuances, refinements, strategies, exceptions, and purported exceptions, <sup>42</sup> which mean an employer in the United States is not safe to assume 100% of the time that United States laws will apply. Therefore, evaluating and understanding other countries’ approaches to the Duty of Care concept outside of the United States is helpful and sometimes even necessary.

### a. United Kingdom

The United Kingdom has a highly-developed body of Duty of Care legislation, both at the criminal and civil levels. The Health and Safety at Work Act of 1974 (“HSWA”) <sup>43</sup> as well as the common law Duty of Care govern civil actions. The Corporate Manslaughter and Corporate Homicide Act of 2007 (the “Manslaughter Act”) governs criminal actions. <sup>44</sup>

The HSWA is the primary piece of legislation covering occupational health and safety in Great Britain and it applies to all employers. <sup>45</sup> An employer can also be liable under the HSWA for injury caused to employees working for the employer outside of the United Kingdom. <sup>46</sup> Guidance on the HSWA states that “[t]he approach you take should be proportionate to the size of your business and the nature of your business activity.” <sup>47</sup> At a minimum, the HSWA provides a Duty of Care for “every employer to ensure, so far as reasonably practical, the health, safety and welfare at work of all his employees.” The HSWA does not require an employer to remove all of the risks associated with doing business, but does require an employer to protect its employees by putting in place measures to control foreseeable risks.

As part of an employer’s general duties under the HSWA, employers shall prepare and revise a written statement of its general policy with respect to health and safety and to notify its employees of such policy, consult its appropriate representatives to determine and check the effectiveness of such measures, establish a safety committee in certain circumstances, and ensure its employees have the appropriate training. <sup>48</sup> The penalties for a breach of the Duty of Care outlined in the HSWA range from a fine up to €20,000 without prison time and a conviction or indictment with unlimited damages. <sup>49</sup>

The Manslaughter Act states that employers can be found guilty of a new offense called “corporate manslaughter,” as a result of serious management failures resulting in a gross breach of a Duty of Care. <sup>50</sup> The offense is not a part of the HSWA. While criminal prosecutions under the Manslaughter Act are of the corporate body and not the individuals (directors, board members, etc.), individuals can be held liable under the HSWA or general criminal law. An organization is guilty of corporate manslaughter if the way in which its activities are managed or organized “causes a person’s death” or “amounts to a gross breach of a relevant Duty of Care owed by the organization to the deceased.” <sup>51</sup>

With respect to civil liability of senior management, if a senior manager is found to be negligent, he or she can be fined under the Manslaughter Act guidelines, based on the size of the corporation and the magnitude of the offense.

<sup>41</sup> Diermeier Article.

<sup>42</sup> Donald C. Dowling Jr., ABA Section of Labor & Employment Law, *How to Determine Which Jurisdiction’s Employment Laws Reach Border-Crossing Staff*, Nov. 5, 2015.

<sup>43</sup> Health and Safety at Work etc., Act 1974, <http://www.legislation.gov.uk/ukpga/1974/37/contents> (“HSWA”).

<sup>44</sup> Corporate Manslaughter and Corporate Homicide Act 2007, Chapter 19, <http://www.legislation.gov.uk/ukpga/2007/19/contents>.

## EMERGING INTERNATIONAL TRENDS (Cont'd)

The courts can also dictate remedial action and even order a company to publish the findings of the court, acknowledge their negligence, and describe what actions they will take to correct the issue. “Senior management” is defined as the “persons who play significant roles in:

- » The making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or;
- » The actual managing or organising of the whole or a substantial part of those activities.”<sup>52</sup>

The key to liability is whether the breach of Duty of Care arose from the decisions and actions of senior management in the United Kingdom. Thus, if an employee of the United Kingdom is working outside of the United Kingdom for that employer, the key to determining whether the senior management members could be liable under the Manslaughter Act is whether the senior manager in the United Kingdom made the relevant decisions in the United Kingdom.

The United Kingdom publishes guidance for senior management to follow to avoid liability under the Manslaughter Act.<sup>53</sup> The essential principles outlined in this guidance is to encourage strong and active leadership from the top, worker involvement (e.g., training and communication), and assessment and review.

### b. Canada

Canadian employers’ Duty of Care are based on statutes, regulations, and common law.<sup>54</sup> The type of work an organization does determines the jurisdiction of authority that applies (i.e., federal or provincial).<sup>55</sup>

The Canadian Labor Code governs federal work, which encompasses about ten (10) percent of Canada’s work force in key sectors of the economy (air, rail, and highway transport, banks, marine transport, etc.).<sup>56</sup> Sections 124 and 125 of the Canadian Labor Code places a general duty on employers to ensure that the workplace health and safety of every person employed is protected both at the workplace and away from the employer’s workplace.<sup>57</sup>



Employers’ Duty of Care further includes making sure that:

- » Vehicles and mobile equipment used by employees meet prescribed standards;
- » Employees are made aware of every known and foreseeable health or safety hazard;
- » Hazard prevention programs appropriate to the work place are developed, implemented, and monitored;
- » Employees are educated on health and safety matters; and
- » Health safety policies and programs are developed.<sup>58</sup>

<sup>45</sup> Health and Safety Executive, Health and Safety at Work etc. Act 1974, <http://www.hse.gov.uk/legislation/hswa.htm>.

<sup>46</sup> HSWA.

<sup>47</sup> Health and Safety Executive, Health and safety made simple: The Basics for your business, <http://www.hse.gov.uk/simple-health-safety/index.htm> (hereinafter “Health and safety made simple”).

<sup>48</sup> Health and safety made simple.

<sup>49</sup> HSWA at Schedule 3A: Offences: Mode of Trial and Maximum Penalty.

<sup>50</sup> Health and Safety Executive, About corporate manslaughter, <http://www.hse.gov.uk/corpmanslaughter/about.htm>.

<sup>51</sup> Id.

<sup>52</sup> Corporate Manslaughter and Corporate Homicide Act 2007, Chapter 19, Section 1, [http://www.legislation.gov.uk/ukpga/2007/19/pdfs/ukpga\\_20070019\\_en.pdf](http://www.legislation.gov.uk/ukpga/2007/19/pdfs/ukpga_20070019_en.pdf).

<sup>53</sup> Leading health and safety at work: Actions for directors, board members, business owners and organizations of all sizes

<sup>54</sup> Claus Article at 13.

<sup>55</sup> Id. at 13.

<sup>56</sup> Government of Canada, Overview – Canada Labour Code, Part II, [http://www.labour.gc.ca/eng/health\\_safety/pubs\\_hs/overview.shtml](http://www.labour.gc.ca/eng/health_safety/pubs_hs/overview.shtml).

<sup>57</sup> Canada Labour Code (R.S.C. 1985, c. L-2), Sections 124 and 125.

<sup>58</sup> Claus Article at 13.



If a Canadian employer is not covered under the Canadian Labor Code (i.e., is not federally regulated), it is covered under a provincial statute, depending on the province (there are ten total provinces in Canada).<sup>62</sup> Each province and the Canadian Federal Government has established some form of health and safety legislation or OSH act.<sup>63</sup> Not only do the OSH acts differ by province, the applicability of these statutes to employee is fact-specific.<sup>64</sup> Similar to the United States, provinces in Canada also have their own workers' compensation-like laws which serve as the source for workplace injury claims.<sup>65</sup> To the extent an employee is not covered under a province's workers' compensation laws, the employer could be subject to a common law tort claim for the employee's injuries.<sup>66</sup>

Finally, the Canadian Criminal Code was amended in 2004 to include Bill C-45, which establishes new types of negligence and non-negligence offenses for health and safety breaches, and imposes serious penalties for violations that result in injuries or death. The liability extends to both individuals and corporations.<sup>67</sup> Significantly, Bill C-45 covers all "persons," not just employees or workers.<sup>68</sup> It is doubtful, however, that Bill C-45 would have extraterritorial application, especially when Bill C-45 specifically states that no person shall be convicted of an offense committed outside of Canada.<sup>69</sup>

<sup>59</sup> HSWA.

<sup>60</sup> Sherrard Kuzz LLP, Canadian Centre for Occupational Health and Safety, and International SOS Foundation, *Canada's Mobile Workforce: A Legal Perspective on Duty of care and Employer Best Practices*, 2016 at 4 ("Canada's Mobile Workforce Article").

<sup>61</sup> HSWA.

<sup>62</sup> Claus Article at 13.

<sup>63</sup> Id.

<sup>64</sup> Id. (citing Klotz, J.M. and Neville, S., *Corporate Obligations to "Road Warriors,"* Toronto: Davis & Company, 2003).

<sup>65</sup> Crawford and Company, *Understanding the Canadian Workers' Compensation System: And How Third Party Administrators Can Help*, <http://web-files.crawco.com/extranet/CA/UnderstandingCanadianWorkersComp.pdf>.

<sup>66</sup> Claus Article at 13.

<sup>67</sup> Claus Article at 13.

<sup>68</sup> Bill C-45 at Section 217.1 "Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task."

<sup>69</sup> Department of Justice, Canada, *A Plain Language Guide Bill C-45 – Amendments to the Criminal Code Affecting the Criminal Liability of Organizations*, <http://www.justice.gc.ca/eng/rp-pr/other-autre/c45/>.

<sup>69</sup> Id.

## EMERGING INTERNATIONAL TRENDS (Cont'd)

The Canadian Labor Code requires each workplace with twenty (20) or more employees to have a health and safety committee and at least half of the committee members must be employees who do not have managerial functions. Companies with 300 or more employees need to go one step further and establish a health and safety committee, which takes a more strategic approach to employee health and safety in an organization by dealing with global issues.<sup>59</sup> Whether a federally regulated Canadian employer could be charged for failure to ensure the health and safety of its Canadian workers employed abroad depends on whether the Canadian regulator would extend its jurisdiction to actions occurring outside of Canada.<sup>60</sup> The Canadian Labor Code and its regulations are enforced through fines according to the seriousness of the offense.<sup>61</sup>



## EMPLOYER BEST PRACTICES

The recent increased emphasis on the Duty of Care and the idea that an employer is responsible for the health, safety, security, and well-being of its globally mobile employees has proved to be a daunting and scary concept for employers to comprehend. By way of illustration, Lisbeth Claus, a professor of Global Human Resources who has done significant work in this area, enumerates a list of twenty-one Duty of Care obligations an employer has to consider, including physical and mental health, work injuries and accidents, travel for work purposes, security, spread of communicable diseases, negligent hiring, and accommodations for employees while traveling for work. <sup>70</sup>

Moreover, the costs associated with failing to take on adequate Duty of Care responsibilities can be exorbitant and, in some cases, can even be enough to put an employer out of business. For example, an article published by the Canadian Trade Commissioner highlights that one Duty of Care incident can be enough to put a mid-sized company out of business. <sup>71</sup> Some of the costs include costs of an incident/injury to a victim, cost of medical expenses, costs of sick pay for employees, costs of employment litigation, costs of morale and productivity loss, and costs of replacing employees who leave. <sup>72</sup>

Therefore, it is imperative for an employer to implement some type of travel risk management policy that will account for the risks its employees face abroad who either are traveling or in a permanent placement job. There are certainly prevention costs associated with implementing a travel risk management plan such as cost of developing a risk management plan, cost of compliance and training, cost of insurance coverage, and cost of vendors. <sup>73</sup> The general consensus, however, is that, overall, it is financially beneficial for employers to implement a travel risk management policy.

<sup>70</sup> Claus Article at 9.

<sup>71</sup> Diermeier Article (citing Canadian Trade Commissioner Service, *Duty of Care: How to Protect Your Workers Abroad*, Jan. 2013).

<sup>72</sup> Claus Article at 26-27.

<sup>73</sup> Id.

<sup>74</sup> Canada's Mobile Workforce Article at 10-11.



Though the task of implementing a travel risk management policy seems daunting, when an employer takes a step back, it is relatively simple for an employer to develop and implement a travel risk management policy and strategy. The essential elements have been phrased in multiple different ways, but the core concepts to consider are some form of planning through assessing company-specific risks and developing policies and procedures, communication to and training of employees, and documentation and analysis of incidents.

### a. Risk Assessment and Development of Policies and Procedures

Proactively and effectively assessing risks and developing policies and procedures to address these risks is crucial. The emphasis is on long-term solutions to the risks employees face while working abroad. Short-term, reactive solutions when a serious accident occurs are not effective.

An employer's first task is to determine the locations where employees are assigned to or travel to for work and then assess the health, safety, and security risks in those locations. Employers need to understand the various Duty of Care obligations and potential liabilities in those locations. Once the employer understands the risks and obligations, the employer will then need to devise a strategy for dealing with the risks, which can include medical emergencies, terrorist events, civil unrest, and demonstrations, natural disasters, power failures, cyberattacks, fire, violence, and infections. <sup>74</sup> An employer also needs to be mindful of the varied resources in each country, which can range from minimal to abundant.



## EMPLOYER BEST PRACTICES (Continued)

Once an employer understands the risks its employees face, the next, and perhaps most important, task is to develop clear policies and procedures that outline the company's Duty of Care responsibilities and travel risk management policies and procedures both for short-term and long-term travel. The main question for an employer to ensure that it answers is how can the employer best keep its employees healthy, safe, and secure in all work locations?

### **b. Communication of Policies and Procedures to and Training of Employees**

Once policies and procedures are put in place, the policies and procedures should be communicated clearly and often in training sessions with all workers. The communication of policies and procedures should occur prior to the trip (e.g., ensure that employees are appropriately prepared for travel before leaving, brief employees on political, security, and travel risks, educate employees on the hazards of the travel/assignment, and equip travelers with resources to help they stay safe and healthy) and during the trip (e.g., know the employee's itinerary, proactively communicate any changes in risks while the employee is on assignment, and know where your employees are at any given time). In the event an issue arises, having adequately trained and informed employees will be helpful in responding effectively to the issue and potentially evacuating the employee from the work location.

### **c. Control and Analyze**

The final step in implementing an appropriate strategy is for a company to ensure its employees are keeping up with their training, the employer is evaluating whether any changes need to be made to policies, and track and analyze data to keep constantly assessing the effectiveness of the employer's travel risk management plan. A crucial part of this final step is documentation and maintaining and auditing the documentation. Failure to document that the other steps have occurred would make completion of those steps valueless.

Overall, an employer's travel risk management plan cannot remain stagnant – it needs to address the world issues that are changing constantly.

## CASE STUDIES

### 1. Environmental Resources Management (ERM)

ERM is a leading global provider of environmental, health, safety, risk, social consulting services and sustainability related services. We routinely support Global Fortune 500 companies as they face business and sustainability challenges in increasingly remote and difficult locations around the world.

Ensuring our employees are safe, healthy and secure and meeting our international business conduct and ethical obligations are critical components of ERM's corporate governance. We manage these priorities, especially regarding the risks associated with travel, through ERM's on-line Travel Risk Assessment (TRA).

Employees access the on-line TRA form and additional relevant information from a dedicated internal website. External criteria (ISOS risk ratings, relevant sanction lists) and internal data (insurance requirements, in-country knowledge) are used to calculate a risk rating for each TRA (i.e. Low, Moderate, High or Extreme) defining the information required and the review and approval approach. TRA review and approval are managed through automatic notifications and on-line review. All data are stored in a secure virtual location, allowing ERM employees to update the document, even when they are out of the office. Approved documents are held in a searchable database, enabling management to identify quickly all affected travelers in the event of an emergency.



When developing the on-line TRA process, we focused on the following benefits:

- » **Efficiency** — A streamlined, well-defined, and automated process provides consistency and enhanced version control.
- » **Familiarity** — Integration of the “best” components from the previous Word-based version of the TRA process reduces the learning curve and improves employee uptake.
- » **Functionality** — Automatic notifications of potential travel to countries that may be subject to trade sanctions, involve specific health risks, or require additional insurance coverage keeps ERM functions cognizant of issues they may need to support before an employee travels.
- » **Accessibility** — Centralized, secure document storage prevents individual connectivity issues from derailing the entire process.
- » **Globally** — Visibility. Relevant, up-to-date information available during unfolding crises allows leadership to rapidly identify and manage any travelers in the vicinity.
- » **Adaptability** — Centrally-managed technology allows relevant process updates to be implemented easily.
- » **Expediency** — Monthly dashboards provide profile summaries of Low, Medium, High, and Extreme travel risks and other key metrics.

Implementing the process was not without challenges. Inertia was the biggest hurdle; however, demonstrating the system's ease of use and flexibility helped mitigate this concern. Most apprehension was eliminated, though, by demonstrating the system's value. During recent emergencies around the world, ERM interrogated the on-line TRA system to identify all travelers in the vicinity so that their whereabouts and safety were known, within minutes of learning of the event. Following one recent event, our Global Director of Operations commented “It is very reassuring to know that we have such a great system (and kudos to all of you who invented it!) but very sad we need it for this purpose.”



## CASE STUDIES (Continued)

### 2. iRobot

iRobot firmly believes that a corporation has a responsibility to do everything reasonably practical to protect the health and safety of its traveling employees. This is commonly referred to as **Duty of Care**. There is also the responsibility to disclose potential risks one might encounter. This is a company's **Duty to Disclose**. Finally, a company has to function within the accepted **Standard of Care**. These legal imperatives coupled with the knowledge that travel risk is everywhere and likely to increase triggered iRobot to develop its Travel Risk Management (TRM) Program. iRobot considers the purpose of its TRM program to be far reaching and multi-pronged. It exists not only to protect its most valuable asset, its employees, but also it maximizes mission effectiveness, minimizes corporate disruptions, and helps to ensure business strength and continuity. There is an awareness at iRobot of "shared responsibility for risk mitigation". The employee and the corporation both have a responsibility to mitigate risk. On the corporate side, iRobot fulfills its responsibility through the establishment, management, and continual improvement of its TRM Program. Throughout the program the belief of shared responsibility is substantially and intrinsically defined and reinforced.

The formation of iRobot's TRM Program began with the determination of the corporation's risk tolerance levels coupled with a well-defined mission and program objectives. This was the foundation that iRobot's robust TRM Program was built upon. Without this foundation, it is difficult to develop a program structure aligned with the corporate culture.

To fulfill its belief that "knowledge is power", iRobot's TRM Program strongly emphasizes pre-trip planning and preparation. iRobot wants well-informed and well-prepared travelers performing their mission in the safest and most secure way possible. To help ensure this, iRobot's TRM Program applies the following broadly defined actions to each trip: pre-deployment preparation, training, monitoring, tracking, response and evaluation.

These actions are necessarily amplified as the destination risk level increases. It is very important to note that the program is set up to ensure that each action can be documented and verified to reduce corporate exposure in case an incident does occur.

iRobot's TRM Program Structure consists of the following components:

- ( i ) *External Supplier Network*
- ( ii ) *Internal Crisis Management Team*
- ( iii ) *Incident Response & Management Plan*
- ( iv ) *TRM Policy*
- ( v ) *Training Program*
- ( vi ) *Tools & Technologies*



From its beginnings iRobot believed it should do what is right for its employees. This belief is evident from the ground level to the executive offices. Although iRobot developed its TRM Program because they felt it was necessary for its employees' safety, they also recognized it provided value for business continuity, business strength and competitiveness, and business growth.

Uncertainty of how a TRM Program is established along with a lack or perceived lack of executive support and/or employee engagement are some of the reasons given as to why such an important program is missing. The attitude at iRobot is certainly not to function without such an important safeguard. We did the extensive work to develop and evolve the program to what it is today. It is a program we are very proud of.



## TRAVEL RISK MANAGEMENT CHECKLIST

This self-assessment checklist is a tool for implementing actions to improve travel and assignment safety health and security related to work. It is based on the International SOS Foundation's Global Framework for Safety, Health and Security for Work-Related International Travel and Assignment.

Senior managers as well as occupational safety, health, security and risk managers should be involved in the completion of this assessment and the identification of priorities for action.

The checklist is divided into five major parts:

1. Policy
2. Roles and Responsibilities
3. Planning
4. Implementing
5. Evaluating and Action for Improvement

Additional checklist items should be considered as necessary.

### HOW TO USE THIS CHECKLIST

Assign a team of people to carry out the assessment exercise. The team should go through the following steps:

1. Review each item:
  - » Think of how the item can be applied
  - » If clarification is needed, ask the relevant manager
  - » Check **Yes** or **No** for all items
  - » Add comments, suggestions or reminders under **Comments**
2. Individually review items marked No and mark the ones that you consider are critical or important as *Priority*.
3. Prepare suggestions immediately after completion of the assessment. These suggestions should address what action should be taken, by whom, and when.
4. If necessary, seek clarification from travel safety, health, security, and risk management specialists with specialized knowledge in applying these competency items.

	Yes	No	Priority
<b>PART 1: POLICY</b>			
1. Has an organizational policy been developed and implemented that aligns travel and assignment safety, health, and security with the organization's objectives?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the policy statement been signed and dated by top management?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the policy statement integrated into the organization's broader policies, in particular the occupational safety and health policy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy: Statement of Intent</b>			
4. Does the policy include a statement of intent addressing the following? <ul style="list-style-type: none"> <li>» Aims and objectives</li> <li>» Compliance</li> <li>» Threat and hazard identification and risk assessment</li> <li>» A commitment to prevention, protection, mitigation, and response to incidents</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy: Organization</b>			
5. Does the policy have an organization section that defines key roles and responsibilities, and who will carry out specific tasks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the organization section describe the delegation of certain tasks to competent persons or an outside organization?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy: Arrangements</b>			
7. Does the arrangements section describe mechanisms to deal with general issues related to travel and assignment safety, health, and security?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Does the arrangements section define special mechanisms to deal with the identification of specific threats, hazards, and the management of risks identified during the risk assessment and control measures?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Policy: Review and Modification</b>			
9. Is the policy periodically reviewed and modified as necessary?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Person completing checklist: \_\_\_\_\_ Date: \_\_\_\_\_

Organization: \_\_\_\_\_ Location: \_\_\_\_\_



	Yes	No	Priority
<b>PART 2: ROLES AND RESPONSIBILITIES</b>			
<b>Roles and Responsibilities: Senior Management</b>			
10. Is a clear policy with measurable objectives implemented and reviewed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are there clear lines of responsibility indicated for senior management?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Is line-management responsibility known and accepted at all levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Are responsibilities defined and communicated to all relevant parties?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Are on-location organizational policy and procedures integrated with local arrangements? For example: <ul style="list-style-type: none"> <li>» Notification and approval of incoming assignees or visitors</li> <li>» Safe systems of work</li> <li>» Emergency procedures</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Are adequate resources available allowing persons responsible for travel and assignment safety, health, and security to perform their functions properly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Roles and Responsibilities: : Manager Responsible for Travel and Assignment Safety, Health and Security</b>			
16. Does a manager (whether centrally or on location) have responsibility and accountability for the development, implementation, periodic review, and evaluation of the system to manage travel and assignment safety, health, and security?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. Is a manager ensuring that a competent person plans work-related travel and assignments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Roles and Responsibilities: Workers Traveling on International Assignment</b>			
18. Do workers actively cooperate in ensuring that travel and assignment safety, health and security policies and procedures are followed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. Do workers maintain situational awareness and report to their line manager (immediate supervisor) any changing situations which they perceive could affect their safety, health, or security?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20. Are workers knowledgeable of, and do they comply with, national occupational safety and health legislation and the organization's occupational safety and health directives?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	Priority
<b>PART 2: ROLES AND RESPONSIBILITIES (Continued)</b>			
<b>Roles and Responsibilities: Contractors</b>			
21. Are arrangements made with all contractors to ensure that responsibilities are assigned and understood to address the safety, health, and security of contractors, their employees, and sub-contractors for travel and assignment or when carrying out work for the organization?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22. Are contractors competent, and do they have access to resources to function in a safe, healthy, and secure manner?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>PART 3: PLANNING</b>			
<b>Planning: Initial Review</b>			
23. Has an initial review been conducted, including identification of applicable legislation, administrative rules, codes of practice and other requirements (such as insurance requirements) the organization has an obligation to comply with - addressing travel and assignment safety, health, and security - both in the organization's home country as well as in destination countries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Planning: System Planning, Development and Implementation</b>			
24. Has a plan been developed and implemented addressing the organization's travel and assignment safety, health, and security system? Is this plan in compliance with national laws and regulations in the organization's home country as well as in countries where workers may travel or be assigned?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
25. Does the scope of the planning process cover the development, implementation and evaluation of the management of the travel and assignment safety, health and security system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Planning: Travel and Assignment Safety, Health and Security Objectives</b>			
26. Are there measurable objectives and key performance indicators in line with the policy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>PART 4: IMPLEMENTING</b>			
<b>Implementing: Training</b>			
27. Do training programs address the following? <ul style="list-style-type: none"> <li>» Workers and their dependents either traveling or on assignment</li> <li>» Individuals organizing travel</li> <li>» Other relevant internal stakeholders</li> </ul> Do these programs take into account the profile of the traveler, location-specific information as well as ethical and cultural considerations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	Priority
<b>PART 4: IMPLEMENTING (Continued)</b>			
<b>Implementing: Training (Continued)</b>			
28. Is adequate training provided to ensure workers and contractors: <ul style="list-style-type: none"> <li>» Are competent to carry out their work in a safe, healthy, and secure manner?</li> <li>» Can address travel and assignment-related risks prior to and during travel, while on assignment and upon return?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
29. Are training programs instructed by competent persons?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
30. Do they include relevant risk, induction and refresher training for all workers and contractors as appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
31. Do training programs include whom to contact in case of an incident, procedures to follow and post-incident reporting requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
32. Do training programs include a mechanism to evaluate, assess and certify whether the participant has developed the necessary competencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Implementing: Medical and Security</b>			
33. Is there a process that ensures the following? <ul style="list-style-type: none"> <li>» All relevant workers are medically fit to travel (having completed a pre-travel medical evaluation where appropriate)</li> <li>» All necessary medications are prescribed</li> <li>» Vaccinations are up to date</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
34. Is a briefing on safety, health and security arrangements conducted for all relevant workers and contractors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
35. Is adequate 24/7 security provided, where appropriate, to support individuals in their movement to and from location and in the functioning of their work?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
36. Is there an effective system to monitor the location of relevant workers, to be used when indicated by the risk level protocol?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Implementing: Documentation</b>			
37. Is there a system documenting that workers and contractors have been made aware of associated risks, and measures to avoid or mitigate these?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



	Yes	No	Priority
<b>PART 4: IMPLEMENTING (Continued)</b>			
<b>Implementing: Documentation (Continued)</b>			
38. Is travel and assignment safety, health and security documented, and are the documents maintained in a systematic manner?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
39. Are all documents in the system clearly written, understandable and easily accessible for those who need to use them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
40. Are specific documents, especially site-specific documents, translated into a language the workers and visitors will easily understand?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
41. Are relevant documents periodically reviewed, revised as necessary and traceable?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
42. Are affected workers aware of documents relevant to them, and do they have easy access to these?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Implementing: Communications</b>			
43. Are relevant parties kept informed about travel and assignment issues as an integral part of the travel and assignment safety, health and security system?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
44. Are resilient procedures established for adequate two-way communications between the organization and the travelers and assignees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
45. Are there mechanisms to inform workers and dependents of developing situations and potential increased risk levels where they are traveling or where they are assigned, including access to a 24/7 reliable and timely information source?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
46. Are effective communications maintained between all parties – addressing work practices as well as prevention, control, and emergency procedures?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
47. Are workers encouraged and regularly consulted on travel and assignment safety, health, and security issues?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
48. Is there a mechanism to gather, consider and share ideas, concerns and good practice suggestions from workers, visitors and dependents?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**PART 4: IMPLEMENTING (Continued)**

**Implementing: : Threat and Hazard Identification and Risk Assessment**

<p>49. Has the scope of threats, hazards and assessed risks been defined, taking into account elements such as the following?</p> <ul style="list-style-type: none"> <li>» The geographic perspective</li> <li>» The environment</li> <li>» Travel and work-related processes and activities, such as commuting from a hotel to a work site</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>50. Are up-to-date threat and hazard identification and risk assessments carried out and appropriate for every travel and assignment destination?</p> <p>Do they include measures to prevent, eliminate, or control travel and assignment risks for workers and their dependents?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>51. Has a determination been made during the risk assessment who could be harmed?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>52. Have the risks been evaluated?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>53. Is there a system to establish types and categories of risk levels and protocols that require specific actions, including measures to address high-risk locations and escalating risks?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>54. Are risk prevention and control measures implemented in the following hierarchical order?</p> <ul style="list-style-type: none"> <li>» 1. Eliminating the risk</li> <li>» 2. Controlling the risk</li> <li>» 3. Minimizing the risk</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>55. Have the risk assessments been regularly reviewed and updated as necessary, taking into account significant changes impacting the risk?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Implementing: : Threat and Hazard Identification and Risk Assessment**

<p>56. Are global and local arrangements in place to manage an emergency or crisis, including preparedness, mitigation, response and recovery?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>57. Does the organization have a written emergency action plan which describes the authorities and responsibilities of key personnel, including the emergency/ crisis management team?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	Priority
<b>PART 4: IMPLEMENTING (Continued)</b>			
<b>Implementing: : Emergency Management</b>			
58. Does the emergency/crisis plan cater for all workers including travelers, assignees, dependents, and local employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
59. Does the organization have a multidisciplinary emergency/crisis management team, led by the senior manager and supported by a designated crisis coordinator and a communications professional (or their designates)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
60. Can the emergency/crisis management team call on other functions (as needed)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
61. Has the organization assessed its capacity to respond to a critical incident including emergency medical plans?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
62. Does the organization have access to information and adequate medical and security support on location, including local or deployable dedicated resources, local medical, security and emergency services, and external providers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
63. Do workers and their dependents on work-related travel or international assignments have access to adequate health care and medical emergency plans (including 24/7 medical contact)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
64. Are information and communications protocols in place factoring in the above-mentioned response components?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Implementing: : Procurement</b>			
65. Does the organization provide regular training for emergencies, including exercises in preparedness, mitigation, response, and recovery procedures?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
66. Are goods, equipment materials, or services for use prior to and during travel or assignment specified to incorporate safety, health, and security requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>PART 5: EVALUATING AND ACTION FOR IMPROVEMENT</b>			
67. Are these specifications in compliance with national legislation, and the organization's policies and procedures both in the organization's home country, as well as in other locations where workers may travel or be assigned?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



	Yes	No	Priority
<b>PART 5: EVALUATING AND ACTION FOR IMPROVEMENT (Continued)</b>			
68. Are arrangements made to see how effectively the organization is carrying out travel and assignment safety, health, and security policies, arrangements, and procedures?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
69. Are reports submitted and evaluated on achieving key performance indicators?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
70. Are travel and assignment related incidents including accidents, ill health, and security events reported according to a fixed reporting matrix and investigated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
71. Does the organization require the contractors to undertake performance reporting, including reports on incidents such as accidents, exposures, injuries, illness, near misses, and security considerations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
72. Are travel and assignment safety, health and security arrangements internally and externally audited?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
73. Is there a provision for management to review the arrangements, procedures and evaluation reports for travel and assignment safety, health and security?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
74. As a result of the evaluation mechanisms, are corrective actions implemented where appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Implementing: : Threat and Hazard Identification and Risk Assessment**

75. Is there a dynamic cycle of continuous improvement addressing the needs of stakeholders?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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**COMMENTS**

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Person completing checklist: \_\_\_\_\_ Date: \_\_\_\_\_

Organization: \_\_\_\_\_ Location: \_\_\_\_\_



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