

CANADA'S MOBILE WORKFORCE:

A Legal Perspective on Duty of Care and Employer Best Practices



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Workers Who Travel Abroad:

The Duty of Care and Employer Best Practices

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INTRODUCTION

We are currently in an age where business knows no borders and where workers travel to, and communicate from, virtually any place in the world. With such opportunities, it is important for employers to understand the legal liabilities and best practices typically associated with workers who travel and work outside of their home country. As liabilities often flow back through contract and/or fiduciary relationships, employers should critically assess the capability of service providers they choose to partner with to execute foreign projects. In addition, employers should assess the local conditions to which a worker is deployed, as well as the legislative requirements set by the worker's home countries.

The vast majority of employers are both familiar with and compliant with their local occupational health and safety standards, worker compensation requirements and even their common law of the duty of care. However, many employers are less familiar with their legal liabilities and best practices where their worker(s) are traveling to and/or working abroad. For example, can the worker sue the employer under Canadian law for an accident that occurs while traveling to another country?

Can the worker rely on the laws of the jurisdiction in which the accident occurred? Can a civil action even be commenced against the employer? Do local occupational health and safety regulations/standards trump those legislated in Canada?



EXECUTIVE SUMMARY

This paper explores the legal landscape and the duty of care Canadian employers owe their Canadian workers who travel and/or work abroad.

It is clear that the legal responsibilities of Canadian employers who employ Canadian workers that travel and/or work abroad is still developing. While there is some question as to whether a Canadian employer could be faced with safety related charges as a result of a workplace accident or injury outside of Canada, the trend suggests Canadian decision makers will look for a way to take jurisdiction. In light of these developments, the prudent, economically and arguably ethical approach for an employer to take is to apply all local site occupational health and safety rules and regulations while still adhering to Canadian duty of care standards.

This paper contains a number of suggested employer best practices to protect Canadian workers when traveling and/or being posted to temporary or longer term assignments outside of Canada.

Finally, the paper strongly recommends Canadian employers engage subject matters experts to conduct proactive risk assessments, establish necessary policies, procedures and training in light of the risks identified and thereafter engage critical response assets to keep their workers safe.



- » shipping and shipping services;
- » radio and television broadcasting and cable systems;
- » airports;
- » grain elevators licensed by the Canadian Grain Commission, and certain feed mills and feed warehouses, flour mills, and grain seed cleaning plants;
- » the federal public service and persons employed by the public service and about 40 Crown corporations and agencies;
- » employment in the operation of ships, trains and aircraft; and
- » the exploration and development of petroleum on lands subject to federal jurisdiction

CANADIAN LAW

1. Legislated Employer Responsibilities for Occupational Health and Safety

Canada is a federal state and thus the responsibility for lawmaking is shared among one federal, ten provincial and three territorial governments. An employer's responsibilities depend on the nature and location of its workplace.

Workplace health and safety standards are provided for in the following statutes:

- » *Canada Labour Code* (R.S.C. , 1985, c. L-2), Part II (Federal)
- » Provincial health and safety legislation
- » *Canadian Criminal Code*, R.S.C. , 1985, c C-46

Each source of workplace health and safety law will be reviewed below.

a. Canada Labour Code, Part II (Federal)

Occupational health and safety in the federal jurisdiction has been consolidated under the *Canada Labour Code*, Part II (the "Code"). The Code applies to the following inter-provincial and international industries (predominantly in transportation and communication):

- » railways;
- » highway transport;
- » telephone and telegraph systems;
- » pipelines;
- » canals;
- » ferries, tunnels and bridges;

The Canadian federal jurisdiction, much like the Canadian provincial jurisdictions explored below, requires every employer to ensure the health and safety of every worker employed by the employer is protected while at work.

Whether a federally regulated Canadian employer could be charged for failure to ensure the health and safety of its Canadian workers employed abroad depends on whether the Canadian regulator would extend its jurisdiction to actions occurring outside of Canada. While there is limited case law on this topic, the cases do provide guidance on whether jurisdiction would be extended under such circumstances.

When assessing risk and developing a program to keep Canadian workers safe, the standard is "employers must take every precaution reasonable in the circumstances". Therefore, all employers should plan proactively to manage the risk of Canadian regulators entertaining jurisdiction no matter where in the world the employer deploys workers with every effort, where reasonable, to practice and abide by Canadian legislation.

In *Seafarers' International Union of Canada and Dome Petroleum Ltd.*,¹ the Canada Industrial Relations Board ("CIRB") allowed a trade union access to workers on an employer's offshore oil rigs and vessels.

The decision notes that while there is a presumption in statutory interpretation that a statute does not operate extra-territorially unless there is an intention to do so, the Statute of Westminster, 1931² declared and enacted that the Parliament of a Dominion (Canada) has full power to make laws having extra-territorial operation. Dome Petroleum went on to apply this reasoning to the Code at paragraphs 26 and 27:

¹ [1978] 2 Can. L.R.B.R. 518 [Dome Petroleum]

² 22 Geo. V, c. 4 (U.K.)

26 The subject matter of the Canada Labour Code, Part V is labour relations or collective bargaining with respect to federal works, undertakings or businesses as defined in section 2 of the Code... A common character of these activities, as described by the language chosen by Parliament, is that they frequently extend beyond Canadian territorial limits. This is the case with ferries, railways and other transport activities, such as airlines and shipping operations. It is beyond imagination to say that with respect to these activities Parliament intended that the unfair labour practices provisions of the Code, collective agreements negotiated under the Code, and rights given to workers and employers were to cease at Canada's territorial limits on land or twelve mile limit at sea (see Territorial Sea and Fishing Zones Act, R.S.C. 1970, T-7, s. 3(1) as amended by R.S.C. 1970 (1st Supp.), c. 45). Quite the contrary, it is clear Parliament intended extra-territorial application of Part V of the Code by virtue of the subject matter, object, language and history of operation of Part V of the Code and its predecessor legislation, unless it would not be accorded extra-territorial effect under international public or private law. With respect to section 199 operating in the circumstances of this case we know of no such impediment.

27 Therefore we find we have jurisdiction to grant this access application with respect to the vessels operating beyond the territorial waters of Canada.

While *Dome Petroleum* does not comment on occupational health and safety requirements, it is safe to extend the CIRB's reasoning to such requirements. Therefore, a violation of the Code with respect to a federally regulated Canadian employer operating outside of Canada with Canadian workers would likely be enforced by a Canadian adjudicate tribunal or court, perhaps subject to the caveat of the enforceability of specific health and safety standards discussed below.

b. Provincial Occupational Health and Safety Legislation

If a Canadian employer is not federally regulated, it is provincially regulated. As noted above, in Canada, each of its ten provinces and three territories have individual occupational health and safety legislation. This includes, but is not limited to, the following provincial industries:

- » automotive manufacturer and dealers;
- » cleaning and maintenance;
- » community agencies;
- » construction;
- » electronics;
- » entertainment;
- » education;
- » food and beverage;
- » provincial government;
- » healthcare;
- » logistics and warehousing;
- » manufacturers;
- » mining;
- » municipalities;
- » plastics;
- » pulp and paper;
- » retail; and
- » services

Provincially regulated employers are required to take all reasonable precautions to prevent injuries or accidents in the workplace as well. Reasonable precautions may be referred to as reasonable care and includes the care, caution, or action a reasonable person is expected to take under similar circumstances.

What is reasonable depends on the circumstances but generally it starts with written policies, practices and procedures. The policies demonstrate and document that there have been workplace audits and identification of hazardous practices and conditions that have been addressed through worker training and orientation. Supervisors must also be competent and properly trained to identify and manage risks.

Although beyond the scope of this publication, it is important to note that workers also have responsibilities for their own health and safety. While rarely a difference to point to the actions of a worker, occupational health and safety legislation often sets out defined worker responsibilities. Such responsibilities typically include acting prudently, cautiously and according to the employer's policies and requirements, following instruction, reporting workplace hazards and reporting all workplace accidents, incidents, injuries or illnesses.

While provincially regulated employers could be charged for failure to ensure the health and safety of its Canadian workers traveling and or working abroad, a recent inter-provincial case is noteworthy and instructive.

In Ontario, the *Occupational Health and Safety Act*³ not only requires an employer to take every precaution reasonable in the circumstances for the protection of a worker, it also protects workers from reprisal should they bring a health and safety concern to the employer, (also known as “whistle blower” protection). In *Diversified Transportation Ltd.*,⁴ a worker complained to the Ontario Labour Relations Board (“OLRB”) that he had been terminated or reprisal against after bringing health and safety concerns to the attention of his employer. The employer was based in Ontario, Canada, but the worker had been assigned to a British Columbia, Canada workplace.

³ R.S.O. 1990, CHAPTER O.1 [Act]

⁴ [2015] O.L.R.D. No. 2616 [*Diversified Transportation*]

Despite the worker's complaints dealing with a workplace outside of the province, the OLRB determined it had jurisdiction to hear the matter. However, the OLRB was careful to distinguish between an employer's general duty to take every precaution reasonable in the circumstances and specific occupational health and safety standards set out in the provincial statutes. Paragraphs 19 and 20 of the decision state:

19 The Ontario legislation does not have the authority to establish through the Act or its regulations the substance of workplace health and safety standards applicable to work performed in British Columbia. Any given workplace standard established by the Act (or more likely, established by a regulation issued under the Act) had no application to [the worker's] employment with the responding party while he worked in Prince George, British Columbia. Those standards and their enforcement – forklift training requirements and the speed at which forklifts may travel in a warehouse for example - are the responsibility of the legislature of the province of British Columbia

20 ...However, [the worker], as an employee of the responding party permanently based in Ontario, had the right, when he was temporarily assigned by the responding party to a workplace in Prince George, to require the responding party to ensure that every precaution reasonable in the circumstances had been taken to protect him. That right existed independently of the substance of any applicable health and safety standard established by the legislature of British Columbia...

While Canadian employers may not be required to ensure that very specific health and safety standards set out in provincial legislation (such as the speed in which forklifts are required to operate) are applied to Canadian workers while the travel and/or work outside of Canada, ultimately, the cases support the principle that Canadian employers regulated by provincial occupational health and safety legislation will be required to take every precaution reasonable in the circumstances to protect its Canadian workers while they travel and/or work outside, not only in another province, but Canada. Canadian employers who are deploying workers to weak governance zones⁵ are cautioned to pay close attention to recognized Canadian standards of care and take active steps to try and replicate as much as reasonably possible at foreign work sites while still being cognizant of local rules, customs and/or practices.

⁵ OECD Risk Awareness Tool for MNEs in Weak Governance Zones, 2006.

Liabilities for breaches of provincial occupational health and safety legislation are set out in Appendix “A”. It is noteworthy that the Ontario provincial government has, in January of 2016 alone, fined five Ontario employers over \$700,000 in respect of workplace accidents. More critically, Canadian employers also need to be aware of, what some suggest may be, a trend of directors and/or company representatives being sentenced to jail after being convicted under the applicable Occupational Health and Safety legislation. There have been three instances recently. There are appeals pending in each case, but this certainly raises the stakes for Canadian corporate directors and officers to whom these laws also apply.

c. *Canadian Criminal Code - Bill C-45*

In 1992, the Westray coal mine in Plymouth, Nova Scotia, Canada exploded, killing 26 miners.

Alleged inadequate safety within the mine had been the subject of much discussion even before the disaster and in 1998 a Canadian Royal Commission of Inquiry was established to investigate. It was determined that there was inadequate ventilation and maintenance which caused methane and coal dust to reach unsafe levels, methane detectors were disconnected because of frequent alarms and there was a general “appalling lack of safety training and indoctrination”⁶ of miners.

Although occupational health and safety charges were laid, there were no convictions, largely as a result of legal technicalities.

In response, in March 2004, Bill C-45 emerged as an amendment to *Canada’s existing Criminal Code*.⁷ The amendments established new types of offences for health and safety breaches which include both negligence and non-negligence related offences. Specifically, the amendments created liability for individuals as well as organizations. With Bill C-45, organizations can be held criminally liable where a representative of the organization demonstrates a lack of care which constitutes negligence, and a senior officer either deliberately turns a blind eye to health and safety risks or makes a conscious choice to prefer profit over safety. Bill C-45 also expands the class to whom organizations owe a duty of care when it comes to health and safety matters from just “employees” or “workers” to all “persons”.

⁶ Richard, J.K.P. (1997) *The Westray Story: A predictable path to disaster: Report of the Westray Mine Public Inquiry*. Halifax, Province of Nova Scotia.

⁷ (R.S.C. , 1985, c. C-46) [Criminal Code]



Criminal Code charges may run parallel to charges under health and safety legislation. To date, there have been 12 charges under the Bill C-45 amendments. There have been six guilty pleas or findings of guilt, one acquittal and three withdrawals of charges. The remaining two cases are in progress.

All cases under Bill C-45 amendments have dealt with Canadian employers operating in Canada with Canadian workers and/or members of the public. The most recent decision found that a construction supervisor was criminally negligent after allowing six workers to use a swing stage at the same time despite knowing that there were only two safety lines. The swing stage snapped and four workers died and one was critically injured.⁸ The supervisor was recently sentenced to imprisonment for 3.5 years.⁹ The case is currently under appeal.

With respect to whether a Canadian employer could be charged under the *Criminal Code* for its actions outside of Canada, it is important to note that the primary basis of criminal jurisdiction is territorial and that the Criminal Code specifically states no person shall be convicted of an offence committed outside of Canada.¹⁰ Further, countries ordinarily have little interest in prohibiting activities that occur abroad and they are, as well, hesitant to incur the displeasure of other states by indiscriminate attempts to control activities that take place wholly within the boundaries of those other countries.¹¹

⁸ R. v. Kazenelson, [2015] O.J. No. 3370.

⁹ R. v. Kazenelson, [2016] O.J. No. 80.

¹⁰ Section 6(2) states: Subject to this Act or any other Act of Parliament, no person shall be convicted or discharged under section 730 of an offence committed outside Canada.

¹¹ R. v. Martin, [1956] 2 All E.R. 86, at p. 92.

In the seminal case of *Libman v. The Queen*,¹² the Supreme Court of Canada considered whether a significant portion of the activities that constituted an offence took place in Canada. Paragraph 74 states:

74 I might summarize my approach to the limits of territoriality in this way. As I see it, all that is necessary to make an offence subject to the jurisdiction of our courts is that a significant portion of the activities constituting that offence took place in Canada. As it is put by modern academics, it is sufficient that there be a "real and substantial link" between an offence and this country, a test well known in public and private international law.

Therefore, if, for example, a Canadian manager or supervisor directed a Canadian worker, who was working abroad, to perform an activity that the manager unquestionably knew to be unsafe and likely to cause significant injury, there is still a risk that Canadian officials will, at some point, try a test case and charge a Canadian employer, officer, director and/or a Canadian manager or supervisor under the *Criminal Code*.

Liabilities for individuals for a breach of Bill C-45 include \$2,000 and/or 6 months imprisonment for a summary offence and 25 years imprisonment for an indictable offence. Liabilities for corporations include \$100,000 for a summary offence and no maximum for an indictable offence. Heightened enforcement and the use of harsher sentences (both monetary and periods of imprisonment) is on the rise with Canadian employers.

¹² [1985] 2 SCR 178.

2. The Civil Standard of Duty of Care

a. Duty of Care Generally

Canadian employers have a duty of care to their workers traveling and/or working abroad. The analysis of the duty of care reflects a two-part test first enunciated in *Anns v. Merton London Borough Council*¹³ and adopted by the Supreme Court of Canada in *City of Kamloops v. Nielson*.¹⁴ The test, most recently confirmed in *Cooper v. Hobart*,¹⁵ is as follows:

30 In brief compass, we suggest that at this stage in the evolution of the law, both in Canada and abroad, the *Anns* analysis is best understood as follows. At the first stage of the *Anns* test, two questions arise: (1) was the harm that occurred the reasonably foreseeable consequence of the defendant's act? and (2) are there reasons, notwithstanding the proximity between the parties established in the first part of this test, that tort liability should not be recognized here? The proximity analysis involved at the first stage of the *Anns* test focuses on factors arising from the relationship between the plaintiff and the defendant. These factors include questions of policy, in the broad sense of that word. If foreseeability and proximity are established at the first stage, a *prima facie* duty of care arises. At the second stage of the *Anns* test, the question still remains whether there are residual policy considerations outside the relationship of the parties that may negative the imposition of a duty of care.

[Original emphasis]

Even with an established principle of duty of care, Canadian courts are typically inclined to apply the law where the accident occurred, subject to the exceptions discussed below. However, if a worker is injured or becomes ill during the course of employment, regardless of where the injury may have occurred, the worker (or the worker's dependants) may also be barred from bringing a civil claim against their Canadian employer.

b. *Lex Fori* or *Lec Loci Delicti*

Although not related to the workplace, the Supreme Court of Canada in *Tolofson v. Jensen*,¹⁶ addressed two cases in which the plaintiffs were injured in provinces outside their home province and then commenced legal action in their home province. In each case, the issue arose as to whether the law governing the actions should be the law where the actions were commenced (*lex fori*) or the law where the accident occurred (*lec loci delicti*). The court found that the applicable substantive law was that of the jurisdiction where the accident occurred.

The Court reasoned that it was appropriate for the parties to an accident to expect the legal consequences of the action would be subject to the laws of the location of the accident. The jurisdiction of where the action was brought should not be able to define the legal rights and liabilities of its own citizens or residents in respect of transactions that occur elsewhere. Although linked to Canadian provinces in all respects, the Court suggested that the same principles were applicable on an international level, subject to greater latitude in carving out exceptions to the general rule.

¹³ [1978] A.C. 728.

¹⁴ [1984] 2 S.C.R. 2.

¹⁵ [2001] 3 S.C.R. 537.

¹⁶ [1994] 3 S.C.R. 1022.

Therefore, there is at least a basis for Canadian employers to argue that they are not required to apply the Canadian duty of care to Canadian workers outside of Canada. Rather, the laws of the jurisdiction in which they are working may apply. Canadian employers are not well advised to proceed in reliance on this general rule.

There is a strong case to be made for an exception to this general rule when it comes to the employment of Canadian workers traveling and/or working outside of the country.

Courts have also alluded to a preference that litigants should settle their rights and obligations *inter se* in their home courts. When all parties are from the forum (Canada), there are many factors, not the least of which are the health care system of their home province and the insurers, all of which are considered justifications allowing the settlement and/or pursuit of issues according to *lex fori*.

c. Worker's Compensation

In Canada, employers (with some exceptions) are required to register with the applicable provincial worker's compensation program – essentially insurance for the cost of workplace injuries.

Although each province has its own program, the concept is virtually the same. Employers are required to pay premiums for each of its workers and if a worker is injured or becomes ill during the course of his or her employment, all related costs (payment for being unable to work, health care benefits, retraining and even lump sum amounts for permanent impairments) are provided by the provincial board. In exchange, the worker (or the worker's dependants) is unable to sue the employer for anything related to the workplace injury or illness.

Confirmation of a worker's inability to sue his or her employer for a workplace accident, injury or illness is typically provided by the provincial worker's compensation tribunal.

In *Decision No. 1091/96* (an Ontario, Canada decision), ¹⁷ workers were traveling from Canada to the United States of America on a business-oriented recreational activity as a sales incentive. One of the workers was operating the plane, which carried two other workers. While in flight, the plane crashed and the three workers were killed. The estates of the two passenger workers sued the estate of the worker operating the plane.

In its analysis, the Workplace Safety and Insurance Tribunal (WSIAT) determined that although the recreational component and personal aspects were significant, the primary characteristic of the trip was its business purpose of enhancing personal relationships which were critical to the sales enterprise. The WSIAT granted survivor benefits to the estates of the deceased workers and the civil claim against the worker who was operating the plane was barred.

Further, in *Decision No. 2273/03I*, ¹⁸ three workers were traveling by car from Ontario, Canada to Utah in the United States of America. The accident was a single vehicle accident. The employer operated in Ontario and all workers were from Ontario. The respondent did not claim benefits in Ontario and instead commenced a legal action against his co-worker, the owner of the vehicle and an insurance company. While the lawsuit was commenced in Ontario, the respondent requested the law of Utah to be applied (as it did not preclude the legal action as Ontario law would).

¹⁷ [1997] O.W.C.A.T.D. No. 65.

¹⁸ [2004] O.W.S.I.A.T.D. No. 2779.



Recognizing that the intent of the respondent was to evade the application of Ontario worker’s compensation law and that all parties had a substantial connection to Ontario, it was determined that the respondents were prevented from commencing legal action in Ontario (and Utah) and the action was barred.

Therefore, while a Canadian employer clearly has a duty of care, it is unlikely that parties seeking compensation as a result of a workplace incident occurring outside of Canada will be able to rely on it for large settlements or findings of fault through the Canadian civil court system. Rather, provided the parties involved have a substantial connection to Canada, legal actions will likely be barred from proceeding and a provincial worker compensation scheme will apply instead. This will ensure the worker and/or the worker’s dependents are compensated but will not result in a public legal decision or large monetary award.

If the worker’s compensation scheme does not apply (because there is not a substantial connection to the Canadian workplace), there still remains the risk of a legal action being commenced.

EMPLOYER BEST PRACTICES

As noted above, by way of federal or provincial occupational health and safety legislation Canadian employers are required to take every precaution reasonable in the circumstances to protect the health and safety of its workers. This is irrespective of whether employers have a civil duty of care and/or workers are able to obtain provincial worker’s compensation. To satisfy this obligation, employers should undertake careful and detailed planning of possible workplace hazards, including travel to and from the work location and increased risk of illness or injury, as well as crisis and event management.

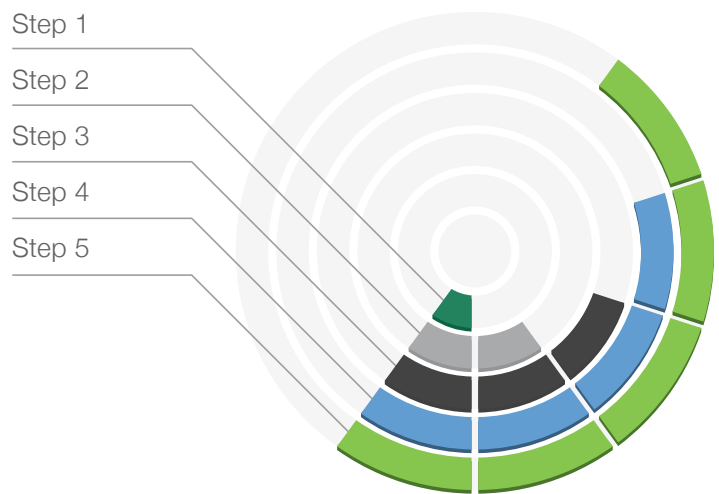
As will be set out below, employers would be well served to apply the same Canadian principles they are familiar with to work locations outside of Canada, to the extent possible.






3. Planning

a. Risk/Security Assessment

Canadian employers are strongly advised to make reasonable efforts to mirror “at home” circumstances at local work sites. This requires subject matter experts who have familiarity with both Canadian workplace health and safety programs and local country and site conditions where workers are traveling to and/or working from.

The five step risk assessment method shown below was developed by the Health and Safety Executive in the United Kingdom as a simple approach to manage risks at the work site and has been endorsed globally:



-  Step 1 - Identify the hazard
-  Step 2 - Decide who might be harmed and how
-  Step 3 - Evaluate the risks and decide on precautions
-  Step 4 - Record your findings and implement them
-  Step 5 - Review your assessment and update if necessary ¹⁹

A risk assessment procedure can be easily tailored to the size and activity of the enterprise, as well as to the available resources and skills. ²⁰

Workers may encounter hazards and emergencies during travel and during their work at off-site locations. Risk assessments need to be proactively completed to provide for many, if not all of the following:

- » medical emergencies;
- » terrorist events, civil unrest, and demonstrations;
- » natural disasters such as earthquakes, severe storms, and floods;
- » power failures/cyber attacks;
- » fires;

- » injuries such as slips, trips, falls, cuts, falling objects, car accidents;
- » illnesses from contaminated food or water;
- » infections (i.e. pandemics);
- » musculoskeletal injuries from poor ergonomics or awkward lifting;
- » violence, including harassment, assault and robbery; and
- » travel disruptions and delays



¹⁹ Consider as well the World Bank EHS guidelines

²⁰ OSH Management System: A tool for continual improvement. ILO, April 28, 2011.

In each case, both employers and workers must have a working familiarity with the locally available assets and resources required to adequately address each of the foregoing circumstances to minimize risk. For example, on-site medical treatment may address many medical needs, but some illnesses or injuries will require treatment that may not be available at a site and will require travel to appropriate medical treatment facilities. Prior planning to establish a medical emergency response plan with respect to the identification of appropriate medical expertise, access to, planned travel resources and potential travel security will be essential.

Once established it is critical that employer expectations are documented and communicated in training sessions with all workers.

Employers are well advised to maintain records of these expectations (typically within handbooks) and training logs to ensure that communication of expectations and training can be proven if necessary and employees are compliant. Employers will typically need to assess performance and adherence to expectations which will enable the identification of gaps necessitating re-training initiatives. In addition, work environments invariably change and employers are well advised to maintain an audit function to identify different needs, amended expectations and new training requirements.

Employers should identify a robust third party auditing process, either company or designate led, that is facilitated in the context of “at home” facilitated in person. The actual audit reports will provide support documentation and will assist in demonstrating proper due diligence in the event the employer is ever challenged.

Employers are also advised to reviewing in person - third party security and/or medical providers to validate they have the proper capability to provide as close to “at home” support as is available in the context of the foreign work location.

These reviews should include, but not be limited to: equipment in proper working order, proper credentials, licensing and training, capacity, availability, operating hours and practices, payment process, and general relationship enhancement. It is extremely key to note the relevance of auditing in person, having firsthand accounts to eliminate and/or at least to reduce misinformation, potential fabrication, or undocumented changes in the ability and capacity providers.

b. Travel Risk Management Policy

Much of the foregoing should be captured in a comprehensive workplace **Travel Risk Management Policy** or TRMP, tailored to the specific workplace. Many MNEs refer to a Corporate Induction Guide. Regardless of whether one refers to a Corporate Induction Guide or an effective TRMP, at least three core principles should be addressed. Each principle is explored further, below:

- » **comprehensive, proactive process to identify and assess travel risks**
- » **strategies to address all identified risks through communication and training**
- » **procedures to respond rapidly and effectively to all events and emergencies**

(i) *Proactive Assessment of Risk*

A common mistake employers make is the assumption that their group insurance plan or Employee Assistance Program sufficiently addresses their needs and satisfies their duty of care responsibilities. Assessing the experience, familiarity and reach of assistance providers embedded in the insurance plan(s) is essential. These programs - which can be of tremendous utility - were historically engaged after an incident occurs. An effective TRMP today (inclusive of an assistance provider) should be proactive in managing the risks posed by business travel and/or working abroad, and should also include the following components.

Employers should consider:

- » First hand local infrastructure knowledge;
- » Language capability – provide support (assistance or informational; either at destination or pre-departure) in all company languages as well as that of the destination;
- » Capacity capability and business continuity planning;
- » Credibility of subject matter experts to provide information or support in the context of the destination and likely context of use (i.e. emergency response or planning – emergency trained and experienced physician);
- » Robust case management infrastructure and process; and
- » Provider recognitions from 3rd party standards organizations (i.e. ISO)

Information Package/Briefing: Workers should be provided with a dynamic information package or briefing before they depart, including a detailed itinerary; contingency plan in the case of emergency; and information regarding specific risks applicable to the destination or travel route.

For workers traveling, relevant information may include: the location and contact information of approved lodging locations; updated weather reports and road conditions; and any unique features of the area, particularly if the worker will be traveling through remote regions without dependable mobile service.

Preparation for Safe Travel

Proactive planning and preparation is required as well, covering such topics included in the following checklists:

- » Ensure that workers obtain all recommended medical checks (inclusive of behavior health evaluation) and vaccinations prior to travel;
- » The only vaccination that an individual is legally required to get before travel is for Yellow Fever when traveling to countries where the presentation of the Yellow Fever vaccination card is required; all others can be recommended or encouraged by the employer but not mandated;
- » Medical checks should take on that of a risk based approach based on the employees job function paired with inherent medical risk of the destination. The testing protocols should reflect this. Examples could include:
 - » At altitude, then an employee should have an EKG and lung capacity assessments as a part of their testing protocols; and
 - » If remote or to a country with low level of medical infrastructure – physician consult to discuss allergies, current medications, and overall health history.
- » If a labour or safety sensitive position – eye testing (vision and colour blind), hearing, or a fitness assessment where the job specific duties are closely replicated (lifting, bending, pushing, pulling, etc. at a predefined weight);
- » Ensure that workers have all required travel documents (passport, visas, etc), itinerary, copies of tickets, names of contact at destination;
- » Ensure that workers have the employer’s medical and emergency insurance policy documents (at their destination);
- » Keep key emergency contact numbers with employees at all times;
- » Always carry a cellphone that can be used during travel and at the destination;
- » A laptop computer or tablet with WIFI connection is strongly recommended (unless otherwise instructed by your employer);
- » Ensure that the supervisor or HR know the worker’s personal email address and cellphone number;

- » Perform a travel risk assessment for the assigned work or travel:
 - › Means of travel (air, rail, bus, car and quality of local roadways);
 - › Route (any potential problems or delays along the route);
 - › Risks of local travel (taxis, buses, rental cars);
 - › Destination (safe and unsafe areas);
 - › Accommodation (quality of hotel, location);
 - › Hazards at the location of off-site work; and
 - › Worker tracking and check-in.
- » Always leave a detailed itinerary with the supervisor and at home containing the destination and travel information, including all flight numbers and hotel information; and
- » Leave photocopies of the passport, travel documents (reservations, tickets) at home for use in an emergency.



Stress, Fatigue, and Distraction

The risk of accidents and injuries is increased by fatigue, reduced alertness and distraction caused by long working hours, jet lag, poor sleep, and stress. Measures to reduce stress and distraction include:

- » Take time to rest and relax
- » Take regular breaks during off-site work
- » Get adequate sleep
- » Avoid alcohol and heavy food
- » Hydrate with safe water sources

Taxis, Limousines and Rental Cars

- » Use only official taxis and limousines from approved companies (not private, non-commercial means);
- » Avoid rental cars (subject to location risk) unless the destination is remote and a car is needed for the return trip; and
- » Do not drive rental cars after a long flight or when unfamiliar with language, customs, hazards, or traffic laws.

Using Personal Vehicles

- » If workers use their personal vehicle for authorized travel the employer can require maintenance and insurance records to show that the vehicle is properly maintained and insured;
- » Workers should avoid using their personal vehicle to drive to an airport if the trip will involve:
 - › Driving very early in the morning or late at night; and
 - › Driving home at night after a long flight
- » Avoid driving to an unfamiliar destination at night;
- » Use GPS to travel to an unfamiliar destination; and
- » Research routes ahead of time and carry maps (e.g., Google maps).

International travel gives rise to additional considerations, including: current political, social and economic climate, the location and contact information of ‘friendly’ consulates and embassies; a summary of unusual or noteworthy local laws or cultural/regional norms; and information relevant to obtaining timely medical attention in the case of an emergency.

Some useful resources include: membership with a global medical/security assistance company, the Canadian Centre for Occupational Health and Safety (www.ccohs.ca); the Government of Canada Travel Advisories directory (www.travel.gc.ca/traveling/advisories); and the Government of Canada embassy and consulate directory (<http://travel.gc.ca/assistance/embassies>).



Depending on the situation, the appropriate protocol or spectrum of resources could be as simple as sending an email upon arrival, up to and including GPS tracking on workers and equipment. With respect to worker tracking, employers are well served to:

- » Have a reasonable understanding where the employee is while out of their home country that monitors the employee in the context of medical or security/personal safety dynamics while at destination;
- » Strong travel tracking tools will also provide real-time updates and information to the employee and corporate stakeholders in the event of an unforeseen occurrence;
- » Ability to filter back and forth in time to review those traveling to a destination as well as those recently to arrive home (several diseases, such as malaria, have incubation periods of at least 7 days); and
- » Integrate as a component of corporate travel approval process – engage travel approvers in the event an employee books to a destination of elevated risk.

Safety in a Destination City

- » Before travel to an unfamiliar destination use travel guides and on-line sources to identify:
 - › any dangerous locations to avoid;
 - › any risks if using public transit;
 - › any risks if using taxis;
 - › specific threats such as pickpockets and street gangs; and
 - › the telephone number to call in case of an emergency (usually 911 in North America, 112 in Europe, 192 in Brazil).
- » Use on-line sources to identify popular safe areas for eating and entertainment;
- » Always carry a card with the address and telephone number of the hotel or other destination;
- » If the worker is traveling to an unfamiliar address carry a card with the name, address and telephone number; and
- » Do not walk to a destination unless the entire route is safe to walk and avoid same path if walking to destination is required on a routine basis (i.e., daily).

Accommodation

Lists of approved accommodations often contain hotels that meet criteria for price and features. The hotel rooms are not necessarily clean, quiet or comfortable. Workers may get inferior rooms. Corporate rates may not be available at certain busy times.

- » Employers or their travel service providers should maintain contracts with hotel chains of guaranteed quality, security and availability at destinations;
- » Look for accommodation in safe areas that have restaurants and shops nearby and have pedestrian traffic day and night. Consult travel guides to identify safe areas;
- » Look for accommodation that is near the meeting location;
- » For commercial accommodation (hotels, inns and B&Bs) consult travel guides and on-line reviews regarding comfort, safety, and quality of the neighbourhood;

Check-in Protocol/Worker Tracking: Regardless of where a worker may be traveling, it is important the employer know their location at all times, particularly in the case of an unexpected emergency (consider contract Emergency Operations Centers (EOC)).

- » Security/personal safety criteria to be considered:
 - › On site security
 - › Crime in the area
 - › Number of access/exit points
 - › Room and door safety
- » Ensure that the accommodation has adequate WIFI computer access;
- » Emergency experts recommend that travelers stay in a room no higher than the 6th floor to enable easier evacuation or rescue or access in case of power failure or fire and always pack a rubber door stopper;
- » Know the location of the nearest emergency exit and stairway; and
- » Outside Canada, USA and Europe check with the reception that the tap water is safe to drink

(iii) *A Written Policy Applied and Enforced Consistently*

As in the case of any workplace policy, to be of maximum benefit a TRMP should be written, clearly communicated and consistently enforced. Often the policy ties to and aligns with the Employer’s Corporate Code of Conduct. It should also include a feedback component so that it can be improved on an on-going basis. A worker should sign an acknowledgment confirming his/her understanding of the policy prior to departure, including an acknowledgment that a violation of the policy may result in discipline, up to and including termination.

Technology Assessment: Consider what technology or other safety equipment is necessary and what destinations may be subject to hacking. Smart phones and tablets are not merely convenient business tools – they can be crucial safety devices. At a minimum there should be confirmation these devices will have service wherever the worker is traveling. If not, consider a contingency communication plan.

(ii) *An Interdisciplinary TRMP Team*

There is a temptation within organizations to view travel risk management as a human resources issue. While your HR department will be heavily involved, a comprehensive TRMP may require active participation from various stakeholders or disciplines in the organization. For example, department managers may be responsible for check-in protocols, IT to ensure the necessary mobile technology is available, and finance to ensure sufficient funding is in place, etc.

An employer should therefore identify the key stakeholders (i.e. Health and Safety, Global Security Management (can assist with geopolitical hazard threat assessment) and Operations, Risk Management and Crisis Response) in its TRMP and ensure they have the skill and ability to carry out the TRMP.

4. Crisis & Event Management

Employer and/or employer designates such as medical/ security assistance companies require the ability to convene a crisis management team, encompassing all appropriate disciplines such as medical, security, logistic and aviation that does not disrupt their business continuity commitments.

Consideration of the employer or designates ability to deploy an incident management team (to compliment the regional crisis management team) as geographically close to “event” as necessary provided reasonable and necessary to do so. In addition the employer or designates medical experience and familiarity with injury or illness progression which may lead to evacuation should not be overlooked.



4. Crisis & Event Management (cont'd)

a. Medical Emergencies

- » Ensure that the employer has proactively identified (Medical Emergency Response Plan: MERP) Local medical and security expertise/support (understanding scope) to cover medical emergencies that may occur during the travel assignment:
 - › Keep the policy number and emergency contact information with you at all times; and
 - › Know what to do in case of a medical emergency (as outlined in the MERP).
- » Carry a cellphone, identification and contact information at all times; and
- » If in doubt about the severity of an injury or illness, contact the local medical expertise and/or previously identified emergency medical provider for advice and/or your medical/security assistance company.

b. Injuries and Illnesses (Not Emergencies)

- » Know what to do if an injury or illness occurs that does not require immediate medical attention but affects the worker's ability to work (e.g., musculoskeletal injury or sprain):
 - › Report the injury to colleagues at the travel destination, if any, the supervisor and HR, and your home

- » Illnesses from contaminated food or water, infections, etc:
 - › Report the injury to colleagues at the travel destination, if any, the supervisor and HR, and home; and
 - › Consult your family doctor or a recommended physician at the destination or your medical/security assistance company regarding any recommended treatment

c. General Emergencies

- » Know the evacuation procedure in case of an emergency (medical and/or security);
- » Know what to do in case of emergencies that do not pose an immediate risk to your health and safety, but prevent or interfere with the purpose of the off-site work:
 - › Power failures;
 - › Natural disasters such as earthquakes, volcanic eruptions, severe storms, and floods; and
 - › Terrorist events, civil unrest, and demonstrations
- » Contact the employer and/or your medical/security assistance company and home as soon as possible

d. Fires

- » When you arrive at a hotel room take careful note of
 - › The nearest exits. Always know where at least two exits are, in case one is blocked; and
 - › The emergency telephone number in the city or country you are staying (it is not always 911)
- » If an alarm sounds carefully approach the door, put your hand on it and check to see if it's hot. If it's hot, it means the fire may be outside your door or that the hallway is filled with smoke. Stay low and place wet towels around the bottom of the doorway to keep smoke out of the room
- » If the door is not hot, calmly but quickly put on your shoes, pick up your wallet and room key, and evacuate the building swiftly via the nearest (clear) staircase, even if you are on the 30th floor (unless otherwise directed by a reliable source)

e. Violence and Terrorism

This may include harassment, assault, theft, robbery, and civil unrest:

- » Avoid locations and situations where violence may occur. If feasible, select hotels and restaurants in areas with lots of shops, restaurants, and pedestrian traffic in the evening;
- » Always travel with a rubber doorstop to reinforce any existing hardware on hotel room doors
- » Get advice from the hotel or meeting organizer regarding the safety of nearby streets to avoid violence;
- » In less safe districts travel in a group or by vetted taxi, especially at night;
- » If your physical safety is threatened call 911 or equivalent for assistance and advice;
- » Seek shelter in a shop, restaurant, hotel or public building if there is a risk of violence;
- » Respond to violence by a technique that is least likely to cause you physical injury or exposure; and
- » Learn de-escalation techniques.



APPENDICES

Appendix “A”

Provincial Occupational Health and Safety Act Liabilities

Alberta <i>Occupational Health and Safety Act, RSA 2000, c O-2.</i>	<p><u>First Offence:</u></p> <p>\$500,000 and in the case of a continuing offence, a further fine of \$30,000 for each day after the first day or part of a day, or 6 months imprisonment, or both.</p> <p><u>Second Offence:</u></p> <p>\$1,000,000 and in the case of a continuing offence, a further fine of \$60,000 for each day or part of a day after the first day that it continues, or 12 months imprisonment or both.</p>
British Columbia <i>Workers Compensation Act, RSBC 1996, c 492.</i>	<p><u>First offence</u></p> <p>\$652,774.38 or 6 months imprisonment, or both. \$32,638.75 for each day during which the offence continues after the first day.</p> <p><u>Second or subsequent offence:</u> \$1,305,548.74.10 or 12 months imprisonment, or both. \$65,277.44 for each day of continuing contravention.</p> <p>[Note: dollar amounts are subject to change in CPI]</p>
Manitoba <i>Workplace Safety and Health Act, CCSM c W210.</i>	<p><u>First offence:</u></p> <p>\$250,000 and imprisonment of 6 months. \$25,000 for each day the offence continues.</p> <p><u>Second or subsequent offence:</u></p> <p>\$500,000 and imprisonment of 6 months. \$50,000 for each day the offence continues.</p>
New Brunswick <i>Occupational Health and Safety Act, SNB 1983, c O-0.2</i>	<p>\$250,000 or imprisonment of 6 months, or both.</p> <p>If continued on more than 1 day, each day will constitute a separate offence.</p>
Newfoundland & Labrador <i>Occupational Health and Safety Act, RSNL 1990, c O-3.</i>	<p>A person other than a corporation: \$250,000 or imprisonment of 12 months, or both.</p> <p>A corporation: \$250,000.</p> <p>\$25,000 for each day the offence continues.</p>
Northwest Territories <i>Safety Act, RSNWT 1988, c S-1</i>	<p>Summary conviction to fine of \$500,000 or imprisonment of 1 year, or both.</p>

<p>Nova Scotia</p> <p><i>Occupational Health and Safety Act, SNS 1996, c 7.</i></p>	<p><u>First offence:</u> \$250,000 or 2 year imprisonment.</p> <p>Subsequent offence within 5 years of conviction of the first: \$500,000 or 2 years imprisonment, or both.</p> <p>Where the offence resulted in a fatality: \$500,000 or 2 years imprisonment of both.</p> <p>\$25,000 for each day after the first day of a continuing contravention.</p>
<p>Ontario</p> <p><i>Occupational Health and Safety Act, RSO 1990, c O.1</i></p>	<p>Person: \$25,000 or 12 months in prison, or both.</p> <p>Corporation: \$500,000.</p>
<p>Prince Edward Island</p> <p><i>Occupational Health and Safety Act, RSPEI 1988, c O-1.01.</i></p>	<p>\$250,000 or 1 month imprisonment or both.</p> <p>\$5,000 for each day an offence continues beyond the first day.</p>
<p>Quebec</p> <p><i>An Act respecting occupational health and safety, CQLR, c S-2.1.</i></p>	<p><u>Contravention of the Act</u></p> <p>Natural person: \$1,500 for a first offence, \$3,000 for a second and \$6,000 for a third or subsequent offence.</p> <p>Legal person: \$3,000 for a first offence, \$6,000 for a second and \$12,000 for a third or subsequent offence.</p> <p><u>By act or omission directly compromises the health, safety or physical well-being of a worker:</u></p> <p>Natural person: \$3,000 for a first offence, \$6,000 for a second offence, \$12,000 for a third or subsequent offence.</p> <p>Legal person: \$60,000 for a first offence, \$150,000 for a second offence, and \$300,000 for a third or subsequent offence.</p>
<p>Saskatchewan</p> <p><i>The Saskatchewan Employment Act, SS 2013, c S-15.1.</i></p>	<p><u>Causing serious injury or fatality</u></p> <p>An individual: \$500,000 plus up to 2 years in prison.</p> <p>A corporation: \$1,500,000.</p>
<p>Yukon</p> <p><i>Occupational Health and Safety Act, RSY 2002, c 159.</i></p>	<p><u>First offence:</u> \$150,000 or imprisonment up to 12 months or both. \$15,000 each day for continuing after the first day.</p> <p><u>Second or subsequent offence:</u> \$300,000 or imprisonment of 24 months, or both. \$25,000 for each day of continuing contravention beyond the first.</p>



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