

Managing travel risks for employees (Toughest HR Question)

by Ryan Treleven

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Question: We often send employees around the country and across the world for business. What obligations do we have to ensure the worker is safe while travelling?

Answer: Some commentators have struck an alarmist tone, pointing to risks posed by terrorism, natural disasters and civil unrest. While these examples underscore the potential severity of the issue, they fail to acknowledge the more common risks. The truth is, whether on a trip to North Korea or across town, there is risk associated with travel that employers cannot ignore.

To identify and minimize risk, a best practice is to design, implement and consistently apply a travel risk management policy (TRMP). This will not only help protect employees from a range of travel risks but demonstrate the employer has turned its mind to the issue of protecting employees during business travel.

Criminal liability

Since 2004, when Bill C-45 was enacted, an organization and its senior officers can be held criminally liable for their acts or omissions as they relate to occupational health and safety.

The Criminal Code of Canada states: “Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.”

The potential consequences of conviction under the Criminal Code are extreme, including life imprisonment for individuals and unlimited fines for corporations. The Ontario Court of Appeal has accepted the concept of “corporate capital punishment” by endorsing fines that could, in appropriate circumstances, force an offending company into bankruptcy.

With that said, the code only applies to conduct representing a marked and substantial departure from that of a reasonably prudent employer. Charges are therefore reserved for morally blameworthy conduct that amounts to wanton and reckless disregard for the lives and safety of employees.

OHS legislation

Separate and distinct from Criminal Code liability are an employer’s obligations under provincial occupational health and safety legislation. In Ontario, the Occupational Health and Safety Act (OHSA) defines workplace as “any land, premises, location or thing at, upon, in or near which a worker works.” In other words, as a worker travels so too does the workplace, as well as the employer’s duty to keep that workplace safe and free of violence, harassment or bullying.

In a recent Ontario Court of Justice decision, an employee who was required to travel through Ontario was killed when he interacted with a piece of equipment known by his employer to be faulty. In making a finding against the employer, the court reiterated that an employer has a duty to not send an employees into a dangerous situation.

In contrast to criminal offences — which require morally blame worthy conduct and a “marked departure” from the reasonable employer — under the OHSA, the intentions of the employer are not relevant and the threshold for a violation is much lower. An employer will be found to have violated the OHSA if it fails to meet a reasonable employer standard.

The corollary is an employer can escape OHSA liability through a due diligence defence by demonstrating it took all reasonable precautions. OHSA obligations are typically enforced through fines, to a maximum of \$25,000 per offence for individuals and \$500,000 per offence for corporations. In extreme circumstances, individuals can be sentenced to up to 12 months in prison.

Civil action

Employees injured in the workplace may be entitled to workers’ compensation benefits, in which case the employee is barred from bringing a legal action against the employer. This includes an employee injured while on business travel outside the province and internationally for up to six months in Ontario, for example (or as extended by the province’s Workplace Safety and Insurance Board).

If an employee is injured in the course of business travel at a time when her employer is not registered and in good standing with the workers’ compensation board, the employee may bring a civil action against her employer.

An employee travelling internationally is subject to the laws of the land. Many countries have specific legislation addressing an employer’s duty to protect its employees, including for example, the United Kingdom’s Corporate Manslaughter and Corporate Homicide Act. Under this act, an employer may be held criminally and financially liable for a failure to provide for the security and safety of its employee.

Given the prominence of London as a business centre and transportation hub for air travel, this act is potentially applicable to a vast number of employers.

TRMPs

So what can an employer do to manage this risk? One important step is implementing a comprehensive workplace TRMP, tailored to the specific workplace. An effective policy should address at least three core principles:

Proactive assessment of risk: A common mistake employers make is believing their group insurance plan or employee assistance program (EAP) sufficiently addresses business travel needs. However, these programs are only engaged after an incident occurs.

An effective TRMP should be proactive in managing the risks posed by business travel and include the following components:

- **Information package/briefing:** Employees should be provided with an information package or briefing before they depart, including a detailed itinerary, contingency plan and information regarding specific risks of the destination or travel route.

For employees travelling within Ontario or Canada, 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 employee will be travelling through remote regions without dependable mobile service.

International travel gives rise to additional considerations, including: the current political and weather 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 the Canadian Centre for Occupational Health and Safety and the government of Canada's travel advisories directory and embassy and consulate directory.

- Check-in protocol/employee tracking: Regardless of where an employee may be travelling, it is important the employer know her location at all times, particularly in the case of an unexpected emergency. Depending on the situation, the appropriate protocol could be as simple as sending an email upon arrival, up to and including GPS tracking on employees and equipment.
- Technology assessment: Consider what technology or other safety equipment are necessary. Smartphones 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 employee is travelling. If not, consider a contingency communication plan.

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 players or departments.

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. An employer should ensure key players have the skill and ability to carry out the policy.

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. It should also include a feedback component so it can be improved on an ongoing basis.

An employee should sign an acknowledgment confirming her understanding of the policy prior to departure, including an acknowledgement that a violation of the policy may result in discipline, up to and including termination.

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