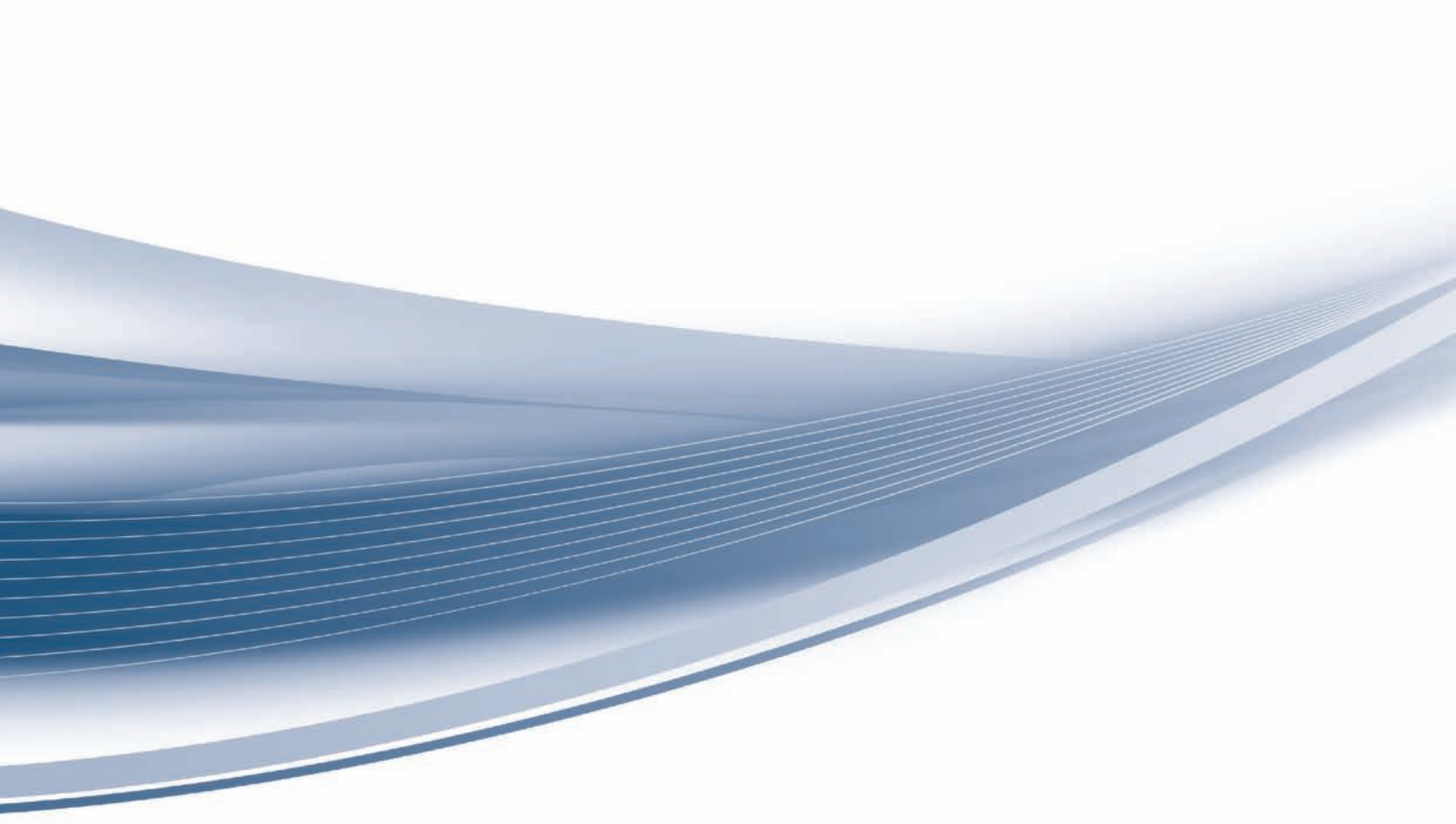




**Duty of Care  
of Employers for Protecting  
International Assignees, their Dependents,  
and International Business Travelers**



**International SOS White Paper Series**


“Duty of Care of Employers  
for Protecting International Assignees, their Dependents, and International Business Travelers,”  
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DISCLAIMER

The content of this paper is for general informational purposes and should not be relied on as legal advice.

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Business travel  
is increasing in range and frequency,  
with the need to seek new markets  
and lower production costs in ever  
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## Introduction

International work and travel are an integral part of the daily operations of a multinational company (“MNC”). MNCs seeking growth opportunities and lower costs of production have embraced globalization, and increasing numbers of employees are now being required to work outside their countries of residence as expatriates or international business travelers. Business travel is increasing in range and frequency, with the need to seek new markets and lower production costs in ever more remote places. This exposes both employees and employers to greater risks. Away from familiar surroundings, employees may encounter precarious environments, presenting increased and unfamiliar threats to their health, safety, and security. This heightens the corporate liability of employers, who have a legal, fiduciary, and moral Duty of Care for their employees.

MNCs risk liability for breaching not only the laws of the country(s) in which they operate and in which their employee(s) are nationals or permanent residents, but also those laws in the countries to which their employees travel on business or live as expatriates. The liability can arise under civil codes, statutes, and common law and may result in civil damages or in criminal fines - even imprisonment.

Risks and threats range from hostile political environments, natural disasters, exposure to disease, travel accidents, and other common travel problems. Additional examples are detailed in Sidebar 1.

Threats and risks faced by international business travelers, expatriates, and their dependents<sup>1</sup> traveling abroad are illustrated in the following examples:

- **Heart attack on an international flight**—A frequent French business traveler, on his way back home from a business trip in Shanghai, suffered a mild heart attack and stroke in mid-flight. To save costs, his employer had required all employees to fly economy class and canceled the company's annual membership for emergency medical services for its business travelers.

<sup>1</sup> These vignettes represent typical situations that security, medical, and/or global HR managers of MNCs may encounter with their international assignees.

- **Car accident after an overnight flight**—An American businesswoman landed in London after an eleven-hour overnight flight from San Francisco. She drove her rental car from the airport to her mid-morning business meeting in Wimbledon. Tired from overnight travel and unfamiliar with driving on the left side of the road, she was involved in a serious car accident.
- **Lost during a terrorist attack**—An engineer from the U.K. was due to stay at a Mumbai hotel attacked by terrorists. A flight delay caused him to miss his connecting flight and he arrived a day late in India. Unable to track his travel itinerary, his whereabouts were unknown by his company for more than 24 hours.
- **Trapped in a flash flood**—Two international assignees of an MNC working on a project in Eastern India traveled on National Highway 60 and were caught in a torrential downpour. This caused a flash flood on the road. After climbing onto the roof of their car to escape, the stranded employees frantically called their manager in New Delhi for help.
- **Possible exposure to rabies**—The wife of an international assignee in Thailand suddenly developed a sore arm and an eye infection. She had been bitten by a local dog a few months earlier. The employee and his dependents had not been vaccinated for rabies before leaving the home country.
- **Lime in a child's eyes**—The child of an international assignee in Papua New Guinea spilled powdered lime into her eyes while playing. The child was rushed to the local hospital for treatment but was allowed to go home soon after, in spite of being in considerable pain. The mother feared that her child did not receive adequate care and would possibly go blind.
- **Airplane hijacking**—One passenger was killed and several were injured when terrorists hijacked an Air India plane en route from Kathmandu to New Delhi. On board were several volunteers of a large NGO who were working in the area. The passengers were eventually released six days later.
- **Feeling ill in Qinhuangdo**—Upon arriving at a hotel in Qinhuangdo after a car ride from Beijing's airport, an international business traveler felt feverish and had a severe headache. He took medicine that he had brought with him and went to bed hoping he would feel better in time for his round of meetings the next day. When he got up the next morning, his illness persisted and included a high fever.
- **Expatriate wife works at a local hospital**—The wife of a Swiss banker on an international assignment for three years in Singapore was working as a surgical nurse at a local medical center. With the sudden outbreak of SARS, the bank feared that her employment at the hospital would put her, her husband, and other employees and their customers at greater risk and urged her to quit her job.

SIDEBAR 1
Risk Management Situations of International Assignees and Business Travelers
• Terrorism, kidnapping, hijacking, piracy
• Lawlessness, violent crimes, threats, opportunistic crime, organized crime, imprisonment
• War, insurgency, political upheaval, coups, and civil unrest
• Natural disasters such as hurricanes, floods, tornados, storms, mudslides, earthquakes, tsunamis, snowstorms, extreme weather conditions, and drought
• Infectious diseases and pandemics such as influenza, SARS, Avian flu and H1N1 (swine 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
• Common travel problems such as lost luggage, invalid/expired/forgotten passports, pickpockets, and scheduling delays
• Lack of legal/administrative compliance (i.e. immigration and visa challenges)

- **Chest pains while on a business trip**—A Swedish information technology worker on a business trip to Silicon Valley in California developed extreme chest pains.
- **Mortal remains**—A South African construction worker hired by a British firm was one of the casualties in an ambush outside of Fallujah, Iraq. His remains needed to be repatriated to Johannesburg.
- **Language barrier in seeking medical care abroad**—An eight-year old child was taken by his parents to an emergency room of a hospital in Sao Paulo, Brazil because of severe pain in the right side of his abdomen. The child's father was on expatriate assignment there for a Canadian company. Doctors diagnosed the child with acute appendicitis, but it took a while for the different parties (parents and medical professionals) to effectively communicate with each other due to language difficulties. Ultimately, a hospital interpreter arrived to explain the situation.



This paper reviews the Duty of Care responsibilities of employers for their employees (and dependents) who cross borders as part of their work duties, in an effort to inform decision-makers about these responsibilities and offer guidelines for the development of an appropriate risk management strategy for their organizations.

- **Severe stress**—An international assignee experienced severe cultural shock and showed signs of extreme stress on the job.
- **Caught in riots**—Three Danish business travelers were stranded when riots broke out in Oran, Algeria. Because of the recent controversy about the publication of cartoons in a Danish newspaper, they were traumatized, became concerned about their safety, and ended up locking themselves in their hotel room.
- **War breaks out**—A United States university professor and his family were living in Beirut, Lebanon where he was teaching as a visiting faculty member at a local university. When the war between Hezbollah and Israel broke out, the university closed, airline traffic was halted, and he and his family sought refuge with local colleagues.
- **Dengue fever**—The seven-year old daughter of a French expatriate in Jakarta was diagnosed with dengue fever, a serious condition occurring more often in children than adults.
- **Epileptic seizure**—The two-year old child of an expatriate family in Singapore suffered an epileptic seizure during a Christmas holiday in Bali and was rushed to the local hospital.
- **Carrying too much luggage**—The spouse of a business traveler accompanied his wife on a business trip to Paris. He experienced acute back pain after lifting the couple's heavy luggage and was immobilized in bed the next day.
- **One too many beers**—After completing a short-term installation project in Germany, a group of U.S. contract workers had one too many beers in the first-class section of a train going from Köln to Brussels. One of the workers began shouting and antagonizing the passengers to the point where a confrontation was imminent.
- **Missing persons after the tsunami**—After the tsunami disaster along the Indonesian coast, an MNC could not immediately account for three expatriates and their families who had taken a Christmas holiday in the region.
- **Fatal company event**—A few employees and a contractor of a leading IT and communications company organized a boat party to celebrate the success of their partnership in Bahrain. The boat capsized and an employee and his wife, along with two contractors, drowned. Several others on the boat were injured.
- **Kidnapping**—A French executive traveling in Colombia was kidnapped along with his private driver. A guerilla group claimed responsibility and demanded a ransom.
- **Blackmail**—A Western international business traveler visited a sex club in Thailand after work. Someone took photos and a large sum of money was demanded for not posting the compromising images on the Internet.

- **Breaking foreign laws**—A European business traveler was arrested at a U.S. airport for using his cell phone in the restricted immigration and customs area. He had not noticed the posted signs and ignored the verbal warning of an immigration agent.
- **Forced ATM withdrawal**—In a cab on the way back to his hotel from a business dinner, the taxi drove to an ATM machine instead. There he met a group of youngsters. They roughed him up and forced him to take out the maximum daily amount of cash and hand it over to them. They held him until after midnight and again forced him to take out the maximum amount the next day. He was then deposited near the hotel by the cab driver.
- **Organized crime**—An expatriate operations manager assigned to the production plant of a Swiss pharmaceutical company outside of Moscow was solicited for protection money by a local group. If he refused to cooperate, they threatened to contaminate the products once they left the plant.
- **Wrongful detention**—The wife of an expatriate was falsely accused of shoplifting in a major department store in Dubai. She was detained for several hours by security without being allowed to contact anyone for assistance.
- **Sexual assault**—A group of company executives attended a dinner party during an annual meeting at a resort area. Upon leaving the party, one of the women was assaulted in the elevator of the hotel.
- **Proper escort**—A female financial analyst in Saudi Arabia was reluctant to attend a company regional meeting because it required travel and no escort service was provided for her.
- **International assignment refusal**—A frequent international business traveler refused to take a business trip to a dangerous location.
- **Sexual harassment**—A U.S. company sent an American on assignment to Sweden. The assignee complained about the sexually explicit screensavers on the laptops of the Swedish co-workers.
- **Unreliable taxi driver**—Upon arriving at the airport of a central Asian country, an engineer hired a local cab driver to bring him to the worksite located in another town over 100 kilometers away. On the way to the site, he asked the driver to stop to use the restroom at a local establishment. When he returned, he discovered that the driver had left with his belongings including his luggage, mobile phone, and passport. When he contacted the local police, they detained him for not having the proper identity papers.
- **Enticed to sue**—A kitchen worker hired in the Philippines by a U.S. cruise liner developed back pain, allegedly from lifting food crates when working at sea. Although not a U.S. citizen or working in the U.S., he became enticed to reach into the U.S. legal system after seeing a large billboard at the Miami port-of-call that advertized legal services to cruise ship employees who have been injured in international waters.
- **Piracy**—The crew of a freighter off the coast of Somalia was taken hostage by pirates and the ship was looted.
- **Manslaughter**—A geological survey company in the U.K. was prosecuted for corporate manslaughter after an employee died taking soil samples in a mine when the mine collapsed.
- **Swine flu outbreak**—An MNC with international assignees in Mexico was concerned about its employees as the news broke about the Swine flu virus killing several people in the country.

#### What actions should these organizations take to adopt their Duty of Care responsibilities?

This paper reviews the Duty of Care responsibilities of employers for their employees (and dependents) who cross borders as part of their work duties in an effort to inform decision-makers about these responsibilities and offer guidelines for the development of an appropriate risk management strategy for their organizations. It is written from a global perspective and offers multiple stakeholder views. Mainly as a result of available information, the examples in this paper lean toward the risks and Duty of Care of an employer sending staff from a developed to a less developed or more risky country or region, however, this paper concludes that the Duty of Care exists across most geographic areas.

In addition, this paper allows the various stakeholders and decision makers to “hear” the information from different perspectives. Primary decision makers with Duty of Care responsibilities in MNCs include senior business decision makers, managing directors, general secretaries, corporate security and risk managers, travel managers, medical directors, insurance managers, legal managers, heads of HR, global HR practitioners responsible for international assignees (expatriates/dependents/international business travelers), and employees responsible for managing the work of international assignees. The paper fills a large gap in the employment literature, as it pulls together a number of related themes that are usually, due to different locations and stakeholders, not fully on everyone’s radar. Often, these themes tend to be fragmented and/or “siloes” into different areas of accountability.

The legal concept of Duty of Care presumes that individuals and organizations have legal obligations to act toward others and the public in a prudent and cautious manner to avoid the risk of reasonably foreseeable injury to others.

## Duty of Care Defined

The legal concept of Duty of Care presumes that individuals and organizations have legal obligations to act toward others and the public in a prudent and cautious manner to avoid the risk of reasonably foreseeable injury to others. This obligation may apply both to acts of commission and omission. Duty of Care requirements may be imposed by statute (legislation) and common law. They are also the result of cultural and social expectations of acceptable standards of care. In that sense, employers also have a moral, as well as a legal, responsibility and obligation for the health, safety, and security of their employees. Breaching Duty of Care may give rise to an action alleging negligence and may result in damages or in the criminal prosecution of the employer.

When viewed from a broader human resource (“HR”) perspective, employers have a variety of Duty of Care responsibilities for their employees. Employers are expected to take practical steps to safeguard their employees against any reasonably foreseeable dangers in the workplace. These Duty of Care obligations of employees encompass a large number of activities considered within the realm of employee well-being. A list of employment-related Duty of Care responsibilities is detailed in Sidebar 2. This range of Duty of Care responsibilities of employers usually extends beyond the typical workplace of employees (such as to home workers, travelers, and international assignees) and may extend to contractors and subcontractors.

When employees work across borders (as in the case of international assignment and international business travel), the employer’s Duty of Care involves risk management extending beyond the usual health, safety, and security requirements imposed by the familiar environments in the employee’s home country. Courts and legislation can both extend the Duty of Care to the dependents accompanying an international assignee. The circumstances in which both international business travelers and expatriates are operating are likely to be very different and unfamiliar. This poses greater health, safety, and security risks to employees than if they worked in their home country. Host country circumstances may differ by the types of threats -



### SIDEBAR 2

#### Range of Employment-Related Duty of Care Obligations by the Employer

- Physical and mental health
- Work injuries and accidents
- Consequences of job workload and stress
- Repetitive strain injuries
- Spread of communicable diseases
- Safety (tools, equipment, workplace)
- Security
- Workplace bullying, harassment, and discrimination
- Corporate fleet management
- Travel for work purposes
- Car rentals, employees' use of personal vehicles, travel to and from work, traffic accidents, driver fatigue, etc.
- Accommodations for employees while traveling for work
- Corporate events away from the workplace (travel, drinking, accidents, etc.)
- Pre-employment selection (fit for work)
- Negligent hiring (sex offenders, violent personalities)
- Accuracy of job references for former employees
- Security and confidentiality of employees' personal data
- Fiduciary duties of board members/directors
- Selection of insurance providers
- Management of employees' benefits
- Due diligence in acquisitions

The circumstances in which both international business travelers and expatriates are operating are likely to be very different and unfamiliar.

including terrorism, lawlessness, crime, political instability, natural disasters, infectious diseases, travel-related sickness, travel accidents, and common travel problems. International assignees, whether on short-term business or serving as long-term expatriates, are also unfamiliar with the host country (or countries) in which they temporarily work and/or reside. This unfamiliarity makes it more difficult for employees to respond appropriately to the threats presented and further increases their exposure to risk and potential harm.

Recognizing an employer's Duty of Care to employees who are working, living, and traveling abroad as part of their work duty, we analyze an employer's Duty of Care from these three perspectives:

- Legal Perspective
- Corporate Social Responsibility View
- Cost/Benefit Analysis

With these view-points in mind we then look at the best practices suggested in professional literature and propose a strategic risk management approach for employers to meet their Duty of Care obligations and review the responsibilities of the various stakeholders including government, senior management, security, HR, and employees with regard to the health, safety, and security of international business travelers, expatriates, and their dependents.

From a legal perspective, compliance for MNCs is much more complex than for domestic organizations.

The following is a review of pertinent legislation and case law in the following countries:

Australia, Belgium, Canada, France, Germany, the Netherlands, Spain, the United Kingdom, and the United States.

## Employer Duty of Care and Legal Compliance

From a legal perspective, compliance for MNCs is much more complex than for domestic organizations. Because they operate in different countries, MNCs must adhere to a myriad of national laws. Tables 1-A through 1-J are provided in the Appendix and list in summarized format, relevant legislation and regulations in several countries with regard to the Duty of Care. In addition, MNCs must comply with supranational regulations (for example, European Union directives and International Labor Organization conventions). They may need to deal with the issues of the extra-territorial scope of legislation and rules pertaining to jurisdiction and choice of law. Several countries especially Western Europe, the U.S., Canada and Australia have developed employer Duty of Care legislation. Others have not. Overall, emerging markets such as China, India, and Brazil are unlikely at this time to take seriously the issue of the employer's Duty of Care. In most cases, they have not articulated or enforced employer Duty of Care legislation. This means that employers should be concerned. Expatriates or business travelers to and from these countries are likely to seek redress for harm under the Western laws where the corporations operate – even if the host nations have not created Duty of Care legislation. With increased globalization, employee mobility is expanding to include converse migration of workers from less to more developed countries. The employees range from low skilled workers (such as janitors, service workers, maids, maritime workers, taxi drivers, etc.) to skilled engineers. While the home countries of the employees may not have well developed Duty of Care cultures and legislation, employers are being held liable to the highest Duty of Care levels in the home or the host countries, and courts tend to favor ever-greater protections for workers.

The following is a review of pertinent legislation and case law in the following countries: Australia, Belgium, Canada, France, Germany, the Netherlands, Spain, the United Kingdom, and the United States.

### Australia

In Australia, employer Duty of Care is legislated through the occupational health and safety (“OHS”) laws from various states, workers’ compensation laws of the various states and the Commonwealth, and common law. An employer is obligated by the substantive OHS laws in each state and territory to ensure, so far as reasonably practicable, the health, safety, and welfare of its employees at work. Although there are state-by-state differences, overall employers must assess the risks and hazards associated with the work of their employees and eliminate or reduce, so far as reasonably practicable, those risks to the health and safety of their employees. Liability can be imposed on the employer as well as on individuals, including directors or senior managers who fail to comply with their Duty of Care obligations, whether or not they reside in Australia. Some legislation and the courts have made it clear that expatriates or business travelers from Australia can take advantage of these laws.

Employees injured at work (and their dependents) can obtain compensation damages and medical expenses through the workers’ compensation laws. The Australian workers’ compensation laws expressly state that they have extra-territorial application. The scope and application of extra-territoriality is, however, complex as issues of jurisdiction and duration of assignment abroad must be considered. Workers’ compensation laws are the main vehicle for seeking damages in most workplace injuries. Employees can also bring a separate action under common law in negligence only when serious injuries have occurred. This allows them to receive damages in excess of the workers’ compensation award.

Relevant Australian cases clearly show that employers, whether they reside in Australia or abroad, have a Duty of Care to ensure that their employees who work or travel abroad are safe. The courts have expanded this duty to include injuries sustained by employees while undertaking activities of their own choosing during non-work and leisure periods. The laws also cover mental and emotional conditions (e.g., stress) encountered as a result of a foreign assignment. Employers must be aware of the foreseeable risks associated with certain assignment areas. Employees seeking damages under common law for the negligence of their employer (in addition to the coverage available under statutory workers compensation laws) must have a serious injury or impairment.

Table 2-A		
Sample of Relevant Australian Duty of Care Cases		
Case (Name-Date)	Description	Decision
Duic v Dillingham Corporation of New Guinea Pty Ltd (1972) 2 NSWLR 266	An employee was injured while on business in Papua New Guinea.	Employee granted workers’ compensation benefits.
Favelle Mort Ltd v Murray (1976) 133 CLR 580	Construction manager on 15-month assignment in New York contracts a viral disease, suffering major injuries.	Federal Court upheld New South Wales Supreme Court decision awarding workers compensation because the disease was contracted during the course of employment.
Compagnie des Chargeurs Caledoniens v Weir (1980) 1 NSWLR 573	An employee hired as a ship’s officer by a French company not registered in Australia was hospitalized after becoming sick while at sea.	Employee awarded compensation under the NSW Workers’ Compensation Act.
Re Commonwealth Banking Corporation v Angus Burns [1990] FCA 252	Employee alleged that employment abroad was the cause of an anxiety-related illness.	Tribunal found that employment abroad caused stress, aggravating an underlying condition of employee.
Carter v The Khamis Mushayt Armed Forces Hospital & Others [1994] NSWCC 27	Employee hired in Australia to work in Saudi Arabia was injured in an automobile accident on the way to work.	Employee was awarded compensation under NSW Workers’ Compensation Act.
Meeson v Placer Pacific Management and others [2002] NSWCC 47	Employee and his partner working in Port Moresby were injured in a knife attack when an intruder broke into their home.	Compensation awarded to employee and his partner under s 25(1)(a) of the Workers’ Compensation Act 1987.
Pacific Access Pty LTD v Davies [2003] NSWSC 218	A sales representative on a sales call in Papua New Guinea is injured when attacked by a thief on client’s premises.	New South Wales Court of Appeals awards employee damages against employer.

*Continued on the following page*

**Table 2-A (continued)**

**Sample of Relevant Australian Duty of Care Cases**

Case (Name-Date)	Description	Decision	Case (Name-Date)	Description	Decision
Neilson v Overseas Projects Corp of Victoria LTD (2005) 223 CLR 331	Spouse of an employee on a two-year assignment in China was severely injured in a fall on a staircase.	High Court confirmed damage award to spouse against employee's employer.	Inspector Wayne James v Chek Ly & Ors [2007] NSWIRComm 315	Managing Director and General Manager charged with criminal breach of Occupational Health and Safety Act of 2002 when an employee is injured at an Australian work site. The Director was out of the country for a significant number of days during the year of the injury and the preceding two years.	Managing Director found guilty of breach of failing to ensure the health safety and welfare at work of company employees, although he was residing abroad. Penalties were imposed.
Inspector Ken Kumar v David Ritchie [2006] NSWIRComm 323	CEO residing outside of Australia was charged in a criminal action for failing to provide a safe system of work when an employee was killed on an Australian work site.	CEO convicted of breach of the Occupational Health and Safety Act of 2000, with cash penalties imposed against said CEO.	Puttick v Tenon LTD [2008] HCA 54	A New Zealand employee of a subsidiary of a company registered in Australia claimed compensation under the New Zealand Compensation Commission for illness from exposure to asbestos while traveling for work in Malaysia and Belgium.  The surviving spouse sued the parent company in Australia claiming the torts occurred in Malaysia and Belgium, and not in New Zealand.	High Court ruled that the tort was located in New Zealand, contrary to surviving spouse's claim.
Workcover Authority of New South Wales (Inspector Belley) v Steven Carl Akerman [2006] NSWIRComm 353	Director of an Australian company residing in the USA and not appearing in the NSW Industrial Relations Commission case was charged with criminal breach of the Occupational Health and Safety Act of 2000 for failing to provide a safe workplace.	Director found guilty of breach of the Act based on his position as Director of the Australian company.			
Allen v Hudson Global (Aust) Pty Limited [2006] NSWCCPD 360	Australian employee, while on a work-related conference in the country, claimed Workers' Compensation for back injuries sustained while playing a video game at a nearby video game parlor on a conference break.	NSW Workers Compensation Commission awarded employee compensation, holding that the employer does not need to sanction activity for it to be compensable. Although this case is domestic, this ruling would probably also apply to foreign travel and assignments.			

**Failing to adhere to Duty of Care obligations may result in both civil and criminal liabilities for the employer.**

**Belgium**

In Belgium, the "Arbeidsongevallenwet" (work accidents law) of 1971 holds employers responsible for work accidents during work, but also to and from work. The prevention of work accidents is one of the major elements of overall employer responsibility for managing employee well being. The risks that employees may encounter on the job must be identified and eliminated to the extent possible. This happens through risk management analysis and taking resulting preventive measures. For specific work situations, such as working at dangerous heights and depths, special preventive measures must be taken by the employer. The prevention of heavy accidents (e.g., in the chemical industry) is subject to special regulation.



The ARAB or “Algemeen reglement op de arbeidsbescherming” (general regulation of work protection) is a consolidation of Belgian health and safety legislation adopted between 1947 and 1993 regarding work protection. This Codex deals with specific and detailed prescriptions of the means by which employers must protect the safety and health of workers, maintain a healthy work climate, and ensure overall hygiene in the workplace. It includes the transposition of the European health and safety directives.

Finally, the “Welzijnswet” (well being law) of 1996 presents a national framework for the management of employee well being at work. It includes all factors related to the conditions under which work is done including safety at work, protection of the health of the worker, psycho-social pressures at work, ergonomics, work hygiene, and attractiveness of the workplace environment. The law is the basis for managing health and safety in the workplace and forms the framework by which management decisions are made. It requires a preventive approach from the employer, and unlike the ARBO codex (which focuses on detailed prescriptions of means), this law focuses on the overall goal of employee well being in the performance of work duties.

When international business travelers or assignees work in Belgium, Belgian law is applicable independently of the magnitude or duration of work. When Belgians are sent to other European Union (“EU”) countries, the choice of law (Belgian or other) depends on the specific laws of each EU country involved.

## Canada

Canadian employers’ Duty of Care are based on statutes, regulations, and common law. When dealing with Canadian law, it needs to be stressed that the jurisdiction of authority (i.e., federal or provincial) depends on the type of work the organization does. Federal work (certain types of work that extend beyond the provincial boundaries) is regulated by the Canadian Labor Code. It places a general duty on employers to ensure that the health and safety at work of every person employed is protected.

### Employers’ Duty of Care 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.

It extends the above Duty of Care obligations to employees who are working away from the employer’s workplace, whether the work site is or is not under the direct control of the employer.

If it is not explicitly one of the defined inter-provincial types of work (such as telecommunications, airlines, shipping, banks, broadcasting, post, etc.) it falls under the provincial statutes. Thus, a law for company directors in Ontario may not apply to company directors in British Columbia even if the two businesses are exactly the same (e.g., retail). Each province and the Canadian federal government have developed some form of health and safety legislation or Occupational Safety and Health Administration Acts (OSHA). OSHA covers most workers and forms of work, but the specific regulations differ by province. Whether or not these statutes apply to a particular employer, employee, or employment relationship will be fact-specific (Klotz and Neville, 2003).

In Ontario, OSHA has a broad definition of workplace, the test being whether the worker is being directed and paid to be there, or near there. OSHA gives specific details regarding Duty of Care for site and industry/employment-specific conditions. These apply in Canada but do not apply abroad. OSHA places several general duties related to traveling employees (and employees abroad). Looking again at Ontario, employers have the duty to provide information and instruction to employees. Employers must also take every precaution reasonable under the circumstances to protect their workers. In a medical emergency, they must provide medical information to a legitimate care provider even if disclosure of confidential business information is involved. They must also prepare and review, at least annually, a written health and safety policy and maintain an implementation program placing emphasis on risk management and prevention.

The Workplace Safety and Insurance Act (WSIA) (in Ontario) is the primary source for claims against employers for workplace injuries. Employees working outside the province can be covered if the duration of employment is less than six months or if the employer applies for coverage for work lasting longer than six months. If the employer does not apply for coverage for an employee staying longer than six months, employer negligence may result in a common law tort claim for employee injuries.

## France

In France, employers (whether French or foreign) have a general duty to ensure that their employees are working in a safe environment (devoir de diligence de l’employeur; obligation de sécurité de l’employeur à l’égard de ses salariés). Failing to adhere to Duty of Care obligations may result in both civil and criminal liabilities for the employer.

The Duty of Care rules, covered by the provisions of the 1910 French Labor Code, are applied through the Social Security Code which defines work-related injuries. The French Labor Code sets forth specific duties to ensure the safety and physical and mental protection of its employees. These measures include: (1) the prevention of professional risks; (2) information and



training; and (3) the establishment of a safety organization and/or adopted safety procedures. These duties even apply for work performed abroad. Under the French Social Security Code, the resulting harm from a work-related accident or illness gives rise to the payment of Social Security benefits as a lump-sum compensation to the employee. The lump-sum is reimbursed by the employer through increases in Social Security contributions. If the work-related injury, illness, or death is due to gross negligence of the employer or a person duly empowered by the employer (i.e., a manager, a supervisor, or a third party), the French Labor Code provides for additional indemnification specified in the Social Security Code, such as aesthetic loss; loss of amenities of life; loss incurred by physical and moral suffering; and diminished or lost opportunity to be promoted. This additional compensation is provided in the form of a pension granted to the employee or to his/her beneficiaries. Although this pension is paid out by the Social Security Fund, it must be reimbursed by the employer.

When employers breach their Duty of Care obligation by not being compliant with the health and safety rules under the French Labor Code and these actions result in death or bodily harm, employers may face additional criminal penalties including fines and imprisonment. Under the French Criminal Code, the penalties are different if the violations are unintentional or deliberate. French Labor Code stipulations apply to foreign employers operating in France and they also extend to French employers' Duty of Care to business travelers and expatriates.

French case law considers that employees working abroad are "at work" and that all injuries occurring during a business trip abroad will be considered work-related injuries. This even includes periods of non-work during a business trip or mission. Case law also holds that gross negligence rules apply to situations abroad except when employees did not remain under the French Social Security system while abroad. This seems to indicate that there is a difference between a French business traveler (who usually remains in the French home country Social Security system) and a French expatriate (who may fall under the Social Security system of the host country). It is important to note that under French case law there is an ever-expanding definition of what is considered a "work-related" injury, placing a burden of greater diligence on the part of the employer.

**The Duty of Care duties of the  
employer and employee  
cannot be waived in advance  
by either party.**

<b>Table 2-B</b>		
<b>Sample of Relevant French Duty of Care Cases</b>		
<b>Case (Name-Date)</b>	<b>Description</b>	<b>Decision</b>
Supreme Court Social Chamber 19th of July 2001 n°99-21.536 Framatome	Employee working for a French company in China suffered a cerebral haemorrhage in his hotel room.	All injuries during a business trip abroad are considered work-related whether the employee is injured during work or during a period of non-work.
Court of Appeal Montpellier, 4th Ch. 18 April 2007, RG 06/06994	Employee working for a French company in Abidjan was attacked during her commute between her home and her place of work.	Additional compensation from the Social Security Fund for an employer's gross negligence is not available to injured employees or their beneficiaries if they are affiliated with a foreign Social Security system.
Saint-Lô Tribunal des affaires de sécurité sociale	Employees working for a French company in Karachi, Pakistan were killed by a suicide bomber.	French company was found liable for gross negligence for failure to take necessary security measures in a geopolitical context of crisis.
CA Rennes 24 October 2007 Nr. 06/06410.	Employees of a French company were killed as a result of a suicide bombing in Karachi, Pakistan.	Although the company had taken several initiatives to avert security problems in the zone by providing employee information, the court found the employer liable for gross negligence. The company in charge of the transport did not properly implement the prescriptions with regard to itinerary changes. Providing employee information alone was considered insufficient Duty of Care.
Supreme Court Social Chamber 19th of July 2001 provides n° 99-20.603 Salomon	A French employee was killed while on assignment abroad.	Court ruled that there is a legal presumption that death occurring on a mission is work-related.

*Continued on the following page*

**Table 2-B (continued)**

Sample of Relevant French Duty of Care Cases		
Case (Name-Date)	Description	Decision
Court of Appeal Rennes 27th of November 2002	French employee on a mission in Senegal contracted an illness from a non-sterile syringe. The illness appeared four years after the injection.	Employee was entitled to compensation under the French Social Security code. The employer's Social Security contribution for work-related accidents increased.

### Germany

Under German law, employer Duty of Care (die Fürsorgepflicht des Arbeitsgebers) is an important corollary of the employment relationship and there is an overall duty of concern, protection, and welfare. This includes information from the employer about concrete risks and dangers related to the employee's work and possible remedies. The Duty of Care is limited to situations that are related to work and employment conditions. Employees have a duty of loyalty to the employer to avoid endangering their life, and physical and mental health.

The Duty of Care duties of the employer and employee cannot be waived in advance by either party.

The employer must also have an interest in the health of the employee when he/she is working abroad. From a Social Security perspective, a provision of the Social Security Act, Book V, provides for direct liability of the employer, and not the state medical insurance, in certain circumstances. For sickness-related costs incurred abroad in countries with which Germany has not concluded a totalization agreement (i.e., a bilateral or multilateral Social Security treaty), the employer is liable.

In the case of international assignees, the employer's Duty of Care may extend to the interests of the employee's immediate family members; at least in cases where the employer provided assistance to family members as well. The employer will be bound to ensure the correctness and adequacy of the assistance provided. The liability for sickness-related costs under Social Security, as described above, also extends to family members who visit the assigned employee in countries outside of Germany.

### The Netherlands

In the Netherlands, employer Duty of Care (zorgplicht werkgever) is legislated through the Civil Codebook (Burgerlijk Wetboek) in various laws (Arbowet) and regulations related to work circumstances. Employees can turn to their employers to seek

damages for injuries they sustained as result of fulfilling their job responsibilities, unless employers can show that they fulfilled their Duty of Care responsibilities. Employers need to also prove that the damages are a result of the employee's intentional and conscious unsafe or reckless behavior. Case law indicates that employers' Duty of Care obligations extend to employees who work from home and liability arises under a variety of circumstances (e.g., employee burnout). Courts require employers to create written guidelines and constantly monitor the enforcement of these guidelines. Employer Duty of Care obligations may end when the employer has no direct influence over the situation. However, employee negligence is difficult to prove, as courts have typically sided with employees.

The Dutch Duty of Care requirements of employers focus heavily on the efforts of the employer (through a risk assessment and management plan) to prevent employee harm. The Arbowet specifies how an employer can fulfill Duty of Care obligations. As mandated in 1994, Dutch employers must make an inventory of, and evaluate the possible risks that the job responsibilities entail (called an RI&E or risico-inventarisatie en-evaluatie) for, employees who work 40 hours a week or more. In addition, the employer must take reasonably expected measures to prevent harm to employees by developing a plan detailing the precautions taken with regard to those risks. This involves proactively communicating the risks to employees, ensuring that instructions are followed, and enforcing policies. For employers with more than 25 employees, the RI&E must be approved and certified by an administrative agency (Arbodienst).

Industry-specific risk assessments can now be downloaded as samples ([www.rie.nl](http://www.rie.nl)). Dutch employers sending employees abroad should provide employees, in writing, with the reasonably foreseeable risks of the assignment and ensure their understanding of, and compliance with instructions to mitigate the risks.

### Spain

In Spanish law, Duty of Care is embedded in the Spanish constitution (1978) and further developed under the required transposition of the EU directives. The Labor Risk Prevention Law is the primary Spanish legislation that emphasizes the employers' Duty of Care through special risk assessment and training measures. The penal code provides criminal penalties for a breach of the Labor Risk Prevention Law. Workers' statutes define jurisdiction using conflicts of law principles for Spanish citizens working abroad. The law on the judiciary also sets out rules regarding jurisdiction in employment contract disputes. Spanish case law extends the rights to workers on a mission abroad, but restricts it to injuries sustained at work.

**Table 2-C**

<b>Sample of Relevant Spanish Duty of Care Cases</b>		
<b>Case (Name-Date)</b>	<b>Description</b>	<b>Decision</b>
Sentence of May 4, 1998. (RJ 1998\4091) Spanish Supreme Court	An employee suffered permanent paralysis while on assignment abroad.	Court held that as long as employees are subject to company decisions, an accident while on a mission abroad is an "occupational" accident as defined in the Labor Risk Prevention Law and the employer has a duty of security to the employee.
Judicial sentence of the Court of Barcelona, October 2007	Employer negligence caused the death of two employees.	<p>Court upheld the employer's sentence for a crime against the rights of workers (and two counts of negligence).</p> <p>Employer was disqualified from his profession for three years.</p> <p>Families of the victims were awarded a total of EUR 280,000.</p>

## United Kingdom (U.K.)

The Duty of Care legislation is highly developed in the U.K. An employer can be found in breach of Duty of Care through both criminal and civil actions. Civil actions are rooted in the Health and Safety at Work Act of 1974 ("HSW Act") and pursuing actions under the common law Duty of Care. Criminal law legislation includes the Corporate Manslaughter and Corporate Homicide Act of 2007 (the "Manslaughter Act").

The HSW Act provides a Duty of Care for every employer to ensure, as far as reasonably practical, the health and safety of every employee. A person breaching the Duty of Care can incur two types of liability for injuries up to, and including, death of the employee: a summary conviction (for up to £20,000) and a conviction on indictment (with unlimited damages). Employers in the U.K. can be held liable for injury caused to employees working for the employer outside the U.K.

The Manslaughter Act consolidates old laws of negligence by corporations and imposes criminal liability on corporations where there is a gross breach of the relevant Duty of Care which results in the death of a person, such as employees, people on work sites, and travelers. Gross breach of Duty of Care is conduct that falls far below what can be reasonably expected from an organization under the circumstances. There is no need to prove that one individual was responsible for the death at work. It simply must arise from activities and decisions which are managed and organized by senior management - those ultimately responsible for the gross breach of Duty of Care. If senior management is found negligent, they can be fined under the Manslaughter Act guidelines, based on the size of the corporation and the magnitude of the offense. In addition to fines, the courts can dictate remedial action to the corporation with regard to what it has to do to comply with the law and fix the situation to prevent future offenses. It can also order the company to publish the findings of the court, and acknowledge that they were negligent and what actions they will take to correct the situation.

The Manslaughter Act applies to a variety of employers such as corporations (excluding sole proprietors), partnerships, limited partnerships, trade associations, employee associations who are also employers, as well as Crown and governmental entities. It is important to note that the Manslaughter Act does not apply to individuals affected by the death of the employee. The heirs to the affected individual can sue for civil damages (under the HSW Act) or bring an action in tort or in contract.

Under the Manslaughter Act, a company may be held criminally liable for negligence that results in the death of an employee outside the U.K. The key is whether the threat that occurred in the host country was a result of breach of Duty of Care occurring in the U.K. (i.e., through the decisions and actions of senior management in the U.K.).

Case law related to death and injury hinges on whether the situation in the host country was reasonably foreseeable - whether the U.K. company should have known that such an injury could occur because of their failure to follow their Duty of Care responsibilities or whether a third party's action can be foreseen and predicted. MNCs headquartered in the U.K., or doing business in the U.K., cannot avoid their Duty of Care responsibilities simply because the employee crosses borders. Additionally, case law has established that MNCs cannot delegate their Duty of Care responsibility to an MNC's subcontractors or agents, whether they are doing business in the U.K. or abroad.

## Employer Duty of Care and Legal Compliance

**Table 2-D**

**Sample of Relevant U.K. Duty of Care Cases**

Case (Name-Date)	Description	Decision	Case (Name-Date)	Description	Decision
Square D-v-Cook [1992] I.C.R. 262	A U.K. employee of a U.K. company sent to Saudi Arabia was injured when he tripped over a loose tile at the Saudi work site. Lower court found breach of employer Duty of Care. This case is an appeal of that decision.	Lower court decision was overturned on appeal, the court ruling that the employer had performed adequate due diligence with regard to the third-party company that caused the accident.  The court reaffirmed that the employer has a non-delegable Duty of Care to take "all reasonable care" to ensure safety of its employees. This duty applies to work premises under the control of the employer or a third party	Mathews-v-Kuwait Bechtel Corp [1959] 2QB 57	An employee entered into a service contract with an overseas corporation to be a mill foreman in Kuwait. The contract is executed in England. He was injured on the job site in Kuwait.	There is an implied contract that the employer will take reasonable care of the employee.  The Court allowed a claim under contract law against a foreign employer (with no office in England) because the contract was executed in England.
Johnson v Coventry Churchill International Ltd [1992] 3ALL ER 14	A contractor, working for a U.K. company, was injured on a work site in Germany. At that time, there was no German law allowing the contractor to recover damages in negligence from the employer. Therefore, an action was brought in the U.K.	Court held that the contractor was an employee and that the employer breached a Duty of Care to provide a safe work system.	Coppas International [U.K.] Limited [1985]SLT 111	Claimant's husband was killed by Iranian bombs while working at a chemical plant in Iraq.	Claimant was not awarded compensation, but court set forth important principles regarding employer's Duty of Care.  Court ruled that the employer has a general duty not to expose an employee to unnecessary risk.  If a certain danger is likely to occur, this duty could include a responsibility to advise or evacuate.
Lubbe and Other appellants v Cape PLC. Respondent and related appeals [2000] 1W.L.R 1545	South African miners, working for a subsidiary of a U.K. company, brought an action in the U.K. alleging breach of Duty of Care because the company exposed them to asbestos. The issue decided in this case was whether the U.K. or South Africa was the appropriate jurisdiction for their claims. The employer argued successfully to stay the action due to his connections in South Africa. The miners appealed the decision to the House of Lords.	The House of Lords ruled that jurisdiction was appropriate in the U.K. against the parent company employer. With regard to jurisdiction, the court must apply the principle of choosing the forum most suitable for the interests of all parties and for the ends of justice. Based on several factors, South Africa was not the appropriate or convenient forum and the stay was not upheld. The damage issue was not determined.	McDermid-v-Nash Dredging and Reclamation Company Limited [1987] 3WLR 212	A U.K. employee of a U.K. company was injured while working as a deckhand on a Dutch boat. The injury was a result of the Dutch boat captain's negligence while the boat was in Swedish territorial waters.	An employer has a non-delegable Duty of Care for the safety of its employees and cannot avoid liability by delegating responsibility for employees to a subcontractor.

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Case law has established that MNCs cannot delegate their Duty of Care responsibility to an MNC's subcontractors or agents.



**Table 2-D (continued)**

Sample of Relevant U.K. Duty of Care Cases		
Case (Name-Date)	Description	Decision
Palfrey-v-Ark Offshore Limited [2001] WL 134034706	An employee of a U.K. company died from malaria caught while on assignment in West Africa. Prior to leaving, the U.K. employer advised the employee to seek medical advice regarding the advisable vaccinations and prophylactics. The employee told his employer that he understood the need to seek medical advice but failed to do so. The employee's widow brought a claim for damages against the employer.	Court awarded damages for the employer's breach of Duty of Care, despite the employee's knowledge of the risks and need to seek advice and the employee's failure to do so. Court stated that the employer has a minimum responsibility to ascertain and make available to the employee publicly available information on health hazards.
Gizbert-v-ABC News U.K.EAT/0160/06/DM [2006]	A news reporter with experience reporting from war zones was dismissed by a news agency for declining subsequent dangerous assignments. The employee based his decision on the needs of a growing family. The employee brought an action for unfair dismissal and made a health and safety complaint under the Employment Rights Act, 1996 s100(1)(c).	The employee was awarded damages by the tribunal for unfair dismissal. On appeal, the damages were reduced because s100(1)(c) of the Employment Rights Act did not apply, as there was no imminent danger as required by that section. However, the employee was entitled to damages for unfair dismissal because the employee had a right to refuse a dangerous assignment.
Industria Armamento Meridionale S.p.A (INARME) [2007]	An employee died in the U.K. after a fall while painting a crane. Criminal prosecution in the U.K. was brought against an Italian company under the Health and Safety at Work Act (1974) for health and safety breaches occurring in the U.K.	The investigation found that the employer's safety management system lacked specific detail to manage work at heights and that the employer failed to ensure the good condition of work equipment. The Turo Crown Court accepted the employer's guilty plea and imposed fines and costs.

## United States (U.S.)

In the United States, there are several sources of law that require an employer Duty of Care for the health, safety, and security of its employees. They include specific federal and state legislation and regulations, professional and industry-wide codes, and contract law. When the standards are lacking or inadequate to protect the employee, companies will be held to a higher common law Duty of Care.

The statutory Duty of Care obligations are set out in the Occupational Safety and Health Administration Act of 1970 ("OSHA") under the "general duty" clause. Employers must furnish their employees with a place of employment that is free from recognized hazards that cause, or are likely to cause, death or serious physical harm to their employees, and employers must comply with occupational safety and health standards promulgated under OSHA. Employees also have Duty of Care responsibilities to comply with occupational safety and health standards and all rules, regulations, and orders issued under OSHA, so far as they are applicable to their own actions and conduct.

The U.S. Occupational Safety and Health Administration, under the Code of Federal Regulations 29 Standard 1910.38, defines basic requirements for emergency planning applicable to most medium-to-large U.S. businesses. Corporations are subject to significant legal liability if they do not undertake emergency preparedness efforts. While fundamental in nature, the requirements include for most businesses, a written document addressing emergency reporting, evacuation, critical plan operations, employee accounting, rescue, medical duties, applicable employee duties under the plan, and alarm notification systems and training (Raisch et al, 2006).

Whereas OSHA is focused on imposing a direct obligation upon an employer to maintain a safe work environment, Workers' Compensation ("WC") laws are designed to enforce an employer's financial responsibility to an employee injured during the course of his or her employment. There is, however, no universal federal act or statute that governs all states in the area of WC. As the coverage varies by state, employers have to consider the laws of each state. They should, however, not solely rely on WC coverage for injured employees as there are states, where under certain circumstances, WC does not provide coverage. These circumstances cover, for example, executive officers, third party claims, care and loss of services or consortium, dual capacity suits, and consequential bodily injury. In general, WC laws do not have extra-territorial application, but there are exceptions. Some states make a business traveler exception for employees traveling abroad to further an employer's business. Employees who are citizens or legal residents of the U.S. or Canada, injured while temporarily outside of the territory (usually for a maximum of 90 days), may be covered by WC laws. Hence the WC in some states applies to business travelers and short-term assignees.



## Employer Duty of Care and Legal Compliance

Corporations are subject to significant legal liability if they do not undertake emergency preparedness efforts.

Common law regarding negligence requires employers to exercise reasonable care to prevent or mitigate the impact of foreseeable hazards. If they fail to take reasonable steps to prevent these risks, they will be found in breach of Duty of Care.

A few U.S. cases illustrate the employer's Duty of Care with regard to international business travelers and assignees. If an injury is reasonably foreseeable, a U.S. employer may risk liability for negligence when their employees are assigned abroad unless they take adequate safety precautions. Employers should be aware that in some states, Workers' Compensation laws have provisions for international business travelers. The tendency of the courts has been to interpret workplace injuries more broadly when they were sustained abroad by employees traveling in furtherance of the employer's business.

**Table 2-E**

### Sample of U.S. Duty of Care Cases

Case (Name-Date)	Description	Decision
Markohaltz v. Gen. Elec. Co. 193 N.E., 2d.636 (N.Y. 1963)	An employee based in New York was sent by his employer to a conference in Paris, France. On his journey back home to New York, and after a 10-day vacation following the conference, he was killed when his return flight crashed. His heirs were awarded WC benefits. The employer appealed the decision.	The Court of Appeals upheld the WC award for the employee, as he was traveling home to resume his employment.
Capizi v. Southern District Reporters, Inc. et al., 61 N.Y. 2d. 50 (1984)	A court transcriber sent by a New York firm to Toronto, Canada was injured when he slipped and fell in the bathtub of his hotel. He was awarded WC benefits. The employer appealed the decision.	The court upheld the award of WC benefits and ruled that changing environments cause a greater risk of injury, requiring compensation in some cases for injuries outside of normal work duties.

**Table 2-E**

### Sample of U.S. Duty of Care Cases

Case (Name-Date)	Description	Decision
Enlow et al. v. Union Texas Dec. 21, 1999 U.S. Federal Court Fifth Circuit (Houston) [unreported jury trial]	Survivors of four employees murdered in Pakistan sued an oil company, alleging breach of duty. They claimed that the employer had no pressing need to send employees to Pakistan during a time of strife and anti-U.S. sentiment. They further alleged that the employer failed to provide a necessary level of security.	The jury decided that the employer did not breach Duty of Care because the risk of murder was not reasonably foreseeable and that the employer had taken adequate safety precaution steps, including the hiring of a private risk management firm.
Ali Khan v. Parsons Services, Ltd., D.C., Cir. No. 04-7162, 11/15/05	A British citizen living in Malaysia, employed by a British company which had its principal place of business in the District of Columbia (U.S.A.), agreed to work as an accountant in the Philippines for a two-year term. His assignment contract stipulated that WC insurance was the exclusive remedy available for work-related injuries while on assignment. Coming back from dinner on a non-business day, he was kidnapped, his ear was cut off, and he was held for three weeks while ransom negotiations took place.	The Court of Appeals remanded the case back to the District Court to determine the negligence issues and ruled that WC laws were not applicable. Looking at the WC laws from various states, the court ruled that the business traveler's exception did not apply because the employee had fixed employment in Manila and was not traveling for his job. Further, the kidnapping took place on a non-business day and outside of a business context (i.e., a leisure meal rather than a business dinner).
	The employee sued his employer based on negligence, arguing that the employer failed to properly negotiate his release. The District Court granted summary judgment to the employer, holding that the employee could not bring a cause of action in negligence because WC was the exclusive remedy.	

**MNCs must be aware that, in the EU, the transposition of the EU directives into local laws, the applicable law, and the jurisdiction are complicated legal issues.**

## **ILO (International Labor Organization)**

The International Labor Organization (ILO) has issued over 70 different conventions that are legally binding, as well as voluntary recommendations to address the occupational safety and health issues of employees. These are organized around four basic categories: (1) guiding policies for actions; (2) protection in given branches of economic activity; (3) protection against specific risks; and (4) measures of protection. The ILO recently issued a proposed Promotional Framework for Occupational Safety and Health (2006). It recommends that ILO member states ratify the proposed convention and take active measures to achieve a safe and healthy work environment with the goal of reducing work-related deaths, accidents, and diseases. Although the Duty of Care of employers for the safety of their employees is explicit in the proposed convention and protects all workers, it does not specifically elaborate on the safety of workers on assignment abroad, whether as business travelers or international assignees.

## **European Union**

Issues related to Duty of Care and employees working across borders in the EU have been indirectly regulated by directives and treaties. Two particular types of EU legislative actions have immediate relevance to the topic of employer Duty of Care for international assignees and business travelers, namely the directives related to the safety and health of workers and the directives/treaties related to jurisdiction and applicable law.

The Safety and Health of Workers and Work Directive (Council Directive 89/391/EEC, 1989) imposes a general Duty of Care on employers and requires that specific measures be taken. This includes the development of an overall protection policy, elimination of known and potential risks, awareness and adaptation of new safe technology, training and consultation with employees, and health surveillance. Member states have transposed this directive within their national legislations, resulting in a diversity of applications by the different EU countries.

There is increased interest at the European level to deal with new employment and workforce trends (such as an aging population, outsourcing, subcontracting, small and medium-sized enterprises, and new and larger flows of migrant workers) and the health and safety issues that relate to these workers. The EU is putting greater pressure on its member states and, hence, employers who operate in these states, to develop a community-wide strategy on health and safety at work such as the paper entitled: *Improving Quality and Productivity at Work: Community Strategy 2007-2012 on Health and Safety at Work, 2007*.

For jurisdictional issues, the Posted Worker Directive and the Council Regulation on Jurisdiction are relevant. The Directive on the Posting of Workers (96/71/EC) focuses on protection of service workers temporarily assigned from one EU member state to another. Expatriate employees are guaranteed the minimum protective measures in the state to which they are posted. It imposes on employers mandatory rules regarding work hours, vacation, and pay. In addition, it details rules with regard to health, safety, hygiene, and working conditions. Specifically, the directive allows the posted worker the opportunity to institute judicial actions in the country where the worker is placed.

With the establishment of Council Regulation on Jurisdiction, the EU recognizes a need for clear and uniform rules regarding which jurisdiction to apply to employment and other civil contract disputes. The EU also recognizes the importance of the enforcement of judgments that are rendered in one member state and enforced in another. Employers operating within the EU should be aware of the court holding jurisdiction in particular cases, as governed by EU rules. This places limitations on employer's ability to engage in advantageous jurisdiction "shopping," with the rules favoring the protection of the employee over the employer.

For applicable law issues, the 1980 EC Convention on the Law Applicable to Contractual Obligations (Rome, 1980) is relevant. The convention addresses a key issue by ensuring that there is proper application of the law involving employer/employee disputes arising from international assignments in different EU countries. The basic principle is freedom of choice of law. The contract will be governed by the law chosen by the parties, even if parties choose a foreign law. In absence of a contractual choice, the convention sets forth the applicable rules to govern the applicable law. As is common with EU directives, the transposition within the laws of each member state has been done with a great deal of diversity. MNCs must be aware that, in the EU, the transposition of the EU Directives into local law, the applicable law, and the jurisdiction are complicated legal issues.

### Discussion of Key Duty of Care Legal Issues

The samples of countries listed above demonstrate great diversity in legislation with regard to the employer's Duty of Care obligations. Depending on the country, there are also gradations in the process of evaluating the employers' obligations. Some countries have more stringent employer Duty of Care statutes, such as the Manslaughter Act in the U.K., and the French Labor Code in France. Others rely on statutory obligations and case law that impose more general Duty of Care, such as the U.S. Some laws speak specifically to the Duty of Care issue, while others require that Duty of Care be embedded into the employment contract, occupational health and safety standards, social security legislation, or workers' compensation laws. Duty of Care may also be simply "implied" as an ancillary part of the employment relationship.

Statutes generally do not specify to what extent national laws apply to employees who work, reside, or travel abroad; however courts have been ready to apply the laws to employees who die or are seriously injured outside the country while they are on business.

Although some the laws may be somewhat different in how they articulate the employers' Duty of Care, they focus on the general obligation of the employer to protect the physical and mental health, safety, security, and well-being of employees wherever they work, whether at the work site, at home, or abroad. Common duties imposed on the employer usually include assessing the risks inherent in the job, site, and tools; taking steps to secure the work site; warning employees of the dangers; and communicating, training, and providing assistance. Employers' breach of Duty of Care usually carries civil and sometimes criminal liabilities. In general, neither employers nor employees can delegate their Duty of Care responsibilities to third parties. In regard to third party contractors and vendors, employers cannot assume that the necessary steps have been taken to secure the


work site. Thus, coverage of contractors, vendors, or the employees who work with them should be included in Duty of Care planning.

Case law continues to refine and define Duty of Care in different countries, thus expanding employers' obligations to cover expatriates, their dependents, and business travelers. However, there are limited reported court judgments and, therefore, limited specific legal standards and practices available. It is likely that such disputes are settled before a judgment is rendered.

To complicate the issue, litigations involving international assignees and employer Duty of Care usually involve the laws of multiple countries. Conflicts of laws can occur (Carew-Reid, 2000). Applicable law is not necessarily limited to the home and host countries of the employee, or the employer or the country in which the work is done. It can be based on the specific circumstances, involving a myriad of considerations and other possible jurisdictions. Determining which court will hear the case can also involve complexity.

Although there may be some guidance as to which country's law or jurisdiction applies, a single rule does not exist. As referenced above, for employment contracts in the European Union countries, the Posted Workers Directive and the Treaty of Rome (1980) both provide guidance as to the applicable and the jurisdiction. It is not uncommon for both employers and employees and their lawyers to forum shop for the most advantageous country, whose laws and jurisdictions benefit their case. Many factors may determine the applicable law and the jurisdiction, including the location of the company headquarters, the country where most decisions are made, the country where the breach actually occurred, the place of primary employment duties for the employee, the duration of the employees assignment in the country, the location where the employment contract was enacted, and others. Therefore, in many contracts for international assignees (often for expatriates and, to a lesser extent, for international business travelers and short-term assignees), a choice-of-law clause is added by the employer/employee and the jurisdiction is determined in advance of any potential conflicts.

Finally, how do employers deal with the various compliances, requirements and levels of Duty of Care standards in different countries? When can an employer operating worldwide assume that they have fulfilled their Duty of Care responsibilities, are compliant with the national legislation, and have acquired a reasonable standard of care in order to safeguard employees' health, safety, and security to avoid expensive litigation or settlements? 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.



**It is generally acknowledged  
in risk management that  
prevention of harm is less  
costly and more sustainable  
than dealing with its  
ramifications.**

## **Employer Duty of Care and Corporate Social Responsibility**

There is a trend in MNCs with regard to the overall well-being and behavior 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 issues such as Duty of Care, 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 obligation, yet they often encounter many challenges in doing so successfully. A number of these challenges have been identified in terms of travel risk management (Advito, 2009). They are: (1) Underestimation by employer—travel seems to be a blind spot when it comes to Duty of Care, compared to health and safety procedures in the permanent workplace; (2) Underestimation by employee—employees do not always understand the risks they face and may not comply with the travel risk policy; (3) Distorted perspective—probability of different risks and events abroad seem remote; (4) Fragmentation of responsibility—the issue involves different departments; (5) Status of travel management—low standing of the travel manager in the organization; and (6) Staying up to date—risk profiles change continuously. Similar challenges are at work in terms of a coordinated employer Duty of Care response.

Employers who have the Duty of Care responsibility may also be unfamiliar with the full extent of the risks and threats because of their detachment from the situation. Quite often, they work out of the corporate headquarters or elsewhere in their home country, away from the locations to which they dispatch their employees. While they are likely to be cognizant with their Duty of Care social and legal obligations in their home country, they are probably unfamiliar with Duty of Care requirements abroad.



## Employer Duty of Care and Corporate Social Responsibility

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, global HR, and line managers, all share responsibility for the organization's 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 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 obligation. However, the real problem may reside in management's lack of awareness of the full extent of their international Duty of Care. The limited number of articles and lack of research on employer Duty of Care in an international context suggests that this topic is not fully understood by most managers and, hence, does not appear on their radar screen. With the current focus on controlling costs, even enlightened security and global HR managers are unsuccessful in making the case for additional resources.

It is generally acknowledged in risk management that prevention of harm is less costly and more sustainable than dealing with its ramifications. The economic costs to employers of not complying with their Duty of Care for international assignees, the extensive unproductive management time expended as a result of a breach, and the loss of goodwill are often ignored. Unfortunately, employers often look for short-term solutions unless a serious injury or accident to an employee has occurred.

While there is lack of empirical research on the employer Duty of Care for international assignees, a few articles in HR and risk management professional literature (many as a result of the enactment of the Manslaughter Act in the United Kingdom) are starting to raise a greater awareness of this topic (Beale, 2007; Cameron, 2007; Cohen, 2006; Fox, 2003; Green, 2005; Gurchick, 2007a; 2007b; Kranc, 2007; Skuse, 2008; Slaughter, 2007; Smith, 2006; Taylor, 2008; Waldron, 1995; Woolf, 2006). Much of this professional literature is focused directly on travel management, rather than the broader topic of employer's Duty of Care. We summarize this professional literature in Sidebar 3 by compiling the travel management best practices suggested and grouping them according to various activities (assessment of risk, strategy/planning, travel planning, policies and procedures, awareness and training, tracking, controlling, and assisting).

These professional articles, mostly written with the assistance of travel organizations, focus mainly on the consequences for employers when they fail to meet their Duty of Care obligations. The travel management industry, of which corporate travel is a major component, is increasingly pressured by their stakeholders

SIDEBAR 3
Travel Management-Employer Duty of Care Best Practices <sup>2</sup>
<b>RISK ASSESSMENT</b>
<ul style="list-style-type: none"> <li>• Carry out proper risk assessment</li> <li>• Understand the relative health, safety, and security risks in locations where employees frequently travel/reside</li> <li>• Identify and inventory risks that are associated with the job responsibilities in the specific location</li> </ul>
<b>STRATEGY/PLANNING</b>
<ul style="list-style-type: none"> <li>• Assess whether your company is currently meeting its Duty of Care obligations</li> <li>• Show your company's commitment to the safety of your employees</li> <li>• Develop and maintain a current crisis management plan</li> <li>• Proactively manage employee travel</li> <li>• Have a travel contingency plan in case of an emergency</li> <li>• Pay attention to the details, completeness, and applicability of the benefits package offered to global workers</li> <li>• Pay attention to family issues in international assignments</li> <li>• Investigate cost/benefits of travel/emergency/medical insurance/kidnapping insurance</li> <li>• Investigate the use of third parties for medical and security assistance, and global emergency medical/travel insurance</li> <li>• Investigate the use of third parties for global travel tracking systems</li> <li>• Use vendors with the right tools, experience, and infrastructure to support your global workers</li> <li>• Consider international vendors to achieve the best international results</li> <li>• Design the organization's structure that supports travel management and Duty of Care requirements</li> <li>• Make sure the organization's culture supports travel management and Duty of Care requirements</li> <li>• Develop a clear policy that governs employees who are traveling and working abroad (international business travel, short term international assignments, and expatriate long term assignment)</li> </ul>

*Continued on the following page*



to address sustainability and corporate social responsibility through responsive travel management. Two cornerstones of corporate social responsibility are the reduction of travel related CO2 emissions and addressing the Duty of Care of business travelers. In three recent special reports prepared by the travel management industry, authors provide toolkits for managers responsible for business travel. The 2008 NBTA CSR Toolkit (Advito, 2008) provides an overall guide to travel management and Duty of Care and links it to corporate social responsibility. "C'est la vie?"—A Step-by-Step Guide to Building a Travel Management Program (Advito, 2009) details the steps of a travel risk management program for organizations. Project ICARUS (Institute of Travel Management, 2008) is a toolkit that includes guidance on managing emissions from car usage, meetings, events, and hotels. It is important to note that, although an important component of Duty of Care, employee travel management alone is not sufficient for meeting employer Duty of Care obligation. The Duty of Care obligations, set forth in various statutory laws and cases of different Western countries, are far more encompassing.

### SIDEBAR 3 (continued)

#### Travel Management-Employer Duty of Care Best Practices<sup>2</sup>

##### POLICIES & PROCEDURES

- Consider how travel policies on a worldwide basis protect employees
- Develop privacy policies
- Have employees sign risk assessment forms (informed consent: know, understand, and accept the risk)
- Do not force employees to work in hostile environments

##### TRAVEL PLANNING

- Check whether basic safety conditions are met for lodging and establish a company preferred hotel program
- Understand local medical practices
- Have a proper travel security program in place
- Have a procedure to follow in the event of a natural disaster, war, terrorist act, medical emergency, or epidemic
- Arrange a full and complete schedule for the traveler
- Include all relevant details in the itinerary, including local office contact details
- Use the local/host office to help with arrangements, as they know the city and local scene
- Organize a car rather than using taxis
- Use the available support services provided by the travel industry

##### TRAVEL PLANNING (continued)

- Make sure that the vehicles employees use for work are taxed and insured
- Check roadworthiness of vehicles for employees using their own cars for work purposes
- Check whether employees have valid driver's licenses and are fit to drive
- Be aware of the danger for employees when driving after long-haul flights
- Be aware of the unfamiliarity of drivers with different conditions (such as driving in a new environment, on different sides of the road, in various road conditions, and with changing traffic rules)
- Establish rest breaks and maximum driving hours/distances for employees
- Allow employees to stay in a hotel when needed
- Cover both domestic and international trips in your travel policy
- Select international assignees using careful assessment and selection techniques
- Register with appropriate embassies

##### COMMUNICATE/EDUCATE/TRAIN

- Ensure that employees are appropriately prepared for travel before leaving
- Provide pre-trip information
- Educate employees on the hazards of the travel/assignment
- Inform employees of endemic threats and suitable mitigation measures before departure
- Communicate sanitation and hygiene issues
- Inform employees of driver regulations such as speed limits, alcohol limits, use of mobile phones, and road tolls
- Inform travelers of significant risk changes during their travel period
- Brief employees on political, security, and travel risks
- Train employees on preventive security and health procedures and outline emergency response procedures
- Train and educate employees on precautionary methods to safeguard them from the spread of communicable diseases
- Make sure employees know how to deal with various "what if" scenarios
- Train employees in emergency responses
- Make employees and managers aware of the travel and risk management policies and their need for adherence

## Employer Duty of Care and Corporate Social Responsibility

COMMUNICATE/EDUCATE/TRAIN (continued)
• Maintain competency through annual awareness training
• Make employees aware of the 24-hour advice and assistance hotline (if available)
• Maintain ongoing awareness of risk
• Train members of the crisis management team on critical incidents
• Rehearse the crisis management plan through tabletop exercises or simulations
• Equip travelers with resources to help them stay safe and healthy
• Train managers on policies and crisis management plan
• Coordinate translation or language services of host countries
TRACK
• Know the employee's itinerary
• Identify employees at risk in advance and notify them of upcoming dangers
• Proactively communicate to employees changes in risk while on assignment
• Know in which cities your travelers are able to get information in a timely manner (i.e. within ten minutes)
• Develop a secure personal traveler data base
• Track business travel of employees (safety, visa, tax compliance)
• Track stealth assignees (under the radar)
• Keep employee health information confidential
• Invest in non-invasive tracking/locator systems
• Use a traveler locator database/tracking system (tracking business travel - air, car, hotel - and other locations and itineraries of your employees)
• Know where your employees are at any given time
CONTROL
• Ensure employee compliance
• Consider compliance of vendors and suppliers
• Assess through regular surveys, data, etc. whether the organization is meeting its Duty of Care legal and ethical responsibilities
• Identify privacy concerns and keep personal information confidential and secure

ASSIST
• Have a mechanism to communicate with employees all over the world in real time
• Have employee contact detail accessible, and put in place a mechanism to rapidly communicate with them
• Provide employees with access to a 24-hour hotline for advice and assistance on risk issues
• Attend to employee's personal and professional needs and wants
• Pay attention to family issues
• Have local deployment teams
• Have access to a deployable incident management team for situations where you do not have a local presence
• Provide appropriate guidance and support
• Provide actionable risk information to the employee on a just-in-time basis
• Enable crisis management capability
• Provide international employee assistance program

<sup>2</sup> These best practices are compiled from professional literature (Beale, 2007; Cameron, 2007; Fox, 2003; Green, 2005; Gurchiek, 2007a, 2007b; Russell, 2008; Skuse, 2008; Slaughter, 2006; Smith, 2008; Waldron, 1995; Woolf, 2006). Note that many of these best practices mainly relate to travel management, which is only one component of the overall employer Duty of Care for employees on international assignments.

In order to calculate a return on investment for developing and implementing a comprehensive Duty of Care strategy for international assignees and business travelers, an MNC will need to carefully analyze its expatriate and business traveler population.

## Cost and Benefits of Employer's Duty of Care for International Assignees

So far, this paper has focused on employers' legal and moral Duty of Care obligations towards their international business travelers and assignees. While there is no data available as to how many MNCs have already developed and implemented a Duty of Care strategy, it has been suggested that companies do not always seem to provide the right level of care. Even for companies that have at least started the process, there are gaps in truly securing the well-being of their employees. In courts of law around the world, these gaps could be perceived as employer negligence (Advito, 2008). The question that remains to be answered is whether a business case can be made to justify the development of an all-encompassing Duty of Care strategy with policies, processes, controls, clear lines of responsibility, and tactical implementation. In economic times of cost containment, such investments will come under intense scrutiny.

A recent case study on implementing a safe business travel policy at a company called Aegis reports that "the potential cost benefit of a global emergency travel and medical insurance policy was investigated and it was concluded that this was cost-effective and useful to introduce" (Beale, 2007). In order to calculate a return on investment for developing and implementing a comprehensive Duty of Care strategy for international assignees and business travelers, an MNC will need to carefully analyze its expatriate and business traveler population. First, the types of international assignments (short-term international assignment, long-term expatriation, international business travel, and international commuting) vary in duration and scope. Second, the risks and threats of these assignments vary significantly depending on the home and host locations. Third, the level of risk varies by country. Fourth, the risks also vary by the work responsibilities of the employee based on their job description and the needs of their particular mission. Fifth, employees may or may not have family or significant others accompanying them – changing the range of the employer's liability. Finally, individual employees have different risk behaviors.

## Cost and Benefits of Employer's Duty of Care for International Assignees

### SIDEBAR 4

#### Duty of Care Cost-Benefit Components

Cost Components	Benefit Components
Cost of a lack of Duty of Care	<ul style="list-style-type: none"> <li>Maintenance of employee well-being (health, safety and security, life)</li> </ul>
<ul style="list-style-type: none"> <li>Cost of an incident/injury to the victim(s) (i.e., loss of life, emotional distress, lost earnings)</li> </ul>	<ul style="list-style-type: none"> <li>Better trained and prepared workforce</li> </ul>
<ul style="list-style-type: none"> <li>Cost of medical expenses, treatment, evacuation, and repatriation</li> </ul>	<ul style="list-style-type: none"> <li>Avoidance of costly incidence costs</li> </ul>
<ul style="list-style-type: none"> <li>Cost of sick pay for employee</li> </ul>	<ul style="list-style-type: none"> <li>Possibility of greater bonuses for managers and employee profit sharing (if applicable)</li> </ul>
<ul style="list-style-type: none"> <li>Cost of diversion of resources (financial and human)</li> </ul>	<ul style="list-style-type: none"> <li>Getting an insurance premium discount if appropriate risk management measures are in place</li> </ul>
<ul style="list-style-type: none"> <li>Cost of extensive executive resources to deal with the situation</li> </ul>	<ul style="list-style-type: none"> <li>Greater legal compliance</li> </ul>
<ul style="list-style-type: none"> <li>Property and economic damage</li> </ul>	<ul style="list-style-type: none"> <li>Avoidance of litigation</li> </ul>
<ul style="list-style-type: none"> <li>Cost of business interruptions, downtime, closure of a site</li> </ul>	<ul style="list-style-type: none"> <li>Increased ability to attract and retain employees</li> </ul>
<ul style="list-style-type: none"> <li>Cost of employment litigation</li> </ul>	<ul style="list-style-type: none"> <li>Increased ability to attract customers and investors</li> </ul>
<ul style="list-style-type: none"> <li>Cost of damages resulting from liability</li> </ul>	<ul style="list-style-type: none"> <li>Improved CSR reputation</li> </ul>
<ul style="list-style-type: none"> <li>Cost of fines and penalties under relevant laws</li> </ul>	<ul style="list-style-type: none"> <li>Improved productivity</li> </ul>
<ul style="list-style-type: none"> <li>Costs of insurance premiums rising as a result of the incident</li> </ul>	<ul style="list-style-type: none"> <li>Increased morale</li> </ul>
<ul style="list-style-type: none"> <li>Costs of morale and productivity loss</li> </ul>	<ul style="list-style-type: none"> <li>Increased reputation and employment brand</li> </ul>
<ul style="list-style-type: none"> <li>Cost of loss of potential employees who can't be recruited</li> </ul>	
<ul style="list-style-type: none"> <li>Costs of replacing employees who leave (recruitment and on-boarding)</li> </ul>	
<ul style="list-style-type: none"> <li>Potential for bankruptcy</li> </ul>	
<ul style="list-style-type: none"> <li>Cost of the loss of goodwill</li> </ul>	
Prevention costs	
<ul style="list-style-type: none"> <li>Cost of developing a risk management plan</li> </ul>	
<ul style="list-style-type: none"> <li>Cost of compliance and training</li> </ul>	
<ul style="list-style-type: none"> <li>Cost of insurance coverage</li> </ul>	
<ul style="list-style-type: none"> <li>Cost of vendors</li> </ul>	

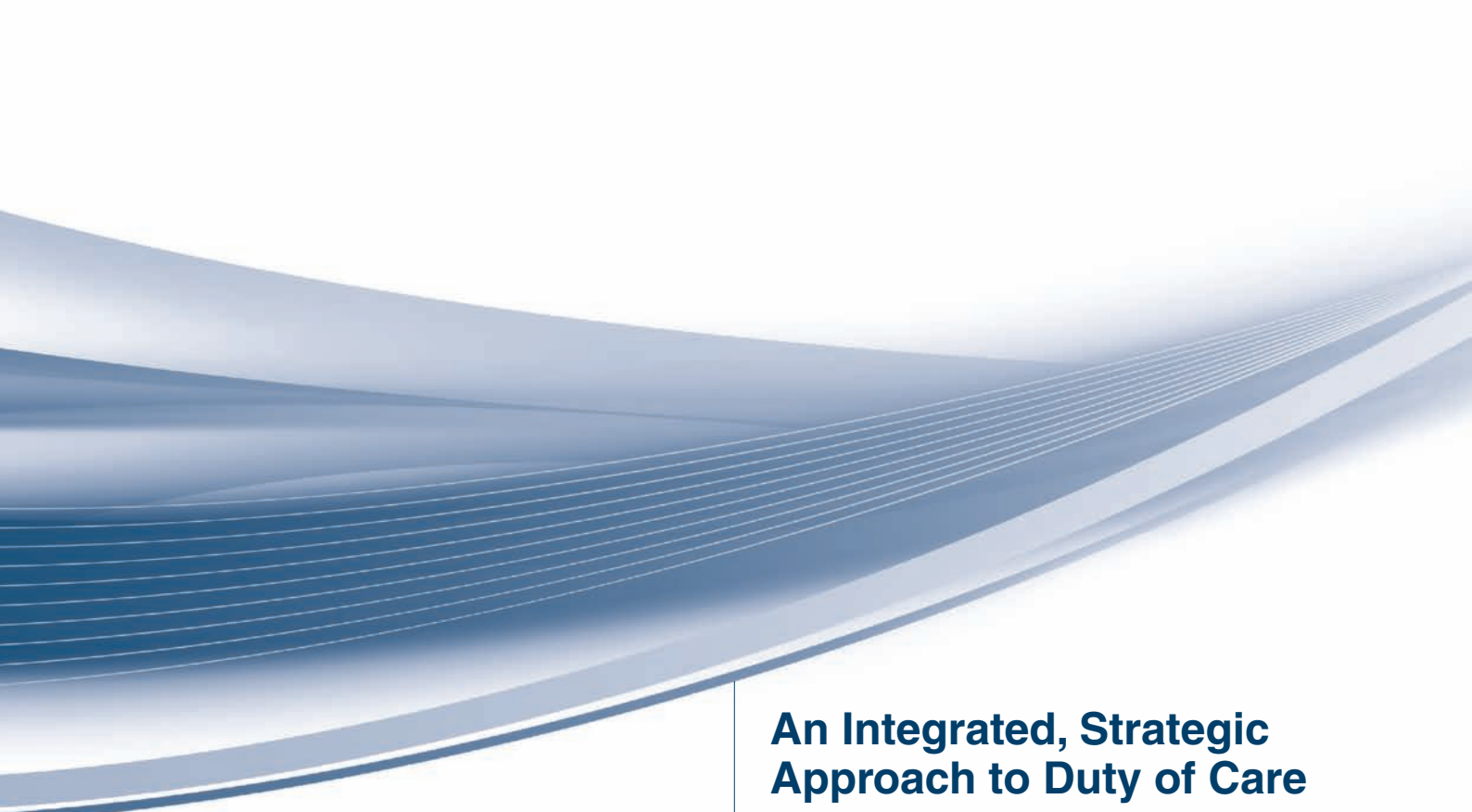
oil, gas, and construction, the number of reportable incidents will affect the bonuses of managers. This leads to the company's decreased ability to attract customers and may trigger liquidated damages under client contracts. Ultimately the impact will impact share price.

Finance departments and business managers are well attuned to creating business cases and performing cost-benefit analyses. Finance, HR, security, medical, and management teams should work together to perform a useful analysis of their own risk and Duty of Care obligations. There is both a "carrot" and a "stick" to an employer's Duty of Care. The "stick" is meeting legal compliance and reducing/avoiding negligence and liability. The "carrot" is employee well being, business continuity, reduced costs (for avoidable expenses like medical care, evacuation, and productivity loss), protecting the reputation and brand of the organization for recruitment and retention purposes, and, last but not least, increasing employee well-being and productivity by avoiding illness, injury, and possible death.

The arguments for prevention far outweigh the costs of implementing a program to prevent employee injury or death and managers who do not undertake a cost/benefit analysis will (given the size of the potential exposure) be failing in their commercial, fiduciary, and moral responsibilities as leaders in their organization.

Duty of Care falls in line with risk management theory: the cost of prevention is cheaper than the cost of dealing with incidents. With regard to travel management, it has been argued (Arnold, 2008) that a proactive approach can also translate into efficiency and cost savings by helping avoid additional costs (such as hotel overnight stays, missed client appointments, and unproductive hours spent sitting in airports). Unfortunately, employers often take a reactive approach, managing risks after incidents have occurred. Sidebar 4 details some of the general costs and benefits of employer Duty of Care. In some industries, such as in





The critical success factors of such a strategic intervention lie with the awareness of, commitment to, and responsibilities of the different stakeholders in the organization.

## An Integrated, Strategic Approach to Duty of Care

How do employers—specifically managers responsible for the health, safety, and security of international assignees—meet their legal and ethical Duty of Care obligations? The answer to this question, as suggested by global HR and risk management experts, lies in prevention and risk management (Claus and McCallum, 2004; Cameron, 2006; Hempel, 2007; European Agency for Safety and Health at Work, 2008; Advito, 2009). In light of the corporate social responsibility and legal Duty of Care responsibilities of employers and the high economic costs of breaching Duty of Care responsibilities, this paper recommends a strategic risk management strategy for global employers vis-à-vis international business travelers and assignees. Such a risk management approach entails a number of different, yet common, risk management steps which usually include risk assessment, prevention, mitigation, and control (see Sidebar 5 for recommended risk management steps).

An applicable notion in the employer's Duty of Care is the distinction between "obligations of results" and "obligations of means" (Alessi, 2005). According to the distinction, an obligation of results is directed at guaranteeing the attainment of a specific result (i.e., the elimination of sickness, injury, or death to the employee while on international assignment). The obligation of means consists of the employer performing its Duty of Care vis-à-vis the employee (i.e., taking the strongest preventive measures to secure the health, safety, and security of the employee while on international assignment). In an ever more complex and dangerous world, employers can't always guarantee results, but they can put measures in place to try and protect the employee against reasonably foreseeable risks. Hence, an integrated risk management approach focuses on obligations of means to achieve obligations of results.

As noted previously, Duty of Care responsibilities for international business travelers and assignees are poorly understood by employers. Yet moral corporate responsibilities and legal liabilities continue to grow in importance and complexity. Thus, risk management interventions must be integrated into corporate

**SIDEBAR 5**

**Risk Management Steps**

Waldron (1995)	<ol style="list-style-type: none"> <li>(1) Understand the medical facts and figures</li> <li>(2) Cover all eventualities</li> <li>(3) Educate, educate, educate</li> <li>(4) Provide location-specific assistance</li> <li>(5) Minimize stress levels</li> <li>(6) Do not underestimate cultural shock</li> </ol>
Claus and McCallum (2004)	<ol style="list-style-type: none"> <li>(1) Assessment and risk management planning</li> <li>(2) Training</li> <li>(3) Information and communication</li> <li>(4) Protection</li> <li>(5) Support during a crisis</li> <li>(6) Empowerment of the employee</li> </ol>
Cameron (2007)	<ol style="list-style-type: none"> <li>(1) Set policy</li> <li>(2) Maintain awareness</li> <li>(3) Prepare and support the traveler</li> <li>(4) Be prepared for the worst case scenario</li> </ol>
Hempel (2007)	<ol style="list-style-type: none"> <li>(1) Anticipate areas of risk</li> <li>(2) Gain agreement on a global risk management strategy</li> <li>(3) Design processes and controls</li> <li>(4) Develop and implement training</li> <li>(5) Implement controls and audit processes</li> </ol>
European Agency for Safety and Health at Work (2008)	<ol style="list-style-type: none"> <li>(1) Identify hazards and those at risk</li> <li>(2) Evaluate and prioritize risks</li> <li>(3) Decide on preventive actions</li> <li>(4) Take action</li> <li>(5) Monitor and review</li> </ol>
Advito (2009)	<ol style="list-style-type: none"> <li>(1) Assign management responsibility</li> <li>(2) Determine risk types</li> <li>(3) Assess risk exposure</li> <li>(4) Mitigate or manage</li> <li>(5) Communicate</li> <li>(6) Audit</li> </ol>

strategy. As noted by Beale (2007), “The main challenges are the creation of a policy that attains support from the business, that discharges the Duty of Care, and that is globally understood and implemented.” The critical success factors of such a strategic intervention lie with the awareness of, commitment to, and responsibilities of the different stakeholders in the organization. Thus, it is important to identify what these Duty of Care responsibilities specifically mean for the various stakeholders (i.e., senior managers, security personnel, global HR professionals, line managers, employees, and other actors in the broader employment scene).

Any successful strategic change initiative must have the support (i.e., commitment and resources) of senior management. This is more likely to be obtained when a solid business case can be made for the employer’s Duty of Care (see the section below on the costs and benefits of employer’s Duty of Care for international assignees). Security, medical, and risk management teams are the most experienced in designing a strategic approach and identifying the resources required to implement and monitor the results. They are responsible for making sure that employees have the basic education, knowledge, and tools to protect themselves in remote and sometimes dangerous locations (Kranc, 2007).

**Global HR  
plays a unique role in  
making sure that the  
organization is meeting  
its Duty of Care  
responsibilities to  
employees as  
identified.**

Global HR plays a unique 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, and it has 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 the management of risk (SHRM Global Learning System, 2009). The responsibility for communicating with traveling employees and their families during crisis often falls upon HR professionals (Arnold, 2008). HR also plays a vital role in successful planning and implementation of emergency planning management, and must 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 counseling services, and managing leave and privacy issues so that interruptions to business operations are minimized (Lindsey, 2006). Finally, line managers (both at home and in host countries) who deal directly with international business travelers and expatriates play an important role in managing work responsibilities and ensuring compliance with company policies.

While it is well established that the employer has a Duty of Care obligation, the employee also holds a duty of loyalty and allegiance. In other words, the employee must comply with the policies and procedures of the employer and be a prudent person in his or her behavior. Prudent, in this context, means that the employee must avoid taking unnecessary risk. Travel Wise, (Leki 2008) focuses on the personal responsibility and internal competencies of the international traveler to assess and mitigate threats, minimize risks, and operate successfully in an unfamiliar environment. The proposed Travel Wise model integrates personal and interpersonal skills (such as personal characteristics, physical characteristics, behavioral patterns, financial situations, and logistics), cross-cultural competences (such as urban living experience, international experience, language fluency, and marital status), emotional intelligence (self awareness, self management, social awareness, and relationship management), and security awareness (experiential attributes such as self confidence, surveillance detection, threat identification, and logistical security attributes). Employees should have the motivation to understand how to balance risk and mitigate the threats involved in an unfamiliar international situation. In short, the employee has a personal responsibility to act prudently, must comply with company policy, and must abide by local laws (where they travel)—ignorance is not an argument for non-compliance.

Employers should counsel employees that, before they cross borders on company business, they may consider having an emergency contact person, a will, an executor to their will, a power of attorney, and a living will. As such, the employer is showing that the organization is looking out for employees' best interest and requires employees to think and plan in advance as well.

## Conclusions

There is a general Duty of Care on employers, from a legal, fiduciary, and corporate social responsibility perspective. Employers must ensure the health and safety of all employees and others who come into the workplace. Potentially, this Duty of Care extends to business travelers and international assignees, and may extend to their dependents who accompany them, when they are asked to travel abroad as part of their work obligations. Therefore, foreseeable risks to these employees must be mitigated by an employer through an integrated and strategic risk management strategy. This approach must be suitable to the work context of the international assignee, whether they are on short-term business travel or serving as long-term expatriates.

Employers must demonstrate they have taken steps to educate their employees about these risks so that they are prepared to handle them should they arise. Employers must then monitor the environment for potential hazards and update international assignees on any developments that could become critical incidents. Finally, employers must adequately support and assist their employees in event of a crisis or an emergency. The employer's Duty of Care cycle is one of "assess, inform, update, and assist," working together with employees to mitigate risks and providing timely, proactive, and efficient solutions.

Employers should be aware of their legal and corporate social responsibilities related to their Duty of Care to employees who cross borders as international business travelers, short term assignees, or expatriates. Duty of Care legislation and case law continue to evolve in order to meet new international workplace challenges, making it more complex to enforce and uphold employers' expanded responsibilities for the overall health, safety, and security of their employees when they cross borders for work-related matters. Internationally, legal issues become more complex as a result of the complexity of establishing jurisdiction and the appropriate law. Due to the gravity of the employer's Duty of Care responsibilities, the diversity of legislation, the complexity of jurisdiction, and the choice of law, MNCs would be well advised to meet the highest prevailing Duty of Care standards to ensure that the risks are minimized. It is inevitable that in meeting these standards, MNCs will require the involvement of medical and security assistance companies and others involved in risk management activities.

Ultimately, the responsibility for developing an integrated risk management strategy that is embedded in the corporate culture cannot be delegated or outsourced. It is the legal, fiduciary, and corporate social responsibility of the MNC, and the result of concerted and cooperative action of senior management, line management, risk management, and global HR professionals to prevent and manage the risks of their international assignees.

The employer's Duty of Care cycle is one of "assess, inform, update and assist," working together with employees to mitigate risks and providing timely, proactive, and efficient solutions.



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## Definition of Key Terms

- **Breach:** Failing to honor an agreement or duty.
- **Corporate social responsibility (CSR):** Recognition of the impact a corporation has on the lives of its stakeholders (including shareholders, employees, communities, customers, and suppliers) and the environment. Can include corporate governance, corporate philanthropy, sustainability, and employee rights and workplace safety. *Source: SHRM Global Learning System, 2009.*
- **Duty of Care (DoC):** A requirement that a person acts toward others and the public with watchfulness, attention, caution, and prudence in that a reasonable person in the circumstances would. If a person's actions do not meet this standard of care, then the acts are considered negligent, and any damages resulting may be claimed in a lawsuit for negligence. *Source: The Free Dictionary by Farlex. <http://legal-dictionary.thefreedictionary.com/duty+of+care> (accessed Jan 27, 2009)*
- **Duty of loyalty (DoL):** The duty of an employee not to compete with the interests of the corporation.
- **Expatriate:** An employee sent abroad for a longer-term assignment (minimum of one year and up to three/five years).
- **Health:** The physical and mental well-being of a person and/or the absence of disease.
- **International assignee:** A person being sent abroad by an employer as part of their job responsibilities. The term is usually reserved for assignment of short-term duration (short-term assignees are considered less than one year and this includes international business travel) and long-term duration (an expatriate is considered from one to three years).
- **Negligence:** Tort where an individual/organization falls short of what is reasonably expected as a standard (as opposed to diligence)
- **Risk:** An assessment of the probability and consequences/impact of a particular threat. *Source: Ray L. Leki, Travel Wise. Boston: Intercultural Press, 2008.*
- **Risk management:** The practice to assess, mitigate, and monitor risk.
- **Safety:** Freedom from threats that occur as a result of living in the world, including natural disasters, accidents, disease and sickness, natural death, and other sources of unintended but potentially serious harm. *Source: Ray L. Leki, Travel Wise. Boston: Intercultural Press, 2008.*
- **Security:** Freedom from hostile acts, including crime, war, harassment, intimidation, discrimination, and, in the extreme case, genocide. *Source: Ray L. Leki, Travel Wise. Boston: Intercultural Press, 2008.*
- **Standard of care:** The watchfulness, attention, caution, and prudence that a reasonable person in the circumstances would exercise. If a person's actions do not meet this standard of care, then his/her acts fail to meet the Duty of Care which all people (supposedly) have toward others. Failure to meet the standard is negligence, and any damages resulting there from may be claimed in a lawsuit by the injured party. *Source: The Free Dictionary by Farlex. <http://legal-dictionary.thefreedictionary.com/standard%20of%20care> (accessed Jan 27, 2009)*
- **Threat:** Any occurrence, situation, or potential action that puts one's safety and/or security into jeopardy. *Source: Ray L. Leki, Travel Wise. Boston: Intercultural Press, 2008.*

## Related Websites<sup>3</sup>

### [www.nfpa.org](http://www.nfpa.org)

The mission of the international National Fire Protection Association (NFPA) is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating consensus codes and standards, research, training, and education. The NFPA 1600 Standards on Disaster/Emergency Management and Business Continuity, which lays out a common set of criteria for disaster/emergency management and business continuity programs for public, non-profit and private entities, are considered the general duty standard of care for U.S. companies.

### [www.nbta.org](http://www.nbta.org)

Website of the National Business Travelers Association (U.S.A.) focused on travel management, a specialized business function that balances employee needs with corporate goals - financial and otherwise. According to the NBTA, travel management ensures cost tracking and control, facilitates adherence to corporate travel policies, realizes savings through negotiated discounts, and serves as a valuable information center for employees and managers in times when travel is not as smooth and carefree as it used to be. The Global Risk Management Committee of the NBTA has as its mission to educate and inform NBTA and its members as to the necessity of integrating risk management into their global travel and meetings programs.

### [http://icarus.itm.org.uk/go/tools\\_and\\_information/duty\\_of\\_care\\_toolkit/](http://icarus.itm.org.uk/go/tools_and_information/duty_of_care_toolkit/)

ICARUS, an initiative of the Institute of Travel Management U.K. & Ireland, aims to help the travel industry develop socially equitable, economically sound, and environmentally conscious travel management practices. In its social dimension, it recognizes that the business travel industry has a Duty of Care not just to its employees, but those individuals, communities, and cultures touched by business travelers and suppliers.

### [www.dfait-maeci.gc.ca](http://www.dfait-maeci.gc.ca)

Site of the Department of Foreign Affairs and International Trade (DFAIT) of Canada. It provides important notices and services for Canadians traveling in foreign countries such as the registration of travelers, country information (travel reports, warnings, global issues, country profiles), and other travel resources

### [www.fco.gov.uk](http://www.fco.gov.uk)

The Foreign Trade and Commonwealth Office (FCO) supports British nationals overseas, helps keep Britain safe, and provides a number of services to British businesses overseas.

### [www.osac.gov](http://www.osac.gov)

Site of The Overseas Security Advisory Council (OSAC), a Federal Advisory Committee with a U.S. Government Charter to promote security cooperation between American business and private sector interests worldwide and the U.S. Department of State. It provides global security news and reports, and other services.

### [www.dhs.gov](http://www.dhs.gov)

Site of the U.S. Department of Homeland Security (DHS). DHS works to anticipate, preempt, detect, and deter threats to the U.S. homeland and to safeguard people and their freedoms, critical infrastructure, property, and the economy from acts of terrorism, natural disasters and other emergencies.

### [www.pandemicflu.gov](http://www.pandemicflu.gov)

U.S. government site that combines avian and pandemic flu information

### [www.cdc.gov/business](http://www.cdc.gov/business)

Site of the Center for Disease Control and Prevention (CDC) of the U.S. Department of Health and Human Services. Provides (among other things) information in pandemic and avian flu, infectious diseases, emergency preparedness, travel, and employee safety and health

### <http://osha.europa.eu/en>

Established in 1996 and located in Bilbao (Spain), the mission of the European Agency for Safety and Health at Work is to make Europe's workplaces safer, healthier, and more productive by bringing together and sharing knowledge and information, and by promoting a culture of risk prevention. The Agency is a tripartite organization working with governments, employers, and workers representatives. They serve as a single reference point for OSH information; help explain European legislation on OSH; commission, collect, and publish new scientific research and statistics on OSH risks; share best practices; and communicate information in a variety of ways to reach workers and workplaces. They also aim to identify new and emerging risks due to the fast pace of change in the workplace.

<sup>3</sup> This list of websites, by no means exhaustive, is limited to a number of government and NGO links that provide general information on the health, safety, and security of workers and/or have relevance to international business travelers and assignees. Vendors have been excluded.

# Appendices

**Table 1-A**

**Summary of Australian Duty of Care Legislation**

Australia	GENERAL PROVISIONS
Occupational Health and Safety laws (vary by state)	<ul style="list-style-type: none"> <li>• In all states, there is a general requirement that an employer must take all reasonably practical steps to ensure the health, safety, and welfare at work of all of its employees.</li> </ul> <p>Duties extend to (among other matters):</p> <ul style="list-style-type: none"> <li>• Ensure that systems of work and the working environment are safe and without risks to health.</li> <li>• Provide such information, instruction, training and supervision as may be necessary to ensure health and safety at work.</li> <li>• Provide welfare facilities to employees, including the provisions of first aid facilities as required.</li> </ul> <p>Employers are required to take reasonably practical steps to:</p> <ul style="list-style-type: none"> <li>• Assess the risks and hazards associated with the work of their employees and</li> <li>• Eliminate or reduce, as far as reasonably practicable, those risks to health and safety.</li> <li>• Consider the possibility of corporate and personal liability (including imprisonment). In some states, this applies to self-employed and contractors for the actions of others. Failure to ensure the health and safety, so far as reasonably practicable, can result in the prosecution of the employer and, where there has been a personal failing of a director or senior manager, this can be attributed to them personally.</li> </ul> <p>The law does not expressly state that OHS legislation is extra-territorial. Employers may have a liability in relation to the steps that they take while in Australia to assess and manage the risks of their employees while overseas.</p>
Workers' Compensation Laws (vary by state)	<ul style="list-style-type: none"> <li>• Schemes under which employees and dependents can obtain compensation and medical expenses when injured at work.</li> </ul> <p>Extra-territoriality is expressly stated in the workers' compensation legislation.</p> <p>Extra-territorial:</p> <ul style="list-style-type: none"> <li>• Must be a connection to the relevant jurisdiction.</li> <li>• Possible distinction between short-term versus long-term nature of work abroad.</li> </ul>



**Table 1-B**

**Summary of Belgian Duty of Care Legislation**

<b>Belgium</b>	<b>GENERAL PROVISIONS</b>
Arbeidsongevallenwet (1971)	<ul style="list-style-type: none"> <li>• Holds the employer responsible for work accidents during work, but also to and from work.</li> </ul>
Algemeen reglement op de arbeidsbescherming (ARAB)	<ul style="list-style-type: none"> <li>• Coordinates all Belgian health and safety legislation (1947-1993) and includes the transposition of the European directives.</li> </ul>
Welzijnswet (1996)	<ul style="list-style-type: none"> <li>• Presents a national framework for the management of employee well-being at work and requires a preventive approach from the employer.</li> </ul>

**Table 1-C**

**Summary of Canadian Duty of Care Legislation**

<b>Canada</b>	<b>GENERAL PROVISIONS</b>
Canadian Labor Code, 1985	<ul style="list-style-type: none"> <li>• Imposes a general Duty of Care on employers to ensure the health and safety of employees engaged in Federal work (work that crosses provincial boundaries) as defined by the statutes.</li> <li>• It sets out general and industry-specific obligations.</li> <li>• Workplace is defined as any place where an employee is engaged in work for an employer.</li> </ul>
Occupational Health and Safety Act 5 (OHSA), Ontario, 1990	<ul style="list-style-type: none"> <li>• Imposes a general duty to ensure the protection of the health and safety of every employee at work.</li> <li>• Requires employer adherence to Duty of Care obligations regarding site and industry/employment conditions.</li> <li>• OHSA is not extra-territorial but under Sec 25(2) et seq. sets out a general employer Duty of Care obligation applicable to traveling employees.</li> </ul>
Workplace Safety Insurance Legislation, 1997	<ul style="list-style-type: none"> <li>• Provincial workers' compensation statutes that cover most work-related accidents.</li> <li>• Primary method of redress for workplace injuries (generally extinguishes all other types of action).</li> <li>• Covers employees on assignment out of province for six months or less or at the request of employer if longer than six months. If employee on assignment for more than six months is injured and not covered because of lack of employer request, the remedy will lay in common law tort action.</li> </ul>

Table 1-D

Summary of French Duty of Care Legislation

France	GENERAL PROVISIONS
<p>French Labor Code, 1910</p>	<ul style="list-style-type: none"> <li>• French Labor Code is the legal basis for employers Duty of Care and penalties for its breach. There is a general duty of all employers (foreign and domestic) to provide a safe work environment. Duty applies to overseas travel and work abroad.</li> </ul> <p>Art. L.4121-1 Specifies employers; duties include:</p> <ul style="list-style-type: none"> <li>• Risk prevention actions</li> <li>• Information and training</li> <li>• Organizational and adaptive actions</li> </ul> <ul style="list-style-type: none"> <li>• Authorizes lump sum compensation to employees injured in “work-related” accidents payable through Social Security to be reimbursed by employer through increased share of contributions. Authorizes additional compensation for gross negligence by employer.</li> </ul> <p>Art L.230-211</p> <ul style="list-style-type: none"> <li>• Mandates that employers conduct health and safety risk assessments.</li> </ul> <p>Art L.4741-1</p> <ul style="list-style-type: none"> <li>• Non-compliance of health and safety rules (as set forth in the articles) resulting in manslaughter or bodily harm may result in criminal charges.</li> </ul>
<p>Social Security Code</p>	<p>Art. L.411-1</p> <ul style="list-style-type: none"> <li>• Provides a definition of “work-related” injuries. Case law broadens definition to cover travel and work abroad.</li> </ul> <p>Art. L.411-2</p> <ul style="list-style-type: none"> <li>• Commuter accidents are considered work-related accidents if certain criteria are satisfied.</li> </ul> <p>Art L. 452-1</p> <ul style="list-style-type: none"> <li>• Supplemental compensation for injuries arising out of gross negligence to be paid by Social Security for victims and/or beneficiaries. Social Security Code defines work-related injuries and provides the mechanism for compensating injured parties.</li> </ul> <p>Art. L.452-3</p> <ul style="list-style-type: none"> <li>• Lists additional compensation to victims and/or beneficiaries including esthetic loss, physical suffering, moral suffering, loss of amenities of life, or chance for professional promotion.</li> </ul>
<p>Criminal Code</p>	<p>Art. 121-1</p> <ul style="list-style-type: none"> <li>• Criminal Code imposes additional penalties to employers (and individuals) for intentional and unintentional breach of Duty of Care that results in injury or death of the employee. Company head or proxy may be liable for unintentional offenses.</li> </ul> <p>Art. 121-2</p> <ul style="list-style-type: none"> <li>• Legal entities, their organizations, and their representatives can be criminally liable (fines and imprisonment) for offenses committed that result in injury or bodily harm.</li> </ul> <p>Articles 223-1 to 223-2</p> <ul style="list-style-type: none"> <li>• Sets forth penalties for individuals and legal entities that expose persons to immediate risk of injury or death by their manifest and deliberate violations of specific health and safety statutes.</li> </ul>

**Table 1-E**

**Summary of German Duty of Care Legislation**

Germany	GENERAL PROVISIONS
<p>§§ 241 Abs. 2, 617-619 BGB (Civil Code) §242 BGB</p>	<ul style="list-style-type: none"> <li>• As secondary or accessory obligation out of the employment contract or the employer-employee relationship, there is “Duty of Care” of the employer and “duty of loyalty” of the employee.</li> <li>• Employer Duty of Care includes concern, protection, and welfare of the employee as they are relevant for completing the duties of the employment contract.</li> <li>• Employee Duty of Loyalty includes the obligation to avoid dangers to life, and physical and mental health.</li> <li>• Duties cannot be waived or delegated to third parties.</li> <li>• Under German civil law, the employer remains liable for mistakes or damages caused by third parties if Duty of Care vis-à-vis the employee is fulfilled by third party.</li> <li>• The employee may have a right of indemnity or recovery of damages, but NOT punitive damages.</li> <li>• Employer Duty of Care obligations reach only so far as the situation is related to work and work obligations.</li> <li>• In German employment law, the Duty of Care extends to employees and his/her family. Similar duty extends to soldiers.</li> <li>• Employer Duty of Care may extend to the employee’s immediate family members, at least where an employer provides assistance to them. Employer may be bound to the correctness and adequacy of the assistance provided to the international assignee and family member.</li> </ul>
<p>Social Security Act, Book V</p>	<ul style="list-style-type: none"> <li>• Provides for direct liability of the employer and not the state medical insurance for sickness related costs incurred in countries with which Germany has not concluded a bilateral or multilateral Social Security treaty. Such liability extends to family members on visits to the employee in the host country.</li> </ul>

Table 1-F

Summary of Dutch Duty of Care Legislation

Netherlands	GENERAL PROVISIONS
Burgerlijk Wetboek (Art 7:658 BW)	<ul style="list-style-type: none"> <li>• The employer is required to arrange sites, tools, and equipment in such a manner, as well as take precautions as reasonably necessary, to prevent accidents to employees and promote the safety in the workplace. Employee must acknowledge that damage was done as a result of employment.</li> <li>• If the employer breaches Duty of Care obligations, it is liable for damages that the employee suffers, unless the damage is the result of purposeful and conscious carelessness of the employee.</li> <li>• Employer is responsible for damages, unless it can prove that Duty of Care responsibilities were maintained.</li> <li>• Employee negligence is difficult to prove. Courts have sided with employee.</li> </ul>
Arbeidsomstandighedenwet (Arbowet)	<ul style="list-style-type: none"> <li>• Details the risk management plan required of employers to fulfill Duty of Care obligations.</li> </ul> <p>Employer must meet Duty of Care obligations:</p> <ul style="list-style-type: none"> <li>• Assess and evaluate the possible risks that the job entails for the employee;</li> <li>• Make an inventory of and evaluate the possible risks of the job responsibilities (RI&amp;E). For employers with more than 25 employees, the RI&amp;E must be approved and certified by an administrative agency (Arbodienst);</li> <li>• Take reasonably expected measures to prevent harm by developing a plan detailing the precautions taken with regard to those risks;</li> <li>• Communicate risks in writing to employees; and</li> <li>• Ensure that instructions are followed and that policies are enforced.</li> </ul>



**Table 1-G**

**Summary of Spanish Duty of Care Legislation**

Spain	GENERAL PROVISIONS
Constitution 1978	Art. 40.2 <ul style="list-style-type: none"> <li>• Government will ensure safe and healthy working conditions.</li> </ul>
Labor risk Prevention Law 31/1995, November 8	<ul style="list-style-type: none"> <li>• Principal legislative source for rules regarding work place health and safety.</li> </ul> Art. 14 <ul style="list-style-type: none"> <li>• Employers have a duty to protect workers against occupational hazards. This duty includes risk assessment, prevention planning, elimination of dangerous activities, emergency action plans, monitoring, information, consultation, and training.</li> <li>• Employees are entitled to effective health and safety.</li> </ul>
Penal Code of 1995	Art. 316 <ul style="list-style-type: none"> <li>• Breach of the Labor Risk Prevention law may result in fines and imprisonment from six months to three years.</li> </ul> Art. 318 <ul style="list-style-type: none"> <li>• Liability of companies for failure to take preventive measures for known risk. Liability will be imposed on administrators and management who are responsible for the breach.</li> </ul>
Workers' Statutes	Art. 1.4 <ul style="list-style-type: none"> <li>• Spanish law is applicable to Spaniards working abroad and recruited in Spain by Spanish companies.</li> </ul>
Law of the Judiciary	Art. 25 <ul style="list-style-type: none"> <li>• Sets out rules of Spanish jurisdiction applicable to litigation of employment contract disputes.</li> </ul>

Table 1-H

Summary of U.K. Duty of Care Legislation

United Kingdom	GENERAL PROVISIONS
<p>Health and Safety at Work Act (HSW Act) 1974</p>	<ul style="list-style-type: none"> <li>• Sec 2(1) HSWA imposes on every employer a Duty of Care to insure so far as it is “reasonably practicable” the health, safety, and welfare at work of all employees.</li> <li>• Sec 2(2) HSWA sets forth in particular an employer’s duties including site and systems maintenances, employee health and safety training, and employer risk assessment.</li> <li>• Both corporations and individuals can be liable for breach.</li> <li>• Employers found in breach of the Act may be fined and remedial orders imposed to avoid further breach.</li> <li>• No extra-territorial effect except U.K. continental shelf and designated U.K. territories.</li> <li>• Jurisdiction: U.K. and certain territories.</li> <li>• Employers with occasional overseas assignments are probably covered under the Act.</li> <li>• Injuries to employees occurring outside of the U.K. may be covered if breach causing injury occurred in the U.K.</li> </ul>
<p>Corporate Manslaughter and Corporate Homicide Act (Manslaughter Act) 2007</p>	<p>Imposes sanctions for a corporation or other entity for the gross breach of “relevant Duty of Care” that results in the death of a person:</p> <ul style="list-style-type: none"> <li>• Liability to corporations not individuals;</li> <li>• Harm must result in death;</li> <li>• All persons are protected, not just employees;</li> <li>• Gross breach is conduct falling far below what is reasonably expected in the circumstances;</li> <li>• Liability rests on showing that activities of senior management were a substantial element in the breach</li> <li>• Unlimited fines, remedial and publicity orders may be imposed;</li> <li>• No extra-territorial effect except for U.K. territorial shelf, U.K. registered ships, British controlled aircraft, hovercraft, and offshore oil rig; and</li> <li>• If death occurs outside of the U.K. but breach of Duty of Care is sustained in the U.K., jurisdiction may apply.</li> </ul>

**Table 1-1**

**Summary of U.S. Duty of Care Legislation**

U.S.	GENERAL PROVISIONS
Occupation Safety and Health Administration (OSHA) Act, 1970	<ul style="list-style-type: none"> <li>• The Duty of Care under OSHA is set out in the general duty clause. The “general duty clause” of OSHA [SEC. 5. Duties (29USC 654)] states that: (a) Each employer –               <ul style="list-style-type: none"> <li>(1) 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;</li> <li>(2) Shall comply with occupational safety and health standards promulgated under this Act.</li> </ul> </li> <li>(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.</li> </ul> <ul style="list-style-type: none"> <li>• Applicability of the act “This Act shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone.”</li> </ul>
NFPA 1600 Standards on Disaster/Emergency Management and Business Continuity Programs, 2007	<ul style="list-style-type: none"> <li>• Lays out a common set of criteria for disaster/emergency management and business continuity programs for public, non-profit and private entities.</li> </ul>
Workers' Compensation (WC) Laws (Vary by state)	<ul style="list-style-type: none"> <li>• No federal act or statute, but state laws.</li> <li>• Most states require employers to provide WC benefits to employees to compensate for work-related injuries.</li> <li>• Exceptions to WC coverage (depending upon the state) may exclude the following circumstances:               <ul style="list-style-type: none"> <li>• Third-party claim-over action—Injured employee may not be able to sue employer under WC but can bring a civil suit against another culpable third party, who in turn may sue the employer.</li> <li>• Care and loss of services or consortium—Injured employee’s spouse may bring a claim against employer for the harm suffered by the spouse as a derivative result of the employee’s injury.</li> <li>• “Dual capacity” suits—Employer may be the manufacturer of a dangerous instrumentality that caused the injury and injured employee may file a suit against the employer as manufacturer (product liability or design defect).</li> <li>• Consequential bodily injury—Family member may suffer direct physical or emotional harm as a consequence of the employee’s injury and bring a civil action.</li> </ul> </li> <li>• WC laws are not extra-territorial but some states have an exception for workers injured on temporary (usually maximum 90 days) assignment outside of the U.S.</li> </ul>

Table 1-J

Summary of European Union Duty of Care Legislation

European Union Treaties/Directives	GENERAL PROVISIONS
<p>Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.</p>	<ul style="list-style-type: none"> <li>Imposes on member state employers a non-delegable duty to insure the safety and health of workers in every aspect related to work. Employers are required to take specific measures, including but not limited to, development of an overall protection policy, elimination of risks and potential risks, worker training and consultation, and the application of new safe technologies. It also requires that employers make available to workers health surveillance appropriate to the health and safety risks they incur at work. It sets out safety obligations on the part of workers to take care of their own safety (and those of others affected by their actions at work) in accordance with the training and instructions given by the employer.</li> </ul>
<p>Improving quality and productivity at work: Community strategy 2007-2012 on health and safety at work.</p> <p>Communication from the Commission to the European parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.</p>	<ul style="list-style-type: none"> <li>Proposed strategy to increase worker productivity in the EU by reducing work-related deaths, injuries and diseases. This is done through the implementation and strengthening of EU legislation, development of national strategies, and promotion of health and safety at the international level.</li> </ul>
<p>Directive on the posting of workers- 96/71/EC. Posted Workers Directive EU 1408/71</p>	<ul style="list-style-type: none"> <li>Objective of the directive is to remove the obstacles for, and facilitate the free movement of, labor within the EU. Balances the free movement of labor with the rights of the employee.</li> <li>Regulates the detachment or secondment of employees from one country to another (i.e. expatriates who habitually work in another or more than one country; employees who have an employment contract in one country but work in another). Exceptions:             <ul style="list-style-type: none"> <li>– Expat remuneration is considered part of basic compensation.</li> <li>– The most advantageous work and compensation and health and safety conditions for the employee are applicable.</li> </ul> </li> </ul>
<p>Council Regulation (EC) No.44/2001 of 22 December 2000 on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.</p>	<ul style="list-style-type: none"> <li>Provides provisions to unify the rules relating to conflict of jurisdiction and recognition and enforcement of judgment in civil matters. It applies to all members states with the exception of Denmark.</li> <li>Section 5 applies to individual contracts of employment.</li> </ul>

Continued on the following page



Table 1-J (continued)

Summary of European Union Duty of Care Legislation

European Union Treaties/Directives	GENERAL PROVISIONS
<p>EC Convention on the Law Applicable to Contractual Obligations (Rome, 1980)</p>	<ul style="list-style-type: none"> <li>• The convention governs the choice of law of EU signatory states to be applied in most contractual obligations. Title 2, Art. 6 addresses the choice of law application for individual employment contracts.</li> <li>• The choice of law can be decided at any time (at the initiation of the employment contract or during the course of employment).</li> </ul> <p>There are three application criteria (temporal, territorial, and material)</p> <ul style="list-style-type: none"> <li>• Temporal: applies to employment contracts established after the treaty went into effect in the member state.</li> <li>• Territorial: applies to member states of the EU.</li> <li>• Material: applies only to employment relationships with an international character (e.g. employer is HQ abroad; employee lives abroad; employment contract originated abroad or is executed partially or fully abroad; the employee works in different countries).</li> </ul> <ul style="list-style-type: none"> <li>• The basic principle is one of freedom of choice, namely the employer and employee are free to choose which law(s) will apply to the employment contract as long as the applicable law is explicit, implicit (derives from the employment contract or the circumstances), and in writing.</li> </ul> <p>Any country law may be applicable to the employment contract. But, there are some limitations/corrections to the freedom of choice:</p> <ol style="list-style-type: none"> <li>1. The employee may not be denied protection that would be afforded to him under the statutes of the law that would be applicable if there was no choice of law.</li> <li>2. The presiding judge on the international case may decide which country law prevails (not all countries have transposed this correction in their legislation—U.K., Germany, Ireland, Luxembourg, Portugal, Spain)</li> </ol>

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- *Stefan Corbanie*, Senior Partner, Eversheds LLP, Brussels, Belgium.
- *Robert Hector, Esq.*, Silverton, Oregon, U.S.
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## The Author

Lisbeth Claus, Ph.D., SPHR, GPHR, is a Professor of Global Human Resources at the Atkinson Graduate School of Management of Willamette University in Salem, Oregon (U.S.A.), where she also served as interim Associate Dean from 2007 to 2008. Prior to joining Willamette University, she held faculty and administrative positions at the Monterey Institute of International Studies and managerial positions at Safeway Inc. and Maritz Inc.

Dr. Claus has been published widely in academic and professional journals on subject matters related to global HR management issues. A frequent keynote speaker at national and international HR conferences, she is the co-author of a leading textbook, *Briscoe, Schuler and Claus, International Human Resource Management* (3rd edition), Routledge, 2009.

She frequently delivers multi-day strategic HR seminars in North America, Europe, and Asia for country and regional HR managers. She was the 2003 President of SHRM Global (then the international division of the Society for Human Resource Management). In 2004, SHRM commissioned her to design the GPHR (Global Professional Human Resources) Certification Preparation Course™. She also served as a subject matter expert for the development of the SHRM Global Learning System and was a member of the Global HR Special Expertise Panel (2005-2008).

To further advance the HR profession, she frequently volunteers her professional services for the establishment and development of country HR associations in emerging markets. A native of Belgium, she speaks Flemish and French, and has a good working knowledge of German.

## About International SOS

International SOS is the world's leading provider of medical assistance, international healthcare, and security services. Operating in over 70 countries, International SOS helps organizations manage the health and safety risks facing their travelers and global workforce. Its services range from consultancy and planning services to 24-hour medical and security advice and assistance. It also provides emergency medical and security evacuations when there is a critical illness, accident or civil unrest. In 2008, the company handled over 1,000,000 assistance cases, including nearly 18,000 evacuations. On average, International SOS handles one evacuation every 29 minutes and receives more than 4.25 million calls per year. International SOS works in partnership with businesses, governments, not-for-profit organizations and individuals, and currently provides key services to 83% of the Fortune Global 100 companies and 64% of the Fortune Global 500 companies.



For more information on Duty of Care and Travel Risk Management, please contact:

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## About “Duty of Care of Employers for Protecting International Assignees, their Dependents, and International Business Travelers”

In today’s global economy, companies don’t hesitate to cross borders, span time zones or operate in remote locations to achieve their objectives – and neither do their employees. After analyzing 300 global companies’ travel itinerary data, a recent International SOS study found that in the past year, more than 3.5 million international trips were taken by employees, a quarter of which were to high or extreme risk destinations. With this increased mobility comes inevitable risks – everything from illness, to outbreaks of civil unrest, to natural disaster.

With this in mind, International SOS commissioned Lisbeth Claus, Ph.D., SPHR, GPHR, professor of global HR at the Atkinson Graduate School of Management of Willamette University, in Salem, Oregon to research, analyze and provide solutions around a topic we’ve been asked about by many clients throughout the years – Duty of Care.

Duty of Care can seem like a daunting topic, but it doesn’t have to be. This white paper provides a roadmap of information and tools that business leaders need to protect their most important asset – their employees – which allows them to also effectively manage business, financial and reputational risks. With a focus on safeguarding employees who travel or live abroad on assignment, the paper breaks down the Duty of Care puzzle and provides an integrated risk management approach to solving it.

This is the first white paper that deals with Duty of Care as it applies to international assignees, their dependents and international business travelers. In reviewing employers’ responsibilities, the paper’s overall goal is to inform decision-makers about these responsibilities - putting them on their radar screen - but at the same time, offer innovative solutions that will help organizations plan, organize and develop an appropriate integrated risk management strategy.

Acknowledging that it is impossible to predict exactly when, where or how crises will occur, this integrated risk management approach to Duty of Care put forth by International SOS emphasizes the importance of preparedness and planning. Key components of the white paper include a review of pertinent legislation and case law summarizing 36 cases in nine countries with information from the European Union and International Labor Organization; reasoning as to why Duty of Care is fragmented within most organizations; a cost-benefit analysis that also ties in a discussion around corporate social responsibility.

International SOS’ mission is to listen to our customers, deliver solutions to their problems and provide for their health, safety and security. In the recent situation in Jakarta, we were on-the-ground within minutes helping our members. During the H1N1 crisis, we developed an educational website. Now, we’re providing *you* with information that we hope will enable your organization to keep your global workforce healthy, safe and secure.

For more information on International SOS, Duty of Care and Integrated Risk Management, visit [www.internationalsos.com/dutyofcare](http://www.internationalsos.com/dutyofcare)