HEALTH, SECURITY & SAFETY

Responsibilities of New Zealand
organisations to employees
on business travel and
overseas assignments

Compiled & produced by

**International SOS
Foundation**

In appreciation of

prevent:

MinterEllison

BusinessNZ

FOREWORD

To ensure New Zealand has a fit for purpose legislative regime for protecting workers, the Health and Safety at Work Act 2015 (HSWA) was introduced into law on April 4 2016. The HSWA is an integrated approach to manage worker safety, health and wellbeing. The overhaul comes after years of review, a Royal Commission on the Pike River Coal Mine Tragedy and an Independent Taskforce on Workplace Health and Safety.

This approach emphasises prevention and accountability. This follows on from other reforms in the Health and Safety space such as the introduction of Worksafe New Zealand, the health and safety regulator, which is seeking to take a proactive approach to education and enforcement.

With a more porous international border and growth of international work-related travel and assignments, appropriate risk management is needed to ensure the safety, health and security of employees who are assigned to travel to countries of differing levels of accessibility to medical care and where other risks exist. The risks associated with overseas work should be managed similar to how work activities carried out within New Zealand are managed.

This document serves as a valuable resource for employers on their duty of care for the health, safety and security of employees travelling overseas for work. Employers can seek better understanding on their legal obligations with respect to health and safety laws in New Zealand, draw reference to risk management practices and learn of the benefits to both employers and employees from adequate protection of their employees who work overseas.

Health and safety risk management is good business continuity planning. We hope employers find this resource of practical use in reshaping their organisational health and safety policies and practices for the protection of their employees when working overseas.

Paul Mckay
Business New Zealand

INTRODUCTION

Duty of care is no longer a vague concept, but a reality for organisations that want to demonstrate a tangible commitment to the protection of their most valuable assets – their employees. As a result of discussions initiated in by the Independent Taskforce on Workplace Health and Safety, and contributed to by the Royal Commission into the Pike River Coal Mine Tragedy, the standard of care required under New Zealand law has now changed.

This Duty of Care publication intends to provide New Zealand employers with a resource outlining duty of care for workplace health, safety and security to overseas travel due to work. Produced by the International SOS Foundation, it gives insight to the New Zealand Employer's Duty of Care on Health and Safety in the Workplace (WHS).

We thank Business New Zealand and Minter Ellison Rudd Watts for their advice on good practices in risk assessment for overseas work assignments and of the state of the law relating to workplace safety and health laws in New Zealand.

This publication gives complimentary perspectives – regulatory and legal context and practical steps from a security perspective – to raise awareness on welfare related issues, relevant work related legislation, common law, and the legal complications and obligations of employers. Case studies show examples of situations where the employer's duty of care should be effective to protect its employees on overseas missions or assignments during the course and outside of work.

Finally, to assist organisations embarking on this process, a self-assessment Travel Risk Mitigation Checklist is available as a tool to implement actions on improving travel and assignment safety, health and security related to work. By better understanding the value of duty of care, it is expected that New Zealand organisations involved in international activities will be able to address it for the direct benefit of their business.

INTRODUCTION TRAVELLER HEALTH, SECURITY & SAFETY STUDY NZ: YOUR VIEW

NEW ZEALAND ORGANISATIONS ARE CONCERNED ABOUT NEW LEGISLATION AND TRAVEL RISKS IMPACTING THEIR BUSINESS

- 42% reported needing support to understand their legal obligations regarding duty of care
- More than one-third of companies said complying with legal obligations of duty of care is their biggest challenge.
- 91% of organisations were concerned about travel risks affecting their business in 2016.
- 73% reported their business travellers or expatriates have suffered from an illness or medical concern while abroad. Petty crime, natural disasters and road accidents are the most common threats to personal safety while travelling abroad.
- 33% of organisations do not proactively educate their people before they travel abroad. [1]

A travel and travel risks survey conducted by International SOS & Business NZ in March 2016 highlighted the extent to which many local businesses were not adequately prepared for the impact of new Health and Safety legislation.

Following the introduction of the new laws in New Zealand, many of the companies survey said they needed help understanding their duty of care obligations (42%), while one-third conveyed challenges in complying with the new legislation.

This paper, developed in conjunction with Business NZ and Minter Ellison Rudd Watts, aims to support companies to better understand the legislation and how to practically meet its requirements. The most important duty owed to a travelling workforce under the Health and Safety legislation is to take steps to ensure they are not exposed to health or safety risks.

A RANGE OF DESTINATIONS

In line with trends across the globe, most companies expect their international business travel to grow, with 93% of survey respondents indicating it would likely remain at the same level or increase throughout the year. Asia and the Pacific, followed by Europe/CIS were selected as the most likely travel destinations.

To help organisations better understand the risks in the markets where they operate and travel, International SOS recently launched **Travel Risk Map 2016**[2] which displays each country's medical risk rating and travel security risk rating. The map can aid organisations and staff in their travel risk mitigation efforts.

Having a solid understanding of where travellers are going is important when developing a travel risk management plan. As discovered during the analysis of medical and travel security risks for the 2016 Travel Risk Map, risks aren't necessarily proportionate. For example, there are 30 countries that have Insignificant or Low travel security risk; but High or Very High medical risk. This range within individual countries highlights the complexities organisations face when preparing staff to travel abroad.

TRAVELLER HEALTH, SECURITY & SAFETY STUDY 2016, NEW ZEALAND

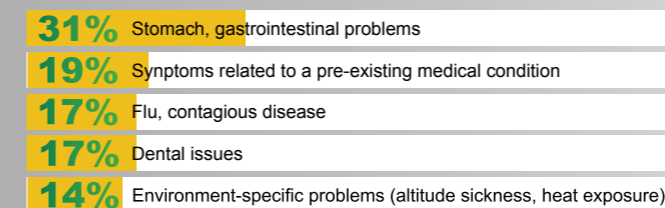### INTERNATIONAL ACTIVITIES AND TRAVEL ANTICIPATED TO REMAIN STABLE OR INCREASE IN 2016

94% of respondents expect their **international activities** to stay the same or increase in 2016

4% of respondents expect their **international activities** to decrease in 2016

93% of respondents expect their **international travel** to stay the same or increase in 2016

5% of respondents expect their **international travel** to decrease in 2016

TOP 3 DESTINATIONS for business Travel in 2016

87% Asia & Pacific **58%** Europe & CIS **55%** North America

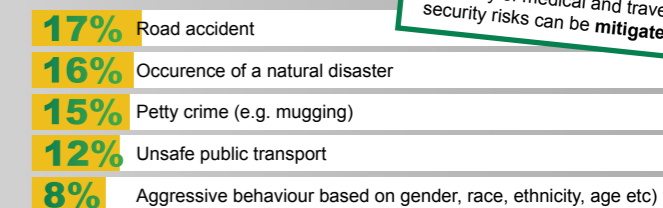New Zealand business travellers go to countries with a variety of risk ratings.

2015 - MEDICAL CONCERNS FACED
71% reported their travellers or expatriates suffered from an illness or medical concern while abroad in 2015

31%	Stomach, gastrointestinal problems
19%	Symptoms related to a pre-existing medical condition
17%	Flu, contagious disease
17%	Dental issues
14%	Environment-specific problems (altitude sickness, heat exposure)

2015 - THREATS TO PERSONAL SAFETY FACED

*Majority of medical and travel security risks can be **mitigated***

17%	Road accident
16%	Occurence of a natural disaster
15%	Petty crime (e.g. mugging)
12%	Unsafe public transport
8%	Aggressive behaviour based on gender, race, ethnicity, age etc)

Based on medical and travel security concerns faced by travellers or expatriates in 2015.

IMPACT OF TRAVEL RISK ON WORKFORCE AND BUSINESS CONTINUITY

63% of respondents are concerned travel risks may have an impact on their workforce in 2016

89% of the organisations have **Travel Risk Prevention** high on their agenda

BUT

1 IN 3 ORGANISATIONS report they **do not pro-actively educate their travellers before they go abroad**

BIGGEST CHALLENGES faced in ensuring wellbeing of overseas employees

Tracking and Communication
- To communicate effectively in the event of a crisis **(53%)**
- To communicate effectively about actual (vs perceived) travel risks with employees **(35%)**

Health & Safety Legislation
- To understand the NZ legal obligations regarding Duty of Care **(43%)**

Compliance
- To comply with NZ legal obligations with regards to Duty of Care **(38%)**
- To document that employees have read pre-trip information and/or completed a travel risk awareness training **(38%)**

MEDICAL CONCERNS FACED BY TRAVELLERS ARE LARGELY PREVENTABLE

While 73% of respondents said their travellers or expatriates suffered an illness or medical concern while abroad in 2015, many of these were actually preventable.

Stomach and gastrointestinal problems, flu and contagious diseases, and insect-borne diseases such as malaria were some of the most common medical problems reported by New Zealand organisations in 2015; all of which are preventable to a large extent.

Most of the health risks faced by travellers can be mitigated by systematic and comprehensive planning. Access to quality health information, advice on vaccinations and prophylaxis, good internal communication, and a solid preventive health check program are all best practice Duty of Care for organisations with global travellers.

ROAD ACCIDENTS MORE LIKELY THAN A TERRORIST ATTACK

Fear of terrorism often rates amongst the top safety concerns for business travellers, but the reality is other threats are far more likely to impact their trip. In 2015, the top three safety and security risks that impacted business travellers were road accidents (17%), natural disasters (16%) and petty crime (15%), while only five per cent were impacted by terrorism. It is extremely important that risk assessments are based on the destination and individual traveller, and not just perceived risk.

TRAVEL RISK MITIGATION IS KEY

Most survey respondents (91%) were concerned travel risks may have an impact on their business in 2016. Despite this, one-in-three organisations said they do not pro-actively educate their travellers before they go abroad.

Duty of Care is about demonstrating that risks have been sufficiently assessed and appropriate precautions taken to mitigate their likelihood or impact. Assessing risk exposure, monitoring events in the region, providing training and ensuring business travellers have access to the most current information, advice and support is the best way to support your staff, enable business growth and deliver on Duty of Care.

FOOTNOTES:

1. *Travel Risk Outlook 2016 Survey is an International SOS survey conducted among 80 people in New Zealand, mainly senior executives working in HR, HSE, Travel, Risk, Security and General Management. Research was conducted online in the period from March 4th till April 4th 2016. The survey asked respondents about the new NZ WHS legislation, international travel preparation, destinations, medical and personal safety issues experienced abroad in 2015 as well as the expected impact of travel risks in 2016.*

2. *Travel Risk Map 2016. International SOS and Control Risks, December 2015. Learn more about Travel Risk Map 2016 and view the map online at www.internationalsos.com/travelriskmap. An interactive digital version is also available.*

ABOUT US

International SOS Foundation

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

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

MinterEllisonRuddWatts

MinterEllisonRuddWatts is a top New Zealand law firm who has been helping clients achieve their goals for over 130 years. We have offices in Auckland and Wellington, and are the only top tier law firm in New Zealand with a truly international presence. Through the MinterEllison Legal Group we can provide a seamless cross-border approach for clients in the Asia Pacific region, and globally.

We are a full service firm, and our employment team is rated as one of the best in the country. Our reputation as leading health and safety experts has been built on our specialist knowledge of the relevant legislation and how it applies to specific industries. Health and safety issues often intersect with industrial relations, accident compensation and discrimination claims. Our team is trained to view matters within an organisation's industrial and commercial landscape, rather than focusing only on the legal issues.

Business NZ

BusinessNZ is committed to New Zealand's success – sustainable growth through free enterprise.

Advocating for enterprise and promoting the voice of thousands of businesses across New Zealand, we work for positive change through new thinking, productivity and innovation.

Our unique strength lies in our capability to engage with government officials, community groups, MPs and Ministers on a daily basis, ensuring business interests are represented throughout the policy making process.

What we do affects all New Zealanders, because when business is going well, it affects the wellbeing of our economy, our environment, our jobs, our communities, our families and our futures.

TABLE OF CONTENTS
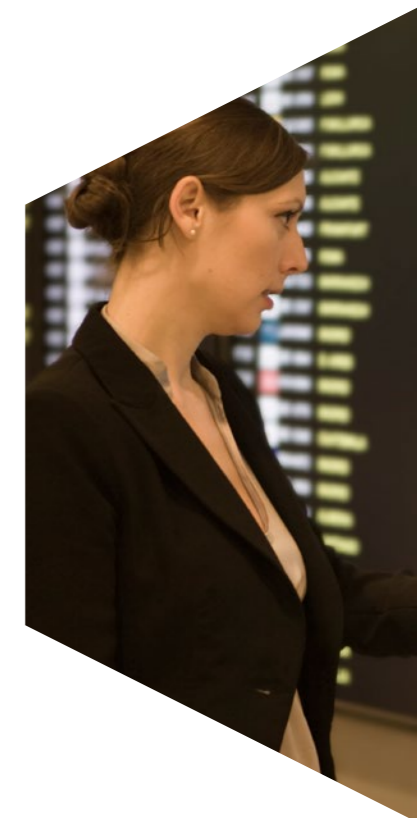
THE NEW ZEALAND EMPLOYER'S DUTY OF CARE ON WORKPLACE HEALTH & SAFETY WHEN EMPLOYEES TRAVEL

Overview Of The New Zealand Employer's Duty Of Care For Employees Who Travel Overseas For Work

1.1 The employment relationship imposes a duty of care on the employer towards its employee. The duty of care in an employer-employee relationship that arises at common law and under legislation, including the Employment Relations Act 2000 and the newly enacted Health and Safety at Work Act 2015 (HSWA).

1.2 The duties owed by employers, principals, suppliers, self-employed people and people in control of places encompass a category, entitled "persons conducting a business or undertaking" (PCBUs).

1.3 The focus is on taking reasonably practicable steps to ensure the health and safety of the PCBU's workers and other person who the PCBU may interact with. This duty can extend to situations where the employee is required to travel on work or is being seconded.

1.4 Under the HSWA the definition of workplace is very wide. It includes any place where a worker goes or is likely to be while at work or a place where work is being carried out for a business or undertaking. Whilst the HSWA does not provide for extra – territorial application (Worksafe will not have jurisdiction to investigate incidents that occur offshore for example) there are nevertheless reasonably practicable steps employers can take in New Zealand before workers travel, to fulfil their duty of care both under the HSWA and employment law.

1.5 This article provides a snapshot of the safety and health obligations of employers based in New Zealand when their employees are travelling overseas.
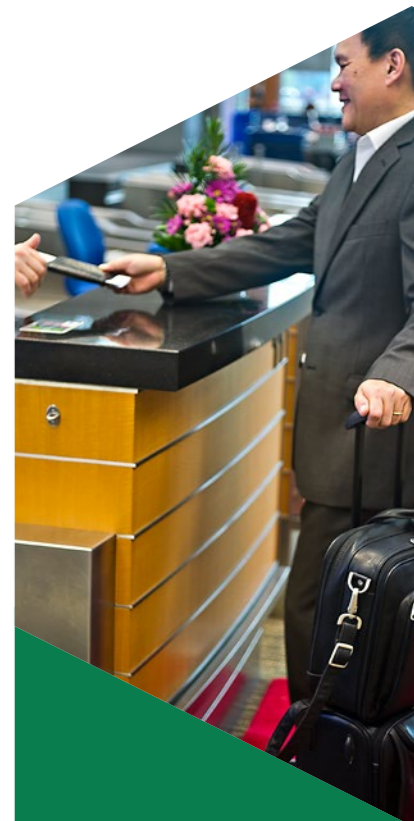
HEALTH AND SAFETY AT WORK ACT 2015 (HSWA)

Overview

2.1   In 2013 the Independent Taskforce declared that New Zealand's health and safety at work regime was failing. As a result New Zealand has undergone the biggest reform to its Health and Safety legislation in 20 years.

2.2   The HSWA was passed into law on 4 September 2015 and took full effect on 4 April 2016. The HSWA provides a framework to secure the health and safety of workers in workplaces to a level that is reasonably practicable.

2.3   The HSWA imposes a broad performance-based liability regime on employers, including the following:

(a)   imposing general duties of care on stakeholders, including employers, and principals vis-a-vis their employees, contractors and other people who are affected by their work; and

(b)   requiring employers to a identify and mitigate risks and hazards at a workplace.

2.4   A number of provisions promulgated under the HSWA expand and encompass a diverse range of matters, including but not limited to:

(a)   protecting workers (including employees and contractors) from harm to their health and safety through minimizing risk arising from their work environment;

(b)   effective compliance and enforcement measures;

(c)   promoting information, training and education in relation to work place health and safety;

(d)   placing obligations on the people who create risk and are best placed

to manage it (including Directors and officers of the PCBU); and

(e)   creating a framework for ongoing improvement for work place health and safety.

2.5   In addition to the provisions under the HSWA, Worksafe, the enforcement body for the HSWA produces a range of information and guidance to enable employees and employers comply with their health and safety obligations. The different types of guidance are:

(a)   Health and safety regulations which expand on provisions in the HSWA and set standards for minimizing risk and hazards. There are also detailed and specific regulations for particular sectors such as construction, agriculture and adventure activities. Regulations are legally binding;

(b)   Safe work instruments which set out the technical rules for health and safety. These are legally binding;

(c)   Approved codes of practice which are practical guides on compliance with legal duties under the Act and regulations. Although they are not legally binding they can be used as evidence in legal proceedings as to whether a duty or obligation under HSWA has been complied with;

(d)   Worksafe Guidance and information such as good practice guidelines, facts sheets, bulletins and alerts which give brief advice and report lessons from real life incidents to employers and employees. This guidance is not legally binding but is helpful to indicate good practice; and

(e)   Worksafe position statements which explain Worksafe's view on a particular health and safety issue (similarly not legally binding).

2.6   The self-regulatory yet penal nature of the HSWA imposes an onerous obligation on the employer. Employers are now obliged to continually monitor and assess risks in the workplace, and implement sufficient and appropriate controls to the workplace and its workers to manage these risks as far as reasonably practicable.

2.7   A violation of a provision of the HSWA may result in fines of up to $3 million for PCBU's, with individuals liable to fines of up to $600,000 or to imprisonment for up to 5 years. Importantly, fines cannot be insured against or otherwise indemnified.

2.8   The court can also make a number of orders when sentencing for offences including adverse publicity orders, orders for restoration, injunctions and training orders.

PERSONS WHO OWE DUTIES UNDER THE HSWA

3.1 The HSWA casts the duty of care over a wide net of people. There are four types of duty holders that have work health and safety duties:

  (a) Persons conducting a business or undertaking (PCBUs) – these may be individuals or organisations;

  (b) Workers;

  (c) Officers; and

  (d) Other persons at workplaces

Duties are not transferable or able to be contracted out of.

3.2 It is important to note that the statutory duty of care may be imposed on a person at any one time under two or more capacities. As such, an employer may incur liability in a dual capacity as a PCBU, as well as a worker or an officer. This has significant repercussions since the duty of care varies according to a person's capacity.

Given the fact that separate and distinct duties and liabilities may be imposed, an employer with multiple capacities must take comprehensive steps to ensure that a reasonable standard of care is met from all angles. This is especially since the employer's duty or liability will not be diminished simply because the duty is actually shared across different persons or under different capacities.

a) PCBU

PCBU's are 'persons conducting a business or undertaking'.

A PCBU with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace (including the entering, exiting, and anything arising from the workplace) is without risks to the health and safety of any person.

The definition of "workplace" has been simplified to mean a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

b) Officer

An officer is a person who occupies a position that exercises significant influence over the management of the business or undertaking. For example company directors, partners in a partnership and chief executives.

Officers must exercise due diligence to ensure that a PCBU complies with its health and safety obligations. They must exercise the care "a reasonable officer would exercise in the same circumstances, taking into consideration the nature of the business or undertaking and the officers' position and nature of their responsibilities".

Due diligence under the HSWA requires directors and officers to:

  (a) acquire and keep up-to-date knowledge of work health and safety matters;

  (b) gain an understanding of the operations of the organisation and the hazards and risks generally associated with those operations;

  (c) ensure the PCBU has appropriate resources and processes to eliminate or minimise those risks;

  (d) ensure the PCBU has appropriate processes for receiving information about incidents, hazards and risks, and for responding to that information;

  (e) ensure there are processes for complying with any duty, and that these are implemented; and

  (f) verify that these resources and process are in place and being used.

An officers' duty is not the same as that of a PCBU. Officers do not have to ensure the health and safety of the PCBU's workers directly. Rather, the officer must exercise due diligence to ensure that the PCBU is meeting its legal obligations under the HSWA. The due diligence duty complements and supports the primary duty of care of the PCBU – it does not replace it.

However, the due diligence duty places a positive duty on people at the governance level of an organisation to actively engage in health and safety matters, reinforcing that health and safety is everyone's responsibility. In doing this, the HSWA emphasises an increased focus on the role of directors and officers in relation to health and safety.

In 2013 the Institute of Directors and the Ministry of Business, Innovation and Employment (MBIE) issued the Good Governance Practices Guideline for Managing Health and Safety Risks (Guideline). While the Guideline records that "it is important to distinguish between the governance and management of an organisation," many of the recommended steps for directors contained in the Guideline might traditionally have been regarded as management tasks.

The Guideline imposes onerous obligations on directors and managers to understand the organisation's health and safety system and to make inquiries to ensure the system is operating effectively.

When making decisions about the allocation of resources or operational strategy, a prudent board or management team will consider the health and safety implications of such decisions and record that they have factored health and safety into their decision-making. Depending on the nature of the decision and whether legal advice is required or the matter is subject to litigation, the Board may want to consider whether to protect such records with legal privilege (which can be waived by the Board at a later stage).

c) Worker

Workers are defined in the Act as 'an individual who carries out work in any capacity for a PCBU.' Workers can be at any level and includes not only employees but contractors also.

Although a PCBU must so far as reasonably practicable, ensure the health and safety of workers, workers also have their own duties. Under the HSWA, they must:

  a) take reasonable care for their own health and safety;

  b) take reasonable care that what they do or do not do does not adversely affect the health and safety of other persons;

  c) cooperate with reasonable work place health and safety policy and procedure that workers have been made aware of; and

  d) comply with any reasonable instruction given by a PCBU.

d) Other persons at workplaces

Other persons at workplaces also have their own duties under the HSWA. They must:

  a) take reasonable care for their own health and safety;

  b) take reasonable care that others are not harmed by something they do or not do;

  c) comply as far as they reasonably can with the PCBU's health and safety instructions

  d) take reasonable care to not cause harm.

IMPACT OF THE HSWA ON EMPLOYEES WHO TRAVEL OVERSEAS FOR WORK

4.1   Whilst the easy argument to make is that a New Zealand employer's obligations under the HSWA should apply only to when the employee is working in New Zealand, the language of the HSWA does leave open a wider interpretation.

4.2   The HSWA defines the term 'workplace' to mean any premises where a person is 'at work', or is to work, currently works, or customarily works. This broad definition could mean that the employer's duty of care extends beyond the employee's primary workplace, such as the office, and extend to be any place where the employee is to perform his or work obligations. In addition, the term 'at work' is defined as all times at which the employee is performing his work obligations, 'wherever that work is carried out'.

4.3   Whilst the HSWA does not provide WorkSafe with the jurisdictions to investigate or prosecute incidents that occur overseas (subject to some exceptions), they may nevertheless consider what happens at an overseas workplace when looking at whether an employer has taken reasonably practicable steps in New Zealand.

4.4   Given this, it would be prudent for employers in New Zealand to act as if they are governed by the provisions of the HSWA and ensure that their employees who are required to travel on the job are also adequately protected with safe and healthy work practices.

4.5   Having said this, it is important to note that the employer's standard of duty of care under the HSWA is subject to what is 'reasonably practicable'. In relation to employees who have to travel overseas for work, there is thus a limit to the type and extent of safety and health measures an employer can undertake, compared to what can be controlled within New Zealand.

As such, it may not be 'reasonably practicable' to require an employer to ensure that the foreign workplace fulfils all the necessary requirements set out in the HSWA. There are inherent practical difficulties in doing so apart from the fact that foreign jurisdictions may have other health and safety laws relating to employees. Foreign workplaces are not within the control of employers based in New Zealand and therefore it is difficult for employers have a say in how these foreign workplaces are regulated.

4.6   However, where an employer has information relating to specific saftey or health risks in a foreign jurisdiction, the employer may bear an obligation to curb or minimise thier employees' risk exposure under New Zealand law.

Accordingly, it would be prudent for the employer to take all 'reasonably practicable' measures to either control the risks involved, or at the very least, prepare their employees for such risks. As an example, it will be good practice for employers to ensure that its employees are made aware of potential safety and health risks they might encounter when they travel overseas for work, or make arrangements to educate its employees to deal with such risks as and when they arise.

PRACTICABLE STEPS TO COMPLY WITH THE HSWA

5.1   It is important for individuals, especially directors and officers, to understand that they will have a personal obligation to exercise due diligence and keep people safe, and they may be personally liable if they do not.

Below are some practicable steps which entities should take to ensure they are in the best position possible to achieve compliance with the new health and safety regime.

Carry out an assessment of your current health and safety management scheme

5.2   Businesses should take the opportunity to assess whether their health and safety systems are still fit for purpose in light of the changes under the HSWA.

An assessment should include an evaluation into whether:

(a)   there are any gaps in the existing policies or systems that need to be remedied;

(b)   individuals who are directors or officers are aware of their duties and have the sufficient knowledge and skills to fulfil their obligations;

(c)   risk and hazard assessments are carried out periodically;

(d)   there are appropriate resources (such as checklists, guidelines and information sheets) available to workers and whether these workers know how and where to find them (including workers located overseas);

(e)   there is a culture where health and safety is supported and promoted through enabling worker participation, resources being allocated to health and safety initiatives and training and information being provided about specific health and safety risks;

(f)   there are mechanisms in place to track health and safety performance through lead and lag indicators; and

(g)   investigation reports are being written up as incidents arise, with legal advice being taken as to both potential liability, but also lessons which can be learned as part of a culture of continuous improvement.

5.3   Businesses should also consider their relationships with other stakeholders and enhance co-ordination between them to ensure that the duties under the HSWA are being complied with. It will be important to consider whether current consultation arrangements are adequate to allow for consultation with all 'workers' to whom a duty is owed about the risks associated with their work overseas.

Systems should also be in place to identify other PCBUs with whom a duty may be shared and ensure consultation occurs with those other duty-holders (such as host employers overseas) to achieve a co-ordinated approach to managing safety risks applicable to workers based or travelling overseas.
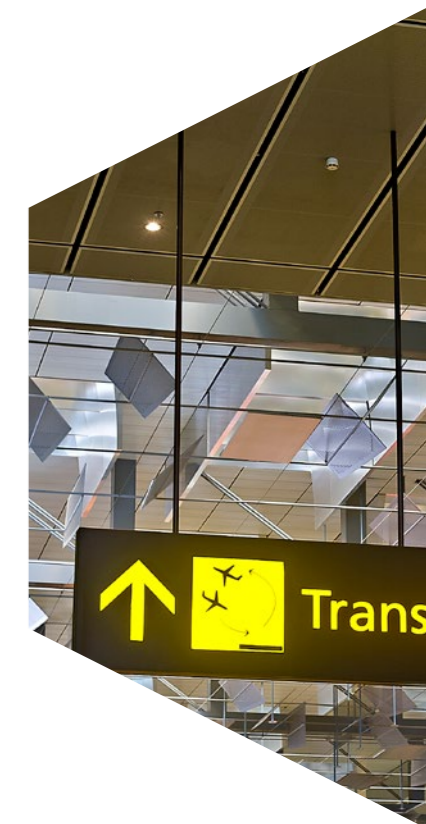
Implement or update your business travel policy

6.1   If you engage workers to travel and work in locations overseas, it is best practice to ensure that you have a comprehensive business travel policy which is easily accessible to workers. Specifically, this policy should outline the health and safety obligations that workers and the employing entity owe to each other. Particular attention may need to be paid to:

- Hazard identification and control procedures: among other things, these should contemplate risks to workers that are likely to arise when they are travelling or based in overseas jurisdictions (e.g. security, immunisation etc).

- Training Procedures: these should be targeted at ensuring the provision of necessary information, instruction and training for workers to understand the particular risks associated with their work, especially if they are required to travel overseas, and the control measures in place to enable them to perform their work safely and in safe conditions.

- Welfare facilities: arrangements should be in place to ensure that workers in remote areas or travelling overseas have access to adequate facilities (including access to drinking water, washing and eating facilities).

- Emergency plans: should be reviewed to ensure that the business can respond to emergencies involving workers who are not based in the main office or may travel nationally or internationally for work purposes. This will include evacuation procedures and processes for ensuring access to appropriate medical assistance as required.

- Procedure for isolated workers: arrangements should be in place to ensure that workers in locations remote from access to medical assistance are provided with effective means of communication.

6.2   A business travel policy should include details around an employer's obligation to book sound accommodation and flights for workers and provide appropriate travel insurance. This policy should also state who the employer's provider is to deliver pre-travel advice and emergency assistance abroad for workers.

Equally, a worker's own health and safety obligations should be set out in this policy. It should be clear to the worker what the employing entity's expectations are regarding their conduct at work while overseas.

6.3   We consider that a critical element for managing staff overseas is that the employer makes it clear to workers that they can make their own calls on health and safety matters and the employer will support these decisions so long as they are reasonable.

6.4   Overall, understanding the provisions of the HSWA and implementing them will mean some initial costs to businesses. As with any regulatory change, businesses need to understand the changes and if necessary, adapt their systems. Over time however, the regulatory and system changes are intended to create greater certainty and reduce on-going compliance costs for small and large low-risk businesses, and even make it easier to comply for high risk businesses.

CONCLUSION

The relevant work related legislation and common law both impose a duty of care on employers to take all reasonably practicable measures to ensure the safety and health of its employees.

Whether or not the employer's statutory or common law duty of care extends to employees travelling overseas for work depends largely on the particular circumstances of each case. Arguably in current times where it is common for employees to travel, there is high chance that the relevant legislation will apply, whether that be through the HSWA or employment law.

As such, local companies as well as foreign companies based in New Zealand must be mindful of their obligations, and as far as reasonably practicable, identify any possible or related risks that their employees may be exposed to overseas.

It is thus important for employers to institute proper corporate policies and procedures to address these risks and ensure that proper training procedures, welfare facilities and emergency plans are made available and readily understandable to their employees. Otherwise, an employer may find itself liable for both civil remedies and criminal penalties under New Zealand law.

The legal information in this paper has been prepared by Minter Ellison Rudd Watts. This short article only provides a brief summary of the state of the law relating to workplace safety and health laws in New Zealand with a discussion on the potential implications for employers where their employees are required to travel on work. This article is not legal advice and cannot be viewed as a substitute to obtaining proper legal or other professional advice.

NEW STUDY QUANTIFIES BENEFIT OF **PREVENTION PROGRAMMES**

PRE-TRAVEL HEALTH CHECKS & MALARIA PREVENTION PROGRAMS BENEFIT BUSINESSES & EMPLOYEES

Companies are increasingly sending employees on global assignments, but until recently little research had been done into the cost to businesses of failed assignments.

Amongst its findings:

- Average investment in an international assignment is US$311,000 per annum
- Cost of a failed assignment ranges between
- US$570,000 to US$950,000
- Pre-travel health check programs reduce the occurrence of failed assignments
- Investing in pre-travel health checks results in up to 2.5X cost savings
- Employee malaria prevention programs could reduce the number of fatal cases by 70%

Quantifying the benefits of implementing pre-travel health checks and malaria prevention measures for business travellers and international assignees, the report found the benefits of implementing a travel health prevention strategy significantly outweigh the operating costs of the program.

A medical check for travellers and international assignees aimed at identifying pre-existing medical issues before assigning employees to a foreign country. This ensures employees are fit for the proposed assignment and its working conditions. It identifies general and work-related health problems before the assignment begins:

- The cost-benefit analysis showed that $1 invested returns a benefit ranging from $1.60 (minimum scenario) to $2.53 (maximum scenario).

A malaria prevention program aimed at employees travelling and working in malaria-risk regions. Employees are given information before departure and receive prophylaxis medication and other technical protection means such as mosquito-nets, insecticide sprays and repellents as well as a malaria curative kit:

- The malaria prevention program reduced the occurrence of fatal cases by 70%. The benefits also outweigh the costs in the case of this program: For each $1 invested, the return was estimated at $1.32.

Laurent Fourier,
Director of the
International SOS Foundation,
spoke to the results of the study:

"Over the years we have released many reports on why an organisation has a duty of care – a moral, and at times legal, responsibility – to protect their people working overseas or on assignment. This study proves there are tangible commercial incentives to investing in preventive programs, in addition to fulfilling an organisations duty of care. Implementing quality, appropriate pre-travel health and malaria programs can save lives and cut costs. Businesses should not ignore these findings."

Marc De Greef,
Managing Director of Prevent said:

"This latest financial analysis proves there is a return on investment resulting from good preventive health and safety practices when managing mobile employees. Companies who invest in the prevention of health risks commonly experience many benefits. These prevention programs should be essential management practices for a sound business."

prevent:

CASE STUDIES

CASE STUDY 1

Cynthia L. is a 32-year old New Zealand woman working for an investment bank in Singapore and travels regularly around South East Asia for business. Having had asthma for most of her life, she has annual health checks and also pays attention to the information she receives about each country prior to her trip including air quality and local medical services.

During a business trip, while on her way to Dhaka, Bangladesh, she experienced an asthma attack due to fatigue, poor air quality and travel stress. she returned to the hotel, took her medication that she always carries with her, but her condition did not improve.

She contacted her company's 24/7 medical and travel security assistance company, and was advised by a doctor to monitor her condition closely, as no signs of severity were noted.

The next morning, she woke up with a bad cough, breathing difficulty and a slight fever.

Following the advice of the assistance centre's doctor, she was referred to a local hospital where she was examined, and prescribed with stronger asthma medications.

As her condition stabilised for travel, the medical assistance company helped Cynthia book a flight back to Singapore the day after. She was then advised to go to hospital for observation and was discharged the next day when her condition improved

Her company said that had she not have contacted the medical assistance company speedily, her condition would soon have deteriorated, necessitating air ambulance evacuation costing USD$56,000.

CASE STUDY 2

Robert C, aged 32, and David K, 47, are two employees of a US organisation and were in Myanmar for the first time.

Robert is an expatriate in Bangkok, while David is travelling from the UK. On the second day of their stay in Yangon, they took a taxi from the hotel to a restaurant in town. The local driver's car was an old imported vehicle that was not well maintained. Both Robert and David were seated at the back, without any seat belts. At a green light, a pedestrian crossed the poorly lit road and the driver swerved to avoid hitting him, resulting in a left-side impact collision.

The driver suffered minor head and chest injuries from the steering wheel. Robert suffered head trauma and and right elbow injury while David was knocked unconscious and suffered a head trauma and scalp laceration.

A passer-by helped Robert to assist David; the driver was in shock. Robert, who is trained in first aid, stopped the scalp bleeding and together with the passer-by, moved David out of the vehicle and took a taxi to Yangon General Hospital.

On the way, Robert contacted David's wife for help as neither of them had any emergency contacts and informed her of the hospital they were going to.

Upon arrival at the hospital ER, they found out its medical capability was limited, hygiene standards were poor, and there was a language barrier. David's wife eventually found and contacted the assistance company which arranged a bed site visit the same evening and a medical evacuation to Bangkok the next day. Both Robert and David made a full recovery.

Had David and Robert have emergency phone numbers on their mobile phone, they could have contacted the assistance company immediately. Also, had their company have a travel policy in place, they might not have considered using a taxi without safety belts. Thankfully, the First Aid Training Robert received through his company proved to be very helpful.

CASE STUDY 3

Simon T. is a 57-year old New Zealander working as a consultant for a manufacturing firm. His company is planning to set up a new production site in the Batangas area, Philippines, and has sent him there for a site inspection.

On the day of his departure, Simon woke up to a throbbing headache but proceeded with his flights to Batanguas. His headaches worsened along the journey. Upon arrival at the hotel, he went straight to bed and slept until the next morning. When he awoke, he was unable to stand and articulate, as a result of a developing stroke.

Back in New Zealander, his wife contacted his company as she could not reach him since the time he was scheduled to arrive at the hotel. His company used their traveller locater system and confirmed that Simon had arrived in Batangas. As he did not respond to text messages sent to his mobile phone asking him to report in, his company contacted the hotel front desk. He was found semi-conscious in his room and was immediately taken by ambulance to the nearest hospital.

As his condition deteriorated, his company's medical assistance company decided to move him to a recommended local hospital. The next day, a medical evacuation was arranged to fly him back to New Zealander where he received intensive care and rehabilitation. Had he not been signed on to the company's travelling tracking and medical assistance services, precious time would have been lost to locate him and manage his condition.

TRAVEL RISK MITIGATION CHECKLIST

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

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

The checklist is divided into five major parts:

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

Additional checklist items should be considered as necessary.

For more information contact apacinfo@internationalsos.com

How to use this checklist

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

1. Review each item:
   - Think of how the item can be applied
   - If clarification is needed, ask the relevant manager
   - Check Yes or No for all items
   - Add comments, suggestions or reminders under Comments

2. Individually review items marked No and mark the ones that you consider are critical or important as Priority

3. Prepare suggestions immediately after completion of the assessment. These suggestions should address what action should be taken, by whom and when

4. If necessary, seek clarification from travel safety, health, security and risk management specialists with specialised knowledge in applying these competency items

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Person completing checklist:	Date:
Organisation:	Location:

PART 1: POLICY

	YES	NO	PRIORITY	COMMENTS

1. Has an organisational policy been developed and implemented that aligns travel and assignment safety, health and security with the organisation's objectives?

2. Has the policy statement been signed and dated by top management?

3. Is the policy statement integrated into the organisation's broader policiesv, in particular the occupational safety and health policy?

Policy: Statement of Intent

4. Does the policy include a statement of intent addressing the following?
   - Aims and objectives
   - Compliance
   - Threat and hazard identification and risk assessment
   - A commitment to prevention, protection, mitigation and response to incidents

Policy: Organisation

5. Does the policy have an organisation section that defines key roles and responsibilities, and who will carry out specific tasks?

6. Does the organisation section describe the delegation of certain tasks to competent persons or an outside organisation?

Policy: Arrangements

7. Does the arrangements section describe mechanisms to deal with general issues related to travel and assignment safety, health and security?

Policy: Arrangements (Continued)

8. Does the arrangements section define special mechanisms to deal with the identification of specific threats, hazards and the management of risks identified during the risk assessment and control measures?

Policy: Review and Modification

9. Is the policy periodically reviewed and modified as necessary?

PART 2: ROLES AND RESPONSIBILITIES

Roles and Responsibilities: Senior Management

10. Is a clear policy with measurable objectives implemented and reviewed?

11. Are there clear lines of responsibility indicated for senior management?

12. Is line-management responsibility known and accepted at all levels?

13. Are responsibilities defined and communicated to all relevant parties?

14. Are on-location organisational policy and procedures integrated with local arrangements? For example:

    - Notification and approval of incoming assignees or visitors
    - Safe systems of work
    - Emergency procedures

15. Are adequate resources available allowing persons responsible for travel and assignment safety, health and security to perform their functions properly?

**Roles and Responsibilities:
Manager Responsible for Travel and Assignment Safety, Health and Security**

16. Does a manager (whether centrally or on location) have responsibility and accountability for the development, implementation, periodic review and evaluation of the system to manage travel and assignment safety, health and security?

17. Is a manager ensuring that a competent person plans work-related travel and assignments?

Roles and Responsibilities: Workers Travelling on International Assignment

18. Do workers actively cooperate in ensuring that travel and assignment safety, health and security policies and procedures are followed?

19. Do workers maintain situational awareness and report to their line manager (immediate supervisor) any changing situations which they perceive could affect their safety, health or security?

20. Are workers knowledgeable of, and do they comply with, national occupational safety and health legislation and the organisation's occupational safety and health directives?

Roles and Responsibilities: Contractors

21. Are arrangements made with all contractors to ensure that responsibilities are assigned and understood to address the safety, health and security of contractors, their employees and sub-contractors for travel and assignment or when carrying out work for the organisation?

22. Are contractors competent, and do they have access to resources to function in a safe, healthy and secure manner?

PART 3: PLANNING	YES	NO	PRIORITY	COMMENTS

Planning: Initial Review

23. Has an initial review been conducted, including identification of applicable legislation, administrative rules, codes of practice and other requirements (such as insurance requirements) the organisation has an obligation to comply with - addressing travel and assignment safety, health and security - both in the organisation's home country as well as in destination countries?

Planning: System Planning, Development and Implementation

24. Has a plan been developed and implemented addressing the organisation's travel and assignment safety, health and security system? Is this plan in compliance with national laws and regulations in the organisation's home country as well as in countries where workers may travel or be assigned?

25. Does the scope of the planning process cover the development, implementation and evaluation of the management of the travel and assignment safety, health and security system?

Planning: Travel and Assignment Safety, Health and Security Objectives

26. Are there measurable objectives and key performance indicators in line with the policy?

PART 4: IMPLEMENTING	YES	NO	PRIORITY	COMMENTS

Implementing: Training

27. Do training programs address the following?
    - Workers and their dependents either travelling or on assignment
    - Individuals organising travel
    - Other relevant internal stakeholders

    Do these programs take into account the profile of the traveller, location-specific information as well as ethical and cultural considerations?

28. Is adequate training provided to ensure workers and contractors:

29. Are competent to carry out their work in a safe, healthy and secure manner?

30. Can address travel and assignment-related risks prior to and during travel, while on assignment and upon return?

31. Are training programs instructed by competent persons?

32. Do they include relevant risk, induction and refresher training for all workers and contractors as appropriate?

33. Do training programs include whom to contact in case of an incident, procedures to follow and post-incident reporting requirements?

34. Do training programs include a mechanism to evaluate, assess and certify whether the participant has developed the necessary competencies?

	YES	NO	PRIORITY	COMMENTS

Implementing: Medical and Security

35. Is there a process that ensures the following?

- All relevant workers are medically fit to travel
- (having completed a pre-travel medical evaluation where appropriate)
- All necessary medications are prescribed
- Vaccinations are up to date

36. Is a briefing on safety, health and security arrangements conducted for all relevant workers and contractors?

37. Is adequate 24/7 security provided, where appropriate, to support individuals in their movement to and from location and in the functioning of their work?

38. Is there an effective system to monitor the location of relevant workers, to be used when indicated by the risk level protocol?

Implementing: Documentation

39. Is there a system documenting that workers and contractors have been made aware of associated risks, and measures to avoid or mitigate these?

40. Is travel and assignment safety, health and security documented, and are the documents maintained in a systematic manner?

41. Are all documents in the system clearly written, understandable and easily accessible for those who need to use them?

	YES	NO	PRIORITY	COMMENTS

42. Are specific documents, especially site-specific documents, translated into a language the workers and visitors will easily understand?

43. Are relevant documents periodically reviewed, revised as necessary and traceable?

44. Are affected workers aware of documents relevant to them, and do they have easy access to these?

Implementing: Communications

45. Are relevant parties kept informed about travel and assignment issues as an integral part of the travel and assignment safety, health and security system?

46. Are resilient procedures established for adequate two-way communications between the organisation and the travellers and assignees?

47. Are there mechanisms to inform workers and dependents of developing situations and potential increased risk levels where they are travelling or where they are assigned, including access to a 24/7 reliable and timely information source?

48. Are effective communications maintained between all parties – addressing work practices as well as prevention, control and emergency procedures?

49. Are workers encouraged and regularly consulted on travel and assignment safety, health and security issues?

50. Is there a mechanism to gather, consider and share ideas, concerns and good practice suggestions from workers, visitors and dependents?

Implementing: Threat and Hazard Identification and Risk Assessment

51. Has the scope of threats, hazards and assessed risks been defined, taking into account elements such as the following?

   - The geographic perspective
   - The environment
   - Travel and work-related processes and activities, such as commuting from a hotel to a work site

Implementing: Threat and Hazard Identification and Risk Assessment

52. Are up-to-date threat and hazard identification and risk assessments carried out and appropriate for every travel and assignment destination?

53. Do they include measures to prevent, eliminate or control travel and assignment risks for workers and their dependents?

54. Has a determination been made during the risk assessment who could be harmed?

55. Have the risks been evaluated?

56. Is there a system to establish types and categories of risk levels and protocols that require specific actions, including measures to address high-risk locations and escalating risks?

57. Are risk prevention and control measures implemented in the following hierarchical order?

   - Eliminating the risk
   - Controlling the risk
   - Minimising the risk

58. Have the risk assessments been regularly reviewed and updated as necessary, taking into account significant changes impacting the risk?

Implementing: Emergency Management

59. Are global and local arrangements in place to manage an emergency or crisis, including preparedness, mitigation, response and recovery?

60. Does the organisation have a written emergency action plan which describes the authorities and responsibilities of key personnel, including the emergency/ crisis management team?

Implementing: Emergency Management

61. Does the emergency/crisis plan cater for all workers including travellers, assignees, dependents and local employees?

62. Does the organisation have a multidisciplinary emergency/crisis management team, led by the senior manager and supported by a designated crisis coordinator and a communications professional (or their designates)?

63. Can the emergency/crisis management team call on other functions (as needed)?

64. Has the organisation assessed its capacity to respond to a critical incident including emergency medical plans?

65. Does the organisation have access to information and adequate medical and security support on location, including local or deployable dedicated resources, local medical, security and emergency services, and external providers?

66. Do workers and their dependents on work-related travel or international assignments have access to adequate health care and medical emergency plans (including 24/7 medical contact)?

	YES	NO	PRIORITY	COMMENTS

67. Are information and communications protocols in place factoring in the above-mentioned response components?

Implementing: Procurement

68. Does the organisation provide regular training for emergencies, including exercises in preparedness, mitigation, response, and recovery procedures?

69. Are goods, equipment materials or services for use prior to and during travel or assignment specified to incorporate safety, health and security requirements?

PART 5: EVALUATING AND ACTION FOR IMPROVEMENT

70. Are these specifications in compliance with national legislation, and the organisation's policies and procedures both in the organisation's home country, as well as in other locations where workers may travel or be assigned?

71. Are arrangements made to see how effectively the organisation is carrying out travel and assignment safety, health and security policies, arrangements and procedures?

72. Are reports submitted and evaluated on achieving key performance indicators?

73. Are travel and assignment related incidents including accidents, ill health, and security events reported according to a fixed reporting matrix and investigated?

74. Does the organisation require the contractors to undertake performance reporting, including reports on incidents such as accidents, exposures, injuries, illness, near misses and security considerations?

	YES	NO	PRIORITY	COMMENTS

75. Are travel and assignment safety, health and security arrangements internally and externally audited?

76. Is there a provision for management to review the arrangements, procedures and evaluation reports for travel and assignment safety, health and security?

77. As a result of the evaluation mechanisms, are corrective actions implemented where appropriate?

Evaluating and Action for Improvement: Continual Improvement

78. Is there a dynamic cycle of continuous improvement addressing the needs of stakeholders?

COMPILED AND PRODUCED BY THE **INTERNATIONAL SOS FOUNDATION**

KEY CONTRIBUTORS

Paul McKay

Manager Employment
Relations Policy

Business New Zealand

Rebecca Malzacher

International SOS Foundation

Aaron Lloyd

Partner

MinterEllisonRuddWatts

Acknowledgements

The International SOS Foundation is grateful for the participation of the individuals who completed the traveller health, security and safety survey and the 15 Duty of Care and travel risk management experts who drafted and ratified the enclosed framework checklist.

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