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Duty of Care: How to protect your workers abroad

Your marketing director disappears on an international sales trip. He hasn't responded to his email in a week, his voicemail is full and he missed his flight home. The media picks up on the story, stock prices plummet and workplace morale reaches an all-time low. Then you find out you could be facing criminal charges.

A routine sales trip has turned into your worst nightmare.

Under Canada's *Criminal Code*, companies owe a duty of care to their employees. This means businesses must take "reasonable steps" to protect workers, whether they are in Canada or working internationally.

If companies do not meet this duty of care, they can be found criminally and financially liable under the *Criminal Code*. In the most extreme cases, the company can face hefty fines and the executives can be jailed. They can also face personal lawsuits.

The "reasonableness" standard is a legal term that is hard to quantify, says John Proctor, the Director of Cyber Resilience for CGI, an independent information technology and business process services firm.

If a company is facing criminal charges, a court will analyze the level of risk the employee faced, which depends on where and when he or she was travelling. The court will then consider what steps the company took to mitigate this risk, such training the employee, setting up a communication system and developing emergency procedures. Based on these two factors, the court will determine whether the company's actions were "reasonable."

"If they're going somewhere fairly stable and safe where there is very little risk, as long as you've given them basic advice and guidance and you've got a system of warning them if things change, you're probably OK," says Proctor. "But sending someone to a high-risk place without providing training would not be seen as reasonable."

The first step to ensuring your company meets the duty of care is to complete a risk assessment, says Proctor.

"If you haven't done a risk analysis, you're never going to be able to determine what is reasonable," Proctor says.

Advito, a travel management consulting company, recommends that employers consider the following risks to employees:

- Crime or civil unrest
- Terrorism
- Safety hazards
- Illnesses
- Stress

Based on this risk assessment, Proctor recommends that companies then take the following steps to ensure they have met the reasonable standard of duty of care:

- Plan for an incident by developing a corporate policy for international travel, establishing a response plan for the incident and creating a family support plan
- Prepare for an incident by training the traveller, establishing a system to track and support the employee while he or she is travelling and assessing the level of risk and threat based on the location
- Prevent a potential incident by tracking the traveller and informing him or her about



changing events and circumstances

- Respond to an incident by implementing the business continuity plan, supporting family members and evaluating the incident management system

Proctor says that most companies can complete these tasks using their current resources since many already have emergency management and business continuity plans that they can adapt for different circumstances.

He estimates that to set up an emergency management system would cost \$5,000-10,000 for a consultant to get the policies and procedures up to best practice, \$2,000-5,000 for an annual exercise and \$1,500 for annual training for every 20 employees.

The cost of ensuring your company meets the duty of care includes developing a risk management plan, training your employees and providing insurance. But the cost of not meeting this standard can be extensive.

For a mid-sized Canadian company, one incident can be enough to put them out of business, Proctor says. "The chance of it happening may be considered somewhat small, but the impact is huge."

"It's very cost-effective to think about this in advance," says Proctor.

About five out of every one million Canadians gets assaulted or killed while travelling abroad, according to statistics from the Department of Foreign Affairs and International Trade. However, Proctor cautions that companies with international operations could face more challenges in the future.

For more information, visit the [Canadian Centre for Occupational Health and Safety website](#) and also visit the [Canadian Trade Commissioner Service website](#).

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