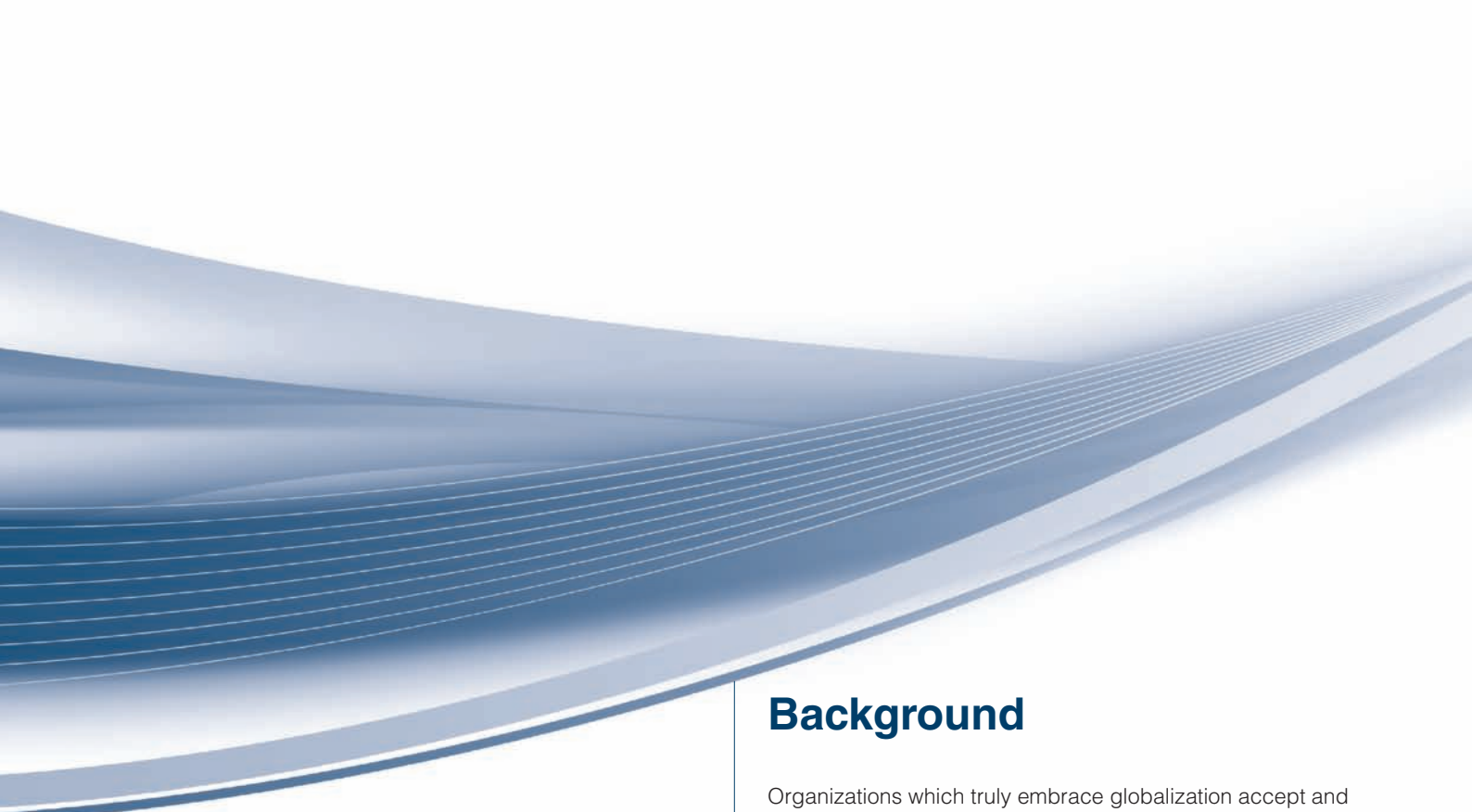




**Duty of Care  
of Employers for Protecting  
International Assignees, their Dependents,  
and International Business Travelers**



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## Background

Organizations which truly embrace globalization accept and promote frequent mobility among their key employees, whether through international assignments or business travel. Business travel is increasing in range and frequency, as multinational companies seek out markets that are not so close to home - more and more are now going to far-flung places. Even in tough economic times, organizations forge ahead with essential travel and assignments. This inevitably brings on more risk to an organization's most valuable asset - its employees. Why is it so risky and are organizations fully aware of how these risks can affect their Duty of Care?

Away from familiar surroundings, employees may encounter precarious environments that present increased and unfamiliar threats to their health, safety, and security. This heightens the corporate liability of employers, who have a legal, fiduciary, and moral Duty of Care for their employees. The employment relationship, in general, includes an obligation of Duty of Care of employers for the health, safety, and security of their employees. This obligation extends to employees and to their dependents who are abroad as international business travelers or as short- or long-term assignees. Host country circumstances may differ by the types of threats – including terrorism, lawlessness, crime, political instability, natural disasters, infectious diseases, travel-related sickness, travel accidents, and common travel problems. This basic unfamiliarity makes it more difficult for employees to respond appropriately to the threats they face, and further increases their exposure to risk and potential harm.

Many organizations are operating across borders without fully understanding the obligations that surround Duty of Care. In essence, a full view of this important component has fallen off the radar screens of some organizations.

## Purpose & Significant Findings

A 2009 White Paper published by International SOS entitled, "Duty of Care of Employers for Protecting International Assignees, their Dependents, and International Business Travelers," explores employers' Duty of Care obligations as it applies to employees on cross-border assignments. This topic fills a void, as it has mostly been neglected in the literature on employment matters, in spite of its significant implications for employers. The topic is treated from multiple perspectives:

- First, it focuses on Duty of Care from a global rather than a specific geographic view-point and emphasizes the diversity of treatment in multiple countries, whether they are developed or emerging markets. This section encompasses a review of pertinent legislation and case law summarizing 36 cases in the following countries: Australia, Belgium, Canada, France, Germany, the Netherlands, Spain, the United Kingdom and the United States. Also included is a review of how the International Labor Organization (ILO) conventions and the European Union (EU) directives support Duty of Care.
- Second, it pulls together and connects Duty of Care responsibilities from different business areas, functions and roles in an organization. Various decision-makers including senior management, managing directors, general secretaries, corporate security managers, risk managers, travel managers, medical directors, insurance managers, legal managers, heads of HR, global HR, and line managers all share responsibility for Duty of Care, but sometimes objectives clash. There is a lack of awareness of the full extent of their international Duty of Care, as well as a lack of information that would help support it.
- Third, it brings attention to the topic from both a legal and cost-benefit analysis perspective, and also points out that Duty of Care is a moral and ethical matter, and therefore an integral part of a company's corporate social responsibility ("CSR") framework. There is both a "carrot" and a "stick" to an employer's Duty of Care. The "stick" is meeting legal compliance and reducing/avoiding negligence and liability. The "carrot" is employee well-being, business continuity, reduced costs (for avoidable expenses like medical care,

evacuation, and productivity loss), protecting the reputation of the organization for recruitment and retention purposes, and increasing employee well-being and productivity by avoiding illness, injury, and possible death.

Several Western countries have developed legislation and derivative case laws that reflect employers' expanded Duty of Care responsibilities, and courts are increasingly favoring employees. Although there is some legal communality, the treatment of the subject is very diverse in terms of application. Internationally, the legal issues become more complex - and the legal outcome more unpredictable as a result of the lack of clarity in regard to jurisdiction and choice of law. To a greater extent, stakeholders insist that it is the employer's corporate social responsibility to recognize and fulfill the Duty of Care. As with all material business decisions, it is incumbent upon senior management to take their Duty of Care responsibility into account, conduct the cost-benefit analysis of complying with their Duty of Care, and make the appropriate business decisions.

This White Paper recommends that global employers develop an integrated and strategic risk management strategy for international business travelers and assignees. Arguments for prevention far outweigh the costs of implementing a program to prevent employee injury or death, litigation, or loss of corporate reputation.

The responsibility for developing an integrated risk management strategy that truly embeds itself into a corporate culture cannot be delegated or outsourced. However, the complexity of meeting the standards imposed by the Duty of Care makes it inevitable that employers utilize the services of companies that provide international security and medical assistance for support. A list of best practices around one component of Duty of Care - travel risk management - is explored.

Prevention and mitigation of risks to international assignees is the responsibility of an enterprise, along with the cooperative and integrated efforts of its senior managers, line managers, risk managers, and global HR unit. To ignore this issue is to ignore legal, commercial, fiduciary, and social responsibilities.

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**Threats and risks faced by international business travelers, expatriates, and their dependents traveling abroad are illustrated in the following examples:**

**International business travelers' incidents**

- **Heart attack on an international flight**—A frequent French business traveler, on his way back home from a business trip to Shanghai, suffered a mild heart attack and stroke mid-flight. His employer, in order to save costs, had required employees to fly economy class and canceled the company's annual membership for emergency medical services for its business travelers.
- **Caught in the riots**—Three Danish business travelers were stranded when riots broke out in Oran, Algeria. Because of the recent controversy about the publication of cartoons in a Danish newspaper, they were traumatized and concerned about their safety, and locked themselves in their hotel room.
- **Lost during a terrorist attack**—An engineer from the U.K. was due to stay at a Mumbai hotel attacked by terrorists. A flight delay caused him to miss his connecting flight and he arrived a day late in India. Unable to track his travel itinerary, his whereabouts were unknown by his company for more than 24 hours.
- **Car accident after an overnight flight**—An American businesswoman landed in London after an 11-hour overnight flight from San Francisco. She drove her rental car from the airport to her mid-morning business meeting in Wimbledon. Tired from the overnight travel and unfamiliar with driving on the left side of the road, she was involved in a serious car accident.

**International assignees' incidents**

- **Missing persons after the tsunami**—After the tsunami tragedy along the Indonesian coast, a global company could not immediately account for three expatriates or their families who had taken a Christmas holiday in the region.
- **Wrongful detention**—The wife of an expatriate was falsely accused of shoplifting in a major department store in Dubai. She was detained for several hours by security without being allowed to contact anyone for assistance.
- **Swine flu outbreak**—A multinational company with international assignees in Mexico was concerned about its employees as the news broke about the swine flu virus killing several people in the country.
- **Fatal company event**—A few employees and a contractor of a leading IT and communications company organized a boat party to celebrate the success of their partnership in Bahrain. The boat capsized and an employee and his wife, along with two contractors, drowned. Several others on the boat were injured.

Written by Dr. Lisbeth Claus, Ph.D, SPHR, GPHR, a Professor of Global Human Resources at the Atkinson Graduate School of Management of Willamette University in Salem, Oregon (U.S.A.)