

The 2012 Global Congress on Travel Risk Management

October 1-2, 2012

Defining Our Global Duty of Care to Mobile Employees

Presented By:

Bill Wright – Fisher & Phillips

Mauricio Foeth – Curtis, Mallet-Prevost, Colt & Mosle LLP

William D. Wright
Partner/Co-chair
International Employment Practice Group



He counsels employers on various employment, compensation and benefit issues related to the employment of foreign nationals in the U.S., as well as the employment of U.S. permanent residents and citizens abroad.

Bill has worked with compliance issues related to hiring, retention and separation of employees in a multitude of jurisdictions. His experience with global employment issues has helped him assist our clients with international operations on all seven continents, including Antarctica. Bill has also counseled clients based outside the United States with the special considerations that are required when complying with U.S. employment and benefit laws.

Mauricio Foeth
Partner at Gastelum Abogados

Mauricio Foeth is partner at Gastelum Abogados in Mexico, where he focuses on international aspects of labor and employment law, arbitration as well as corporate law. Currently, he is advising a major European premium car maker on all collective and individual labor law aspects for its new plant in Mexico.

Gastélum Abogados has established itself as a vanguard boutique firm that provides value-added services to its clients, who are thus able to make decisions and come to creative management solutions.

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DEFINING OUR GLOBAL DUTY OF CARE TO MOBILE EMPLOYEES

Presented By:
 Bill Wright - *Fisher & Phillips*
 Mauricio Foeth, *Curtis, Mallet-Prevost, Colt & Mosle LLP*

Special legal issues associated with keeping employees on international assignments safe and healthy

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WILLIAM D. WRIGHT
 PARTNER
 FISHER & PHILLIPS



- Partner in the Philadelphia and Washington, D.C. offices and is the co-chair of the International Employment Practice Group
- Has spoken in Europe, Canada and South America on global employment issues
- Editor of Fisher & Phillips's Cross Border Employee Blog

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MAURICIO FOETH
 PARTNER
 GASTELUM ABOGADOS IN MEXICO

- Mauricio Foeth is partner at Gastelum Abogados in Mexico, where he focuses on international aspects of labor and employment law, arbitration as well as corporate law.
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OVERVIEW OF LEGAL ISSUES

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- Safety and Health Laws
- Policies, Contracts, and Other Documents
- Duty of Care Laws
- Workers' Compensation
- Litigation
- Family Members
- Medical/Family Leave
- VISA/Other Naturalization Issues
- General Advice

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SAFETY AND HEALTH LAWS

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- OSHA and OSHA Recordkeeping only covers:
 - U.S. and U.S. Commonwealth Sites
 - Employees (not family members)

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SAFETY AND HEALTH LAWS

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- Regulatory agencies in country where incident occurs usually regulate legal and compliance issues.



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POLICIES, CONTRACTS, AND OTHER DOCUMENTS

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- **Company expatriate policies, benefits policies, and other policies**




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POLICIES, CONTRACTS, AND OTHER DOCUMENTS

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- **Expatriate Assignment Letters**




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POLICIES, CONTRACTS, AND OTHER DOCUMENTS

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- **Employee Contracts**
- **Employer documents covering employee family members**
- **Insurance Policies**



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DUTY OF CARE LAWS

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- Some country-specific and other international laws (ex. Belgium) cover business travelers working in that country regardless of magnitude or duration of work



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DUTY OF CARE LAWS

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- Other countries, such as Australia, cover their citizens who work abroad or during leisure when they are abroad. In Australia, employees can also be awarded damages in excess of workers' compensation claims in negligence lawsuits, including possible personal liability for managers

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LITIGATION

Litigation can therefore occur in multiple countries, depending upon the circumstances and the specific laws

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WORKERS' COMPENSATION

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- Some states' and countries' workers' compensation laws cover injuries and illnesses while on international employment assignments



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WORKERS' COMPENSATION

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- PA Workers' Comp Law covers employees working outside the state, including outside the U.S. when employees are under a contract of hire made in PA under certain circumstances



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FAMILY MEMBERS

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- Employees who contract disease during international assignments create a unique and difficult situation for themselves, their family, and their employers



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- Health repercussions for employees
- Legal repercussions regarding family members and others
- Notification issues regarding co-workers and others

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FAMILY MEMBERS

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- Preventive Issues
- Inoculations



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MEDICAL AND FAMILY LEAVE ISSUES

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- Leave issues when expatriate employees are injured or become ill

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MEDICAL AND FAMILY LEAVE ISSUES

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- FMLA is not required for U.S. employees working outside of the U.S.



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MEDICAL AND FAMILY LEAVE ISSUES

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- Leave laws of host country may not apply to employee, either



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VISA AND OTHER EMPLOYMENT ISSUES

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- Visa issues when employees need to evacuate a country
 - Disruption in length of service in a country may jeopardize employee visa or other documentation



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VISA AND OTHER EMPLOYMENT ISSUES

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- Job elimination or transfer may cause employment issues such as severance restructuring in numerous countries



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GENERAL ADVICE

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- When preparing expatriate documents and policies, anticipate emergencies, disruptions, illnesses, and other impediments to create a successful work assignment



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- Ensure expatriate documents and policies do not include promises
 - e.g. “2-4 year assignment”



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GENERAL ADVICE

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- Create a swift-acting global crisis team with training, contact information, and protocol in place to be ready at any time and for any situation



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THANK YOU!

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