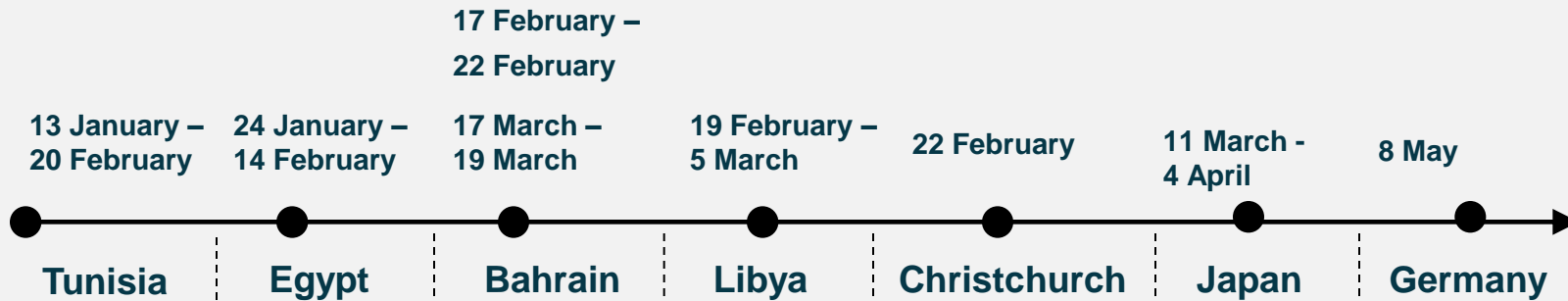


# Duty of Care: Vigilance in Times of Crises

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# Lessons Learned... From a Volatile World!



# Duty of Care

Simply put, 'Duty of Care' is a company's obligation to protect its employees from risks.

## Palfrey-v-Ark Offshore Limited

- Employee of UK company dies from Malaria contracted whilst on assignment in West Africa
- Court awarded damages for breach of Duty of Care despite employee's knowledge of the risks and his failure to seek advice.

## Enlow et al. v. Union Texas

- Survivors of an attack in Pakistan in which a number of employees were killed sued an oil company alleging breach of Duty of Care.
- Jury ruled against the complainants as the murder was not reasonably foreseeable and the employer has taken adequate safety precaution steps including hiring a private risk management firm.

## Saint-Lô Tribunal des affaires de sécurité sociale

- Employees working for a French company in Karachi, Pakistan were killed by a suicide bomber.
- French company was found to be negligent in failing to take necessary security measures in a geopolitical context of crisis.

Source: "Duty of Care for Protecting International Assignees, their Dependents, and International Business Travelers," published by International SOS and written by Lisbeth Claus, Ph.D, SPHR, GPHR

# What is Duty of Care?

## LEGAL

Individuals and organizations have legal obligations to act toward others and the public in a prudent and cautious manner to avoid the risk of reasonable foreseeable injury to others.

## HR

Employers have an obligation for the health, safety, security and well-being of their employees.

## Travel

When employees cross borders for their work, the employer's duty of care involves risk management extending beyond the usual health, safety and security imposed by the familiar environment in the home country.

“Duty of Loyalty” of employees

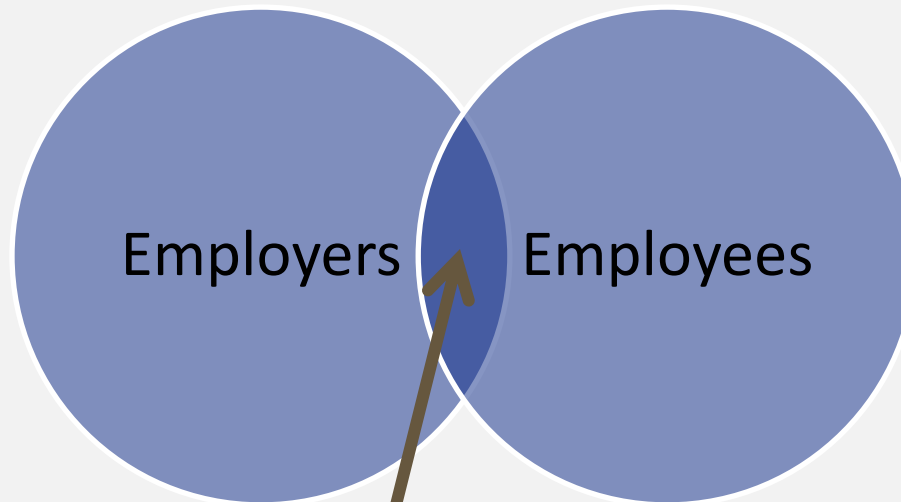
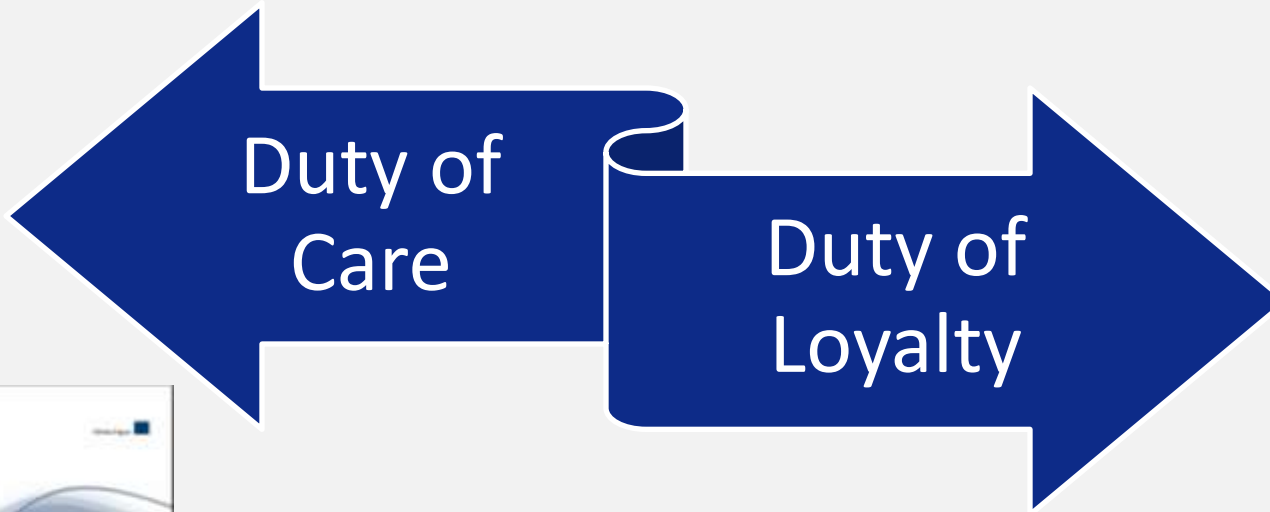
# Duty of Care and Duty of Loyalty

**Duty of Care** is defined as a requirement that a person or organization acts towards others and the public with watchfulness, attention, caution and prudence in a manner that a reasonable person in the circumstance would.

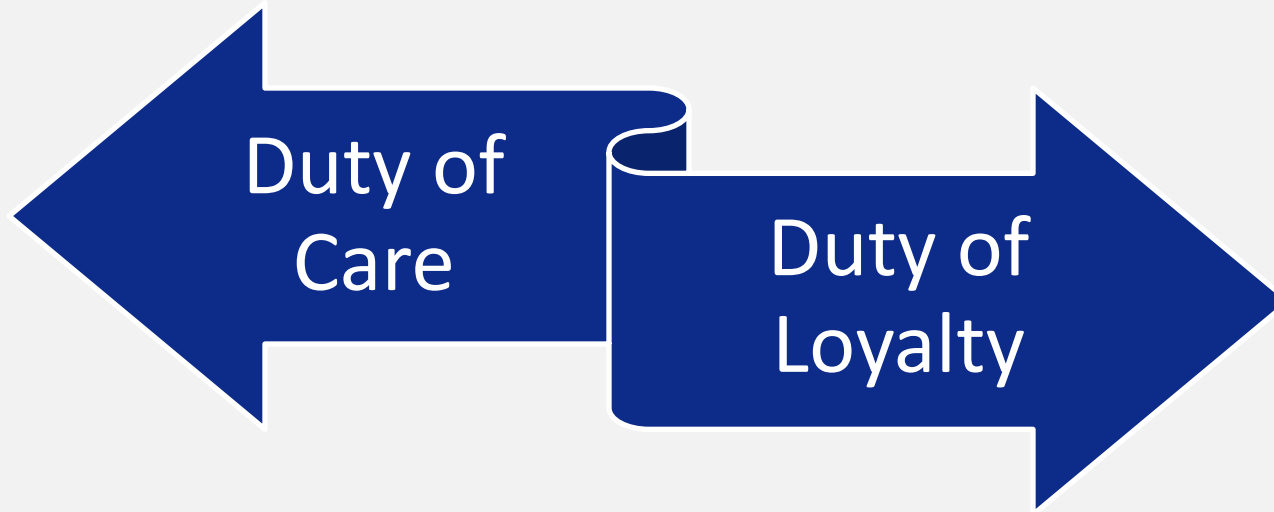


**Duty of Loyalty** is defined as the duty of an employee not to compete with the interest of the organization and follow the employer's Duty of Care policies and procedures.

# Duty of Care and Duty of Loyalty

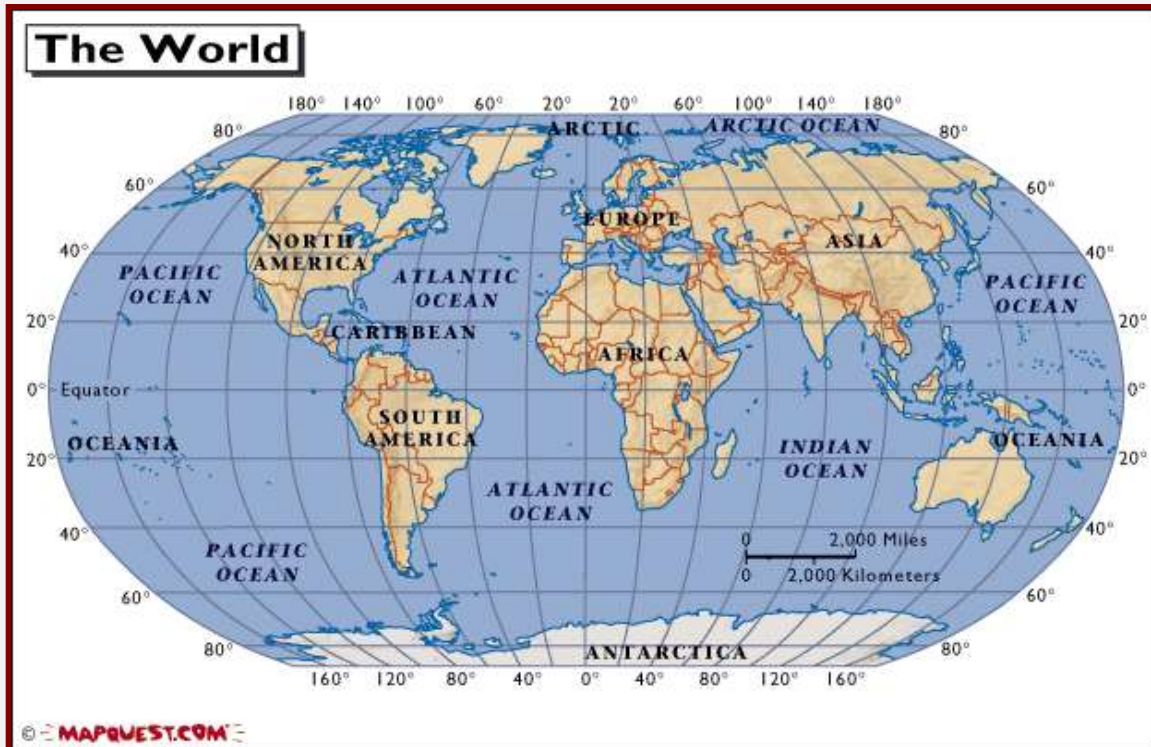


# Duty of Care and Duty of Loyalty



- Global HR is called upon to play a leading role in protecting the health, safety, security and well-being of employees.

# Employer's Duty of Care Legal



- Australia
- Belgium
- Canada
- France
- Germany
- Netherlands
- Spain
- United Kingdom
- United States
- ILO
- European Union



# Key Duty of Care Legal Issues

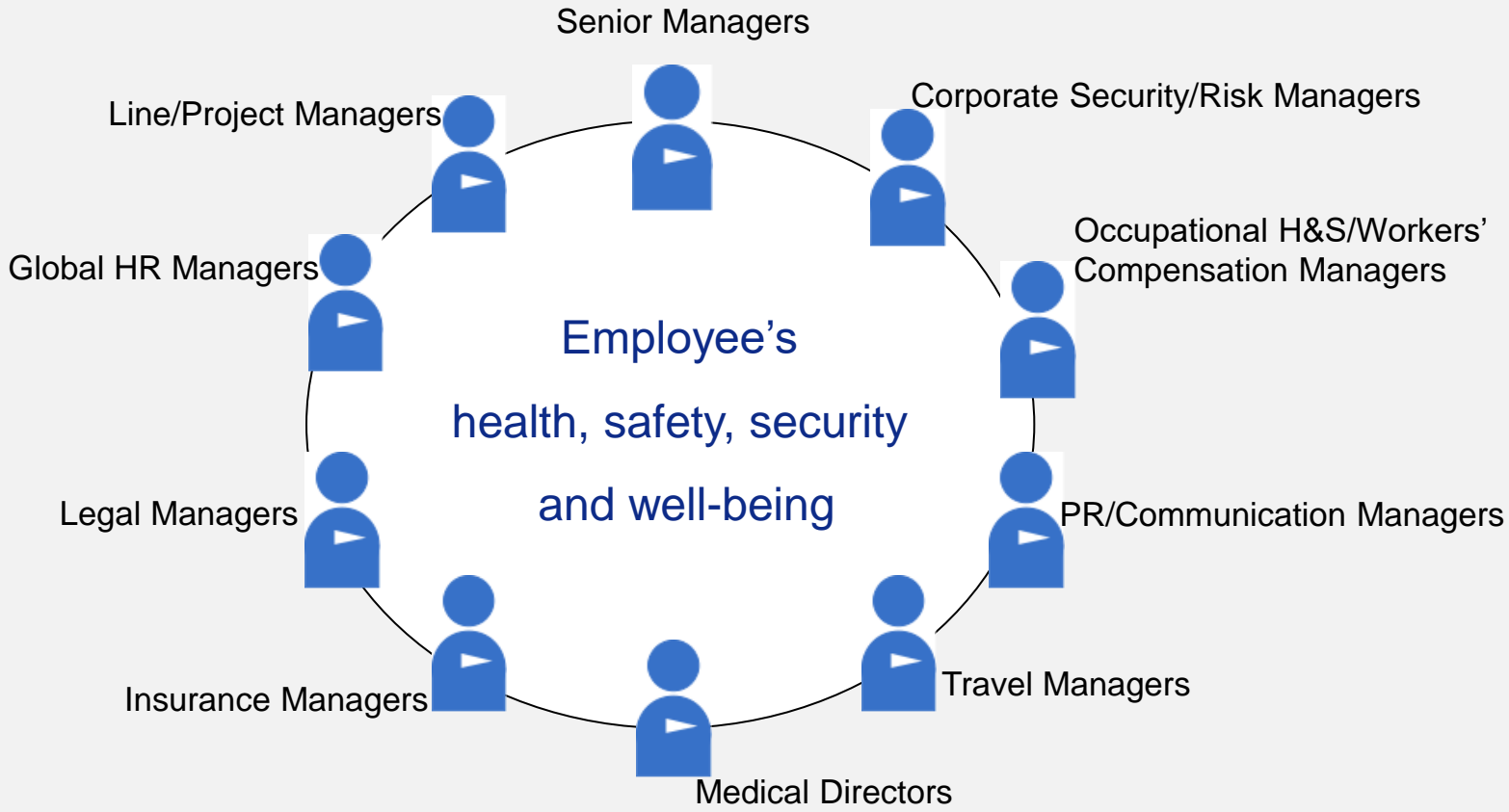


- Great diversity in legislation
- Multiple legal systems involved for global workforce
- Many factors impact applicable law and jurisdiction
- Case law continues to refine and define Duty of Care obligations

# Your Challenges

- Lack of awareness among employers
- *“It is unlikely to happen to us”* attitude
- Unfamiliarity with legal duty of care issues
- Current focus on cost reduction
- Difficulty to take coordinated action because of multiple decision-makers
- How to bring it to the attention of the C-suite
  - Tip: Broaden the discussion from Travel Risk Management to include Duty of Care in order to get the C-suite involved

# Decision-Maker Concerns



What are the major duty of care concerns for each decision-maker when an incident occurs?

# Lessons Learned

1. The most important concern, common to all decision-makers, is the health, safety and well-being of the employee.
2. The employer is being held accountable for a whole plethora of situations that can happen to the international assignee, their dependents and international business travelers.
3. Many employers are not aware of the extent of their duty of care obligations.
4. Awareness is critical yet insufficient.
5. Compliance is complicated due to the diversity of laws (statutes and case law) in different countries, jurisdiction and choice of law issues.

# Lessons Learned *(con't)*

6. Employer's duty of care obligations cannot be delegated.
7. Employers need focus both on compliance and sustainable/responsible solutions.
8. Prevention far outweighs the costs of employee injury, death, and/or litigation.
9. Assuming employer's duty of care obligations requires a planned and integrated risk management approach.
10. Employers should rely on experienced partners to help them meet their duty of care obligations.

# Integrated Duty of Care Risk Management Model

## FIGURE 1

### Integrated Duty of Care Risk Management Model

- 1 Assess company-specific risk
- 2 Plan strategically
- 3 Develop policies and procedures
- 4 Manage global mobility
- 5 Communicate/educate/train
- 6 Track and inform
- 7 Advise, assist and evacuate
- 8 Control and analyze