

The responsibility of Norwegian companies for their employees travelling on business and overseas assignments: a legal perspective



Introduction

Increased international business activity has resulted in higher numbers of employees working abroad, and many Norwegian companies have extensive experience in assigning their employees internationally, particularly in the oil & gas and shipping industries.

Because of these activities, employees face greater risks and threats to their health, safety and wellbeing. Many employees, for example, travel to remote areas with poor health and safety conditions where both the working environment and the society are very different from what they are used to in Norway. In addition to this, unexpected situations, such as the Ebola and Zika outbreaks and terrorist attacks, increase the health and safety risk to employees working abroad. Employers must therefore take into consideration the ethical and legal implications of short and long term international assignments.

To fulfill their duty of care towards employees, employers should adopt the following preventative principles of health and safety management. These are applicable to most companies operating internationally:

1. **Travel Risk Policy.** Every organisation sending employees for work abroad should have a specific policy statement/ guidance document setting out its requirements as regards such assignments.
2. **Risk assessment.** As in the case of the workplace in the home country, suitable and sufficient prior risk assessment forms a central part of Travel Risk Management.

3. **Training.** Staff being sent abroad should be suitably trained (and records kept) on health and safety requirements. This includes the need for pre travel medical/dental check-ups, personal safety (general precautions to be taken to ensure food safety, consumption of safe drinking water, personal security and money precautions), public transport and taxis, driving abroad (in some countries it may be advisable to use a driver who is a host national), dress and cultural awareness.
4. **Tracking and Communicating.** Every organisation should also be able to have a system to track the location of relevant workers and communicate with them to provide support in any situation and most particularly crisis management.

The regulations in this summary are relevant for the situation where a Norwegian employer assigns an employee in Norway to work in another country for a fixed period of time. The summary provides a general overview of the Norwegian legal framework outlining the employer's duties towards employees regarding safety, health and security in these situations.

It outlines to what extent prevention has superseded purely financial considerations and that insurance is not enough.

Norwegian legal framework

The concept of a “duty of care” is not a particular legal definition in Norway.

However, the Working Environment Act from 2005 (hereinafter “the WEA”), lays down most of the employer obligations that would be considered part of the duty of care-concept. One of the aims of the WEA is to secure a work environment that is both physically and mentally secure and has a welfare standard in line with the technological and social evolution in society. The WEA contains duties for the employer related to these aims. The WEA applies to employees performing work for an employer. This is interpreted broadly so as to apply to all employees performing any and all kinds of work covered by the employment relationship.

In addition to the WEA, the Act relating to compensation for damages from 1969 regulates the employer’s liability in tort in relation to employees and might also be of relevance.

Regulation of Norwegian employer’s responsibility for the health and safety of employees

The main piece of legislation regulating the work health and safety is the WEA together with supplementary regulations.

The main aim of the WEA is to prevent work-related illness and accidents and achieving a safe and sound working environment both physically and mentally. The duty of care-obligations in the WEA are fairly general and principally gives the employer an obligation to secure a safe working environment for their employees and safeguard compliance with the WEA’s general provisions when planning, managing and monitoring the business.

The employer has to deal with working environment issues in a systematic and orderly way. This means that action plans, risk analysis, routine documents and follow-up procedures shall be put in place when necessary. It also means that working environment issues need to be taken into account in the daily decision-making and should be assessed continuously.

The jurisdiction of the WEA is limited to Norwegian territory and the territorial waters, with certain exceptions. This means that a Norwegian employer will have no direct obligations under the WEA with regard to the work carried out by an employee abroad.

However, the WEA will be applicable in the time period prior to the assignment. The WEA imposes obligations on the employer whereby the employer has to ensure that the employee has access to the relevant information and training and holds an adequate level of risk-awareness for the work to be performed. Such information and training obligations will have to be addressed by the employer prior to the assignment. Before sending the employee abroad the employer therefore should take all reasonable measures to ensure that the employee is:

- Suitable to conduct the work in question (in terms of education, training, experience, etc.);
- Informed about the risks and dangers involved in the assignment (both in respect of the work activities as well as the general situation in the country where the work will be performed);
- Informed about how to avoid such risks and danger and how to act in case of an emergency.

As stated above, the WEA does not provide any distinct obligations for the employer with regard to employees working in other

countries. However, even if the WEA as a main rule is limited to Norwegian territory and territorial waters, it is fair to assume that the obligation to secure a safe and sound working environment in the WEA to a certain extent will have some implications for the employer’s duties also in relation to work being performed in another country.

First of all, the employment contract may state that Norwegian law will apply also when work is performed in a foreign country. Secondly, Norwegian employers might feel uncomfortable completely overlooking their domestic obligations in foreign countries. Thirdly, the underlying obligation to secure a safe working environment might also be relevant in relation to a consideration of negligence under the Act relating to compensation for damages.

In light of this, a caring employer should consider a number of measures before sending an employee abroad. For instance, the following may be considered appropriate in this regard:

- Perform, and continuously keep up-to-date, adequate risk analysis of the assignment;
- Provide the employee with necessary medical support;
- Make sure that sufficient insurance coverage is put in place; and
- Give due consideration to accompanying family members.

If an employee is about to be sent to an unstable region or a high-risk area, the precautionary measures should be increased. In such a case the following may be considered:

- Assess the health status of the employee before travel and the risks of likely illnesses or injuries during the travel and stay abroad;
- Provide immunization programmes for the countries to be visited in accordance with international guidelines;
- Provide information and training on what to do in the event of (i) sickness or injury, or (ii) an emergency or disaster during the trip;
- Consider establishing routines for regular communication/contact with the employee;
- Consider providing guidelines for off-duty hours and activities; and
- Consider certain safety measures.

Liability and sanctions

Intentional or negligent breaches of the rules in the WEA may be punishable as criminal offences. Both the owner of the company, the employer or the person acting as employer can be charged for such breaches, and the penalty might be both prison time and/or statutory penalty fees. In some cases, for example where the breach has caused or could have caused serious danger for the life or health of the employee, breaches can be punishable with as much as 3 years in prison.

In addition to this, an employee may commence a civil claim against his employer under the Act relating to compensation for damages. The jurisdictional scope of this law is also limited to Norwegian territory. However, it might be given effect in the specific case. An example of this is the case referred to below.

There has been very little Norwegian case law regarding an employer’s obligations towards employees in foreign countries, but in 2015 the Oslo District Court passed judgement in a case regarding the Norwegian Refugee Council’s economic liability after one of its employees was shot and kidnapped when working for the company in Kenya.

The Norwegian Refugee Council was convicted to pay an assembled compensation of approximately 460000 EURO to the employee, a relatively high amount by Norwegian standards. The case was however particular in many ways. The Norwegian Refugee Council operates refugee camps in some of the most dangerous and unstable areas of the world. The position of the kidnapped employee was first Project Manager Emergency Coordinator and subsequently Area Programme Support Manager in the refugee camp Dadaab in Kenya from July 2011 until July 2012. The employee was a Canadian citizen and he was hired and worked in Kenya for a Norwegian company.

The kidnapping of the employee occurred when the Secretary General of the Norwegian Refugee Council came to visit the refugee camps in Kenya. The delegation accompanying the Secretary General travelled in an unarmed convoy. Outside the refugee camp IFO II the convoy was attacked. The chauffeur in one of the cars was killed, another chauffeur was seriously wounded and four employees of the Norwegian Refugee Council were kidnapped. The employee that filed the suit was shot and injured in addition to being kidnapped and held hostage for several days before being rescued.

The safety situation in the area had become more serious from the fall of 2011, and there were incidents where humanitarian aid workers were kidnapped. The safety during the visit had been assessed by several people in charge of security for the region, and they had agreed on having an unarmed convoy. However, when the decision to travel in an unarmed convoy became known to the chief of security in Oslo he immediately sent an e-mail expressing his concerns. At this point the visit had begun, and none of the recipients received his e-mail until after the incident. One of the local chauffeurs also refused to partake in the convoy when he learned that it was to be unarmed.

These aspects, along with other factors, resulted in the Norwegian Refugee Council acknowledging that the safety measures that had been taken were insufficient, and that they had acted negligent, cf. the Act relating to compensation for damages. The question of whether the Act relating to compensation for damages was applicable in the case was not debated by the parties.

Since the employer had assumed liability, the details regarding the employer's duty of care in this situation did not become a question

during the court proceedings. However, the fact that the Norwegian Refugee Council assumed liability still gives some insight as to what would be viewed as negligence on the employer's side in such a case.

The case shows that employers should pay close attention to the safety situation for their employees and should monitor developments and, when necessary, re-assess the risk analysis that was made before and in connection with the assignment. It also shows that whether or not Norwegian law is applicable to incidents in foreign countries in such cases, it might not be a question of further debate between the parties for various reasons.

Regulation of Health and Safety within the EU/ European Economic Area (EEA)

An assignment to another state within the EU/EEA will normally fall under the scope of the EU Posted Workers Directive (96/71/EC). According to the directive, an employer that is domiciled or registered in Norway must comply with work health and safety standards that are at least as favorable to the employee as the regulations in the country where the employee is carrying out his or her work.

The law of the other country

Much like the EU Posted Workers Directive affects the rights of employees working for foreign companies in Norway, there may be rules and regulations in the country where the assignment is to be performed that affect the working situation of the employee going abroad. Other jurisdictions might operate with very different regulations and have different enforcement practices compared to what the employer is used to. The employer should therefore consider the relevant rules of the foreign country and their relevance for the assignment.

Things to remember

The most important thing to do for an employer who takes duty of care seriously, is to be proactive and conduct proper risk assessments both ahead of and during the assignment. It is also important for the employee to receive the necessary information and training in due time before the assignment. The employer should also have the necessary procedures, facilities and emergency plans readily at hand in order to minimize the impact and scale of possible incidents and track travelling employees at all times.



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Kluge was established in 1923 and has during the last years grown to approximately 120 lawyers in offices in the three major Norwegian business centers of Oslo, Stavanger and Bergen. The firm provides services in all areas of commercial law as well as employment, construction and public law.

The Travel Risk Management toolbox

This toolbox provides an essential checklist that suggests health and security measures to take by organisations to fulfill their responsibilities and implement a travel risk and emergency management system.

Today, more and more organisations are operating globally.

Overseas postings are a growing reality for a number of companies and these companies retain legal and social responsibility for their employees and dependants while they are abroad.

The Travel Risk Management Toolbox is a practical checklist that suggests health and travel security measures to implement along the travel cycle for travellers and international assignees¹:

- pre-travel, what to implement from a preparation, information and compliance perspective
- during travel, how to deal with travel-related issues and ensure compliance
- post-travel, what to review and improve in the travel risk and emergency management system.

Health and travel security measures have to be defined according to the level of risk at a destination. These measures must be proportional and defined according to the risk environment, exposure and the type of work performed. They must be endorsed by senior management of the organisation and communicated to workers appropriately.

WITH THE SUPPORT OF THE INTERNATIONAL ORGANISATION OF EMPLOYERS

The IOE was created in 1920 to advocate in the tripartite International Labour Organisation (ILO) on behalf of the global employer and business community. Today, from its headquarters in Geneva, the IOE continues to defend and promote these same interests across a wide range of UN agencies, international organisations, intergovernmental processes and the media.

1. Centre for Research into the Management of Expatriation (CRoME), Gwendolyn Cuizon, *Expatriates in International assignments*, 2009



TRAVEL CYCLE FOR TRAVELLERS AND INTERNATIONAL ASSIGNEES

LEGAL AND SOCIAL RESPONSIBILITIES OF THE ORGANISATION

| | Pre-travel | During travel | Post-travel | |
|--|--|--|---|--|
| 1. Health and safety policy | Define: <ul style="list-style-type: none"> • Why? Mission statement • Who? Organisation and responsibilities • How? Arrangements | Implement: <ul style="list-style-type: none"> • The mechanisms to deal with travel-related issues • The mechanisms to ensure compliance | Review: <ul style="list-style-type: none"> • Periodically • Modify as necessary | |
| 2. Risk assessment for identified risks and hazards | <ul style="list-style-type: none"> • Dynamic risk assessment of threats and hazards • Selection, implementation and/or adjustment of appropriate mitigation measures to reduce risk to an acceptable level | | | |
| 3. Organisation, planning and implementation | a. Information and advice | <ul style="list-style-type: none"> • Pre-travel access to medical and security information • Destination guide information • Destination specific medical and security alerts | <ul style="list-style-type: none"> • 24/7 access to medical and security information while travelling • Referrals to medical and security support outside of home country | <ul style="list-style-type: none"> • Access to medical advice if illness is developed post-travel • Access to post-trauma advice after an security-related issue |
| | b. Competence and training | <ul style="list-style-type: none"> • Briefing of health, safety and security arrangements • Destination-specific training • First aid training | | |
| | c. Fitness to travel, incl. travel health consultation | <ul style="list-style-type: none"> • Pre-travel medical examination where appropriate • Travel health consultation for up-to-date vaccinations | <ul style="list-style-type: none"> • Periodical examination, where appropriate • Health surveillance, where appropriate • Wellness/health promotion | <ul style="list-style-type: none"> • Post-assignment examination • Return to work from affected areas process |
| | d. Travel health and security kits and supplies | <ul style="list-style-type: none"> • Provide travel medical kit (first aid, Malaria, etc.) • Provide travel security kit • Stock of necessary prescription medication (esp. long-term) | | <ul style="list-style-type: none"> • Monitoring and refilling of travel health and security kits after utilisation |
| | e. Medical or security emergency management | <ul style="list-style-type: none"> • Prepare emergency action plans to manage a medical or security emergency or crisis • Provide training on emergency plans | | <ul style="list-style-type: none"> • Post-assignment medical and psychological support |
| | f. Tracking and communicating | <ul style="list-style-type: none"> • Pre-travel access to medical and security information • Destination guide information • Compliance to travel policy and to the traveller's destination | <ul style="list-style-type: none"> • Implement tools, processes and procedures to track location of relevant workers and communicate with them • Tracking system and process to support crisis management | <ul style="list-style-type: none"> • Mechanism to allow ideas and suggestions from workers (two-way communication) |
| 4. Evaluation | <ul style="list-style-type: none"> • Reporting and evaluating of key performance indicators • Internal and external auditing • Alignment with enterprise risk management (reporting on claims, opportunity to finance prevention actions through captive funds) • Integration in the general compliance strategy | | | |
| 5. Action for improvement | <ul style="list-style-type: none"> • Corrective actions implemented where appropriate | | | |

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