



**2014 Global Congress on
Travel Risk Management**

Defining our Global Duty of Care to Mobile Employees

*Legal issues associated with keeping employees on international
assignments safe and healthy*



Bill Wright **Partner - Fisher & Phillips**

- William counsels employers on various HR issues related to managing employees abroad, including employing U.S. citizens abroad.
- William's experience with HR compliance issues in a multitude of jurisdictions has helped him assist employers with international operations on all seven continents.
- William has also counseled clients outside the United States with the special compliance considerations surrounding U.S. employment and benefit laws.



Jordan Cowman
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- Jordan W. Cowman focuses his law practice on transnational projects and transactions, international agreements, public international law and policy, and corporate compliance.
- He has a broad range of international experience representing and advising governments and international agencies on policy issues, as well as multinationals in industries including: logistics, technology, transportation, energy, defense, manufacturing, retail, banking, food, aviation, chemical, hospitality, insurance, manufacturing and private equity.





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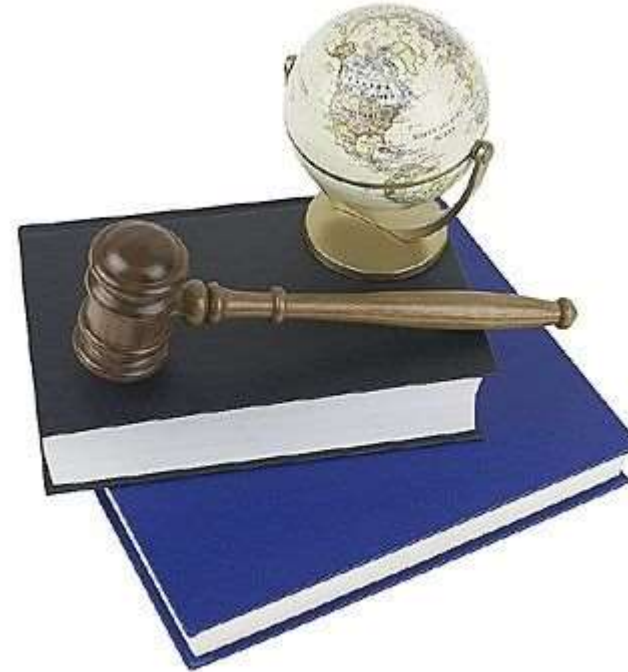
Roadmap

- 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
- Duty to Protect Individual Employees Overseas: Context
- Draw 4 Key Distinctions



Safety and Health Laws

- OSHA and OSHA Recordkeeping only covers:
 - U.S. and U.S. Commonwealth Sites
 - Employees (not family members)
 - Regulatory agencies in country where incident occurs usually regulate legal and compliance issues



Policies, Contracts, And Other Documents



- Company expatriate policies, benefits policies, and other policies
- Expatriate assignment letters
- Employee contracts
- Employer documents covering employee family members
- Insurance policies



Duty of Care Laws

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



Workers' Compensation

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



Litigation



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



Family Members

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



Family Members (cont'd)

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



Medical and Family Leave Issues

- Leave issues when expatriate employees are injured or become ill
- FMLA is not required for U.S. employees working outside of the U.S.
- Leave laws of host country may not apply to employee, either



Visa and Other Employment Issues

- Visa issues when employees need to evacuate a country
- Disruption in length of service in a country may jeopardize employee visa or other documentation
- Job elimination or transfer may cause employment issues such as severance restructuring in numerous countries



General Advice

- When preparing expatriate documents and policies, anticipate emergencies, disruptions, illnesses, and other impediments to create a successful work assignment
- Ensure expatriate documents and policies do not include promises
 - e.g. “2-4 year assignment”
- 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



Duty to Protect Individual Employees Overseas: Context

- Expatriates and business travelers vs. locals
- Danger zones vs. serious injuries in safe places
- Bet-the-company litigation vs. OSHA-like claims and workers' compensation claims



Draw 4 Key Distinctions:

Distinction #1

Safety/security issues *versus* legal issues



Draw 4 Key Distinctions:

Distinction #2

Health/safety regulation *versus*
personal injury litigation



Draw 4 Key Distinctions:

Distinction #3

Local employees *versus* expatriate and business travelers

Work hours vs. 24 hours

Capped local worker injury claims



Draw 4 Key Distinctions:

Distinction #4

Personal injury lawsuits *versus* workers' compensation claims

Host-country claims *versus* home country or HQ country (U.S.) claims

Foreign voluntary workers compensation coverage *versus* workers' compensation bar defense

Exclusive remedy agreement (election of remedies) *versus* personal injury waiver



In Closing

ANY QUESTIONS?

