10 Things to Know About Duty of Care and Travel Today

Employment and Labor

There's no doubt that the current travel landscape has never been more complicated, unpredictable, or risky. In addition to having to navigate inconsistent and often complex jurisdictional responses to the COVID-19 pandemic, organizations across the globe must now consider new and emerging threats to their traveling employees' health and safety, including extreme weather events, rising geopolitical unrest, and growing cybercrime.

Is your company ready to manage the risks associated with employee travel in 2022 and beyond? Chances are, the answer may be largely no.

Today's travel landscape is volatile

As more employees return to travel this year, many companies are back to treating the opportunity like it's 2019, either following a pre-COVID travel management model or, in some cases, no model at all. Unfortunately, the potential legal and reputational consequences of such an approach are significant. Today's travel landscape is more volatile than ever before, and organizations face heightened threats to personnel health, data, and cyber security, business continuity, and reputation, all of which can affect legal, compliance, and [duty of care](#) responsibilities.

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While travel risk management (TRM) is not a new concept, there is an ever-growing expectation that businesses requiring their employees to travel have an advanced TRM policy in place. To that end, the International Organization for Standardization (ISO) created a guide to assist employers with their TRM efforts. The ISO 31030, launched in September 2021, establishes a global standard for TRM and provides a framework for good practice.

It's no secret that employers have a duty of care or legal obligation to prevent their employees from reasonably foreseeable risks. This includes putting sound, strategic, and watertight steps in place to safeguard the well-being of employees who travel.

More recently, duty of care has expanded to also include a legal — and moral — obligation to protect family members who accompany traveling employees. In an era of rapidly increasing "bleisure" travel and "workcations," where employees combine work-related travel with leisure travel and may bring family members along, this obligation has become particularly significant.

General counsel are uniquely positioned to play an important oversight and coordination role in TRM policy development, ensuring line-of-sight accountability and executive engagement to drive implementation across the enterprise.

Use this list of practical considerations for all GCs about duty of care as it relates both to business and leisure travel:

1. Travel risk management (TRM) must be treated like any other business imperative.

Oftentimes businesses put substantial rigor around priorities such as financial management or operational efficiency, yet neglect to conduct due diligence around TRM. A good TRM program must be prioritized by leadership, resourced adequately, and managed effectively. It must be integrated into business continuity programs, including crisis management and issue-escalation protocols. Failure to do so may increase the risk of litigation if there is a travel-related incident, and lead to significant reputational damage.

2. Ignorance of the ISO 31030 is unacceptable in today's travel climate.

And it won't help you to avoid legal risk should your employee experience an emergency while traveling. Meeting the ISO standard promotes safety and security for travelers, providing reassurance that "foreseeable risk" has been addressed. Companies should, at the very least, be aware of ISO 31030 and work towards meeting the standard. Failure to do so could leave you vulnerable to litigation should an employee travel-related incident occur.

3. A good TRM policy should be stand-alone.

It must address the specific needs of the individual traveler, including where they will be going and what type of activities they'll be participating in. It must also be traveler-approved, and include an education process, ensuring full understanding of tools used to educate, locate, and communicate in an emergency.

4. Most — but not all — travel risks are foreseeable.

Remember that duty of care begins before the trip. When considering "reasonably foreseeable risk," companies must focus on assessing the traveler's individual risk profile.

In addition to assessing individual risks, risks associated with the intended destination, and the level of support available, should also be assessed. When organizations manage their travelers with a risk-focused, education-led TRM program, they demonstrate duty of care. And, when a traveler experiences an incident, mistake or vulnerability, and the company has a feedback process, they have shown due diligence.

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5. Education is paramount.

The tools that employers put in place to safeguard their employees are only effective if there is uptake by the traveler. It is incumbent on employers to verify that their employees are aware of potential hazards associated with their destination and how the TRM tools can assist them. Failure to do so can increase the risk of litigation in the event of a travel-related incident.

6. Some small foreseeable risks can become serious quickly. How you respond is critical.

Take, for example, an employee who attends a business development symposium hosted at a mountain resort in North America who is attacked by wildlife during a walk to the venue. Or an employee who falls off a boat during a team-building cruise event and drowns.

A good TRM program should include guidance on how a company should handle this type of emergency, including crisis and escalation protocols. At the same time, employees should not only be aware of the potential dangers of a particular location or activity, but also have access to resources to request assistance, such as a 24/7 toll-free telephone number and a monitored email address to which they can communicate needs.

7. Technology can be your best friend. Make sure it's part of your TRM.

Many TRM solutions utilize geo-location "tracking" tools that must be accepted by the end-user in order to work. Employees should be encouraged to turn on the tracking feature as soon as they arrive at their destination as there can be safety concerns in and around airports and to and from transit hubs. As companies increasingly allow employees to manage their own travel arrangements, it is important that employers ask for a copy of their itinerary and then review both the itinerary, the corporate travel policy, and TRM tools with the employee.

8. Your TRM policy must be easy to access.

Assure the policy is readily available while the employee is engaged in travel, with resources and assistance options clearly indicated. As people's level of comfort using "smart" technology has grown, so too has the availability of sophisticated resources available to employers to assist them in meeting their duty of care obligations. These include robust artificial intelligence-driven solutions to optimize travel risk intelligence, traveler tracking, traveler alerting, and traveler assistance — all in real time, at the touch of a button.

9. Strategic communication matters.

You need to take into consideration your audience's preferred channels of communication to effectively communicate the details of your corporate travel policy to employees. At some companies, younger staff members may be more inclined to listen to an in-person explanation of the benefits of the corporate policy, while older staff may prefer to receive this communication electronically. The reverse may be true at other companies!

Distribute the information through multiple communication channels to appeal to the widest audience possible. Solicit feedback and invite questions to ensure internal communication has been properly understood. Utilize your organization's communications department to support the writing and presentation of the materials, and consider incorporating digital technologies, such as online survey tools, to measure and track audience understanding and uptake of the messages.

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You may want to ask that staff sign a sheet at the conclusion of an in-person meeting or mark a check-box at the end of an electronic presentation, attesting to the fact that they received this information.

10. Consider family members of "bleisure" and "workcation" travelers

With the rise of bleisure travelers and the new practice of companies allowing (and even funding) employees to spend a short period of time working from anywhere in the world, often with families in tow, organizations must not forget their duty of care responsibilities to all involved. Failure to do so may expose them to significant incident causation and loss. Not managing risk is also considered gross negligence.

While it is impossible to predict every risk or potential hazard, it has become easier to safeguard employees and their families by working with travel risk experts and travel assistance providers. Now more than ever, TRM requires a business-driven approach focused on identifying and addressing issues as opportunities.

[Grace Patenall](#)

General Counsel

World Travel Protection Inc.

Grace Patenall, LLB, MBA, is global chief legal officer at [World Travel Protection](#) (WTP), a subsidiary of the Zurich Insurance Group, and has been practicing law for over 20 years. Following a decade in litigation as in-house counsel for a prominent insurance provider, she moved into private practice, working for one of Canada's largest law firms in the financial services group, with a focus on insurance regulatory matters. She joined WTP in 2017 as general counsel.

In her current role, Patenall leads and manages legal operations for WTP's offices in Australia, the United Kingdom, and Canada, which collectively provide coverage to more than 20 million business and leisure travelers per year, and 24/7 access to a team of medical, security, and operational experts who assure travelers are looked after anywhere in the world.

A devoted mother of three, she is passionate about giving back to the community, contributing her leadership skills to student associations at the Rotman School of Management at the University of Toronto, and as a board member for the East End Children's Centre in Toronto.