Duty of Care

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Duty of Care Defined
Duty of Care is contained within the broader legal concept of *negligence*.

Negligence is the “*failure to act with reasonable care*”.

Reasonable care is defined by *legislation, courtroom verdicts, industry standards, and common sense*.

What would a “reasonable person/company” within the same industry do?
Negligence is a tort encompassing *unintentional* wrongful conduct that injures others.

The concept of negligence helped develop the modern idea of **duty**.

**Duty** is everything we *have done or should have done* to perform our *expressed or implied* function competently and effectively.
## Duty of Care

| DEFINITION | The responsibility or the legal obligation of a person or company to avoid acts or omissions which can be *reasonably foreseen* to cause harm to others. |
| COMPLIANCE | Employers are required to comply with “duty of care” laws by *taking practical steps* to safeguard their employees. |
| BREACH | Failure to *take reasonable steps* to help prevent employee harm during business travel. |
The duty of care principle (do what is reasonable) is unchanging.

What does change are the standards (what is considered reasonable) to fulfill this principle.

Based on this awareness, the actions and procedures within a Travel Risk Management Program (“TRM”) must constantly evolve to stay current with what is considered “reasonable”.

TRM Programs Must Be Structured To Adapt to Ever-Changing Standards
Duty of Care Legislation
<table>
<thead>
<tr>
<th>Country</th>
<th>Legislation</th>
</tr>
</thead>
</table>
| United States| • Occupation Safety and Health Occupation Safety and Health Administration (OSHA) Act, 1970  
• NFPA 1600 Standards on Disaster/Emergency Management and Business Continuity Programs, 2007  
• Workers’ Compensation Laws Administration (OSHA) Act, 1970                                    |
| United Kingdom| • Health and Safety at Work Act (HSW Act) 1974  
• Corporate Manslaughter and Corporate Homicide Act (Manslaughter Act) 2007                            |
| Canada       | • Canadian Labor Code, 1985  
• Occupational Health and Safety Act 5 (OHSA), Ontario, 1990                                         |
| France       | • French Labor Code, 1910  
• Social Security Code and Criminal Code                                                                  |
| Germany      | • §§ 241 Abs. 2, 617-619 BGB (Civil Code) §242 BGB  
• Social Security Act, Book V  
• Burgerlijk Wetboek (Art 7:658 BW)  
• Arbeidsomstandighedenwet (Arbowet)                                                                       |
| Netherlands  | • §1 1978  
• Labor risk Prevention Law 31/1995, November 8  
• Penal Code of 1995  
• Workers’ Statutes  
• Law of the Judiciary                                                                                   |
Station Night Club Fire Case Study

**Incident**
- Rhode Island - February 20\textsuperscript{th} 2003
- 100 people died and was the nation’s fourth deadliest night club fire

**Cause**
- Pyrotechnics set off by Great White’s tour manager
- Plastic foam used as sound insulation ignited and engulfed the club
- No sprinkler system and limited exits

**Judgement**
- Over $176M was awarded to the plaintiffs and their families
- Over 90 vendors were sued
  - Great White Band (set off pyrotechnics) - $1M
  - Sealed Air Corp (made the foam) - $25M
  - WPRI TV News (said to have contributed to obstruct escape routes) - $30M
  - Anheuser-Bush – (beer sold at event) - $5M
  - McLaughlin & Morin (beer distributor) - $16M
  - Home Depot – (sold foam to club owners) - $5M
  - ABC Bus (transported band to place) - $500K
  - Clear Channel Broadcasting - $22M (advertised event)
  - Super Star Services LLC - $500K (transported band to location)

**Third Party Vendors Can Share Responsibility & Liability**
Risk – Don’t Think It Won’t Happen To you

Risk Threatens Business Growth, Strength, & Continuity
Adequate Safety Requires Synergy
Travel Risk Management Program ("TRM")

- TRM Global Supplier Network
- Prepared & Responsible Employees
- TRM Policy & Incident Response Mgmt.
- Ownership & Support
- Systems/Tools to Manage Risk

Effective TRM Program = Duty of Care
Ownership and Support


TRM Programs with C-Level support are most often successful

- Facilitates program compliance
- Creates a synergistic strengthening of the program (each C-level organization is aligned)
- Defines leadership by example
- Fosters opportunity for program evolution

Travel Programs lacking C-Level support are generally the first to fail

- More difficult to mandate compliance
- Prohibits program growth
- Obvious target for budget reduction
- Employees will question program’s “usefulness”
Ownership & management of travel risk can vary by company

Company Stakeholders:

- **Originator:** Identifies threat(s) and need for program
- **Executive Support:** Drives the program forward
- **Risk Manager:** Responsible for risk management
  - Position varies by company based on company size and structure
- **TRM Team:** Cross functional partnerships
  - Program manager
Key Stakeholders’ Responsibilities

- Create internal/external TRM network
- Determine risk tolerances
- Assess risk & capability to manage identified risks
- Create TRM Policy (and procedures) to mitigate and manage risk
- Train & communicate
- Stress testing program/policies
- Program maintenance
External TRM Global Supplier Network

- TMC & Other Preferred Travel Partners
  - Supply Data to TRM Network
  - Assist w/Policy Enforcement
  - Pre-Trip Approval Process
  - Travel Portal
  - Traveler Tracking
  - Airline Safety
  - Reporting

- Tools & Technology
  - Pre-Deployment Preparation
  - Travel Portal
  - Traveler Tracking – people/buildings
  - Customized Web Sites for Destination Information
  - Mobile Applications & Communications
  - E-Learning

- Medical & Security Support
  - Destination Risk Ratings
  - Medical/Security Advice & Assistance
  - 24/7 365 Call Center
  - Customized Destination Information
  - Evacuation
  - Traveler Tracking
  - Consultation
  - Advisories/Alerts

- Insurance
  - Security/Medical Evacuation Insurance
  - Supplemental Medical
  - AD&D
  - Life Insurance
  - Kidnap & Ransom
  - War Zone

Note: Not All Inclusive

Build An Aligned Network
Risk Assessment
Risk assessment is the process where a company:

- Identifies **foreseeable** threats
- Evaluates risks associated with the threat, its **probability** of occurrence, and company exposure
- Helps establish risk mitigation tactics (policies/procedures) to **eliminate or minimize** the impact of each identified risk

**Travel Risk Assessment Must Precede Effective Policy Development**
Travel Related Risk (not all inclusive)

<table>
<thead>
<tr>
<th>Employee Risk</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improper Medical Treatment</td>
<td>Personnel</td>
</tr>
<tr>
<td>Unsanitary Food Conditions</td>
<td>Legal</td>
</tr>
<tr>
<td>Automobile Accidents</td>
<td>Financial</td>
</tr>
<tr>
<td>Natural Disasters</td>
<td>Reputational</td>
</tr>
<tr>
<td>Infectious Disease</td>
<td>Business Continuity</td>
</tr>
<tr>
<td>Intellectual Property</td>
<td>Intellectual Property</td>
</tr>
<tr>
<td>Productivity Trip Effectiveness</td>
<td>Productivity/Trip Effectiveness</td>
</tr>
</tbody>
</table>

Risk Differs But Is Shared By The Company & Employee
Risk Assessment Matrix

**Hazard Identification**
- Fire
- Explosion
- Natural hazards
- Hazardous materials spill or release
- Terrorism
- Workplace violence
- Pandemic disease
- Utility outage
- Mechanical breakdown
- Supplier failure
- Cyber attack

**Assets at Risk**
- People
- Property including buildings, critical infrastructure
- Supply chain
- Systems/equipment
- Information Technology
- Business operations
- Reputation of or confidence in entity
- Regulatory and contractual obligations
- Environment

**Impacts**
- Casualties
- Property damage
- Business interruption
- Loss of customers
- Financial loss
- Environmental contamination
- Loss of confidence in the organization
- Fines and penalties
- Lawsuits

**Probability & Magnitude**

**Vulnerability Assessment**
The Four T’s

- Treat
- Transfer
- Terminate
- Tolerate
Incident #1

U.S. Air #1549 - 150 Passengers of which 23 were Bank of America employees including executives.
Incident #2

Malaysian #370
• 239 Passengers - 20 employees from Freescale Semiconductor, Austin, TX who were developing stealth technology for the U.S. Department of Defense

Malaysian #17
• 283 passengers - 100 HIV researchers on board “setback work for cure and strategic prevention very significantly”
Embodies the guiding principles (actions and conduct) by which the company will manage travel risk

Contains a defined mission, program objectives, and detailed procedures to enable strategic decision making

- Policy construction is directed by legal tenets and duty of care principles

TRM policies can stand alone or be part of another policy such as a corporate travel or health & safety policy
iRobot | TRM Policy Purpose

- **Documents** and **validates** company responsibility for employee safety and welfare - **Duty of Care**

- Enables companies to **standardize** global **risk management**

- **Links** company **vision** and the employees’ **actions**

- Forms the basis for **measuring performance** and **accountability** at all levels

- Effectively manages employees’ actions while **minimizing day-to-day intervention**

- **Liability management**
All businesses are not created equal, but all must have the basic tenets of risk management customized for each company’s inherent personality.
Establishes company values and standards of expected behavior at all levels (employees, contractors, agents, interns, etc.) in compliance with applicable laws

Creates an attitude and culture of trust setting the tone for excellence

Strategic communication demonstrating a company’s commitment to act responsibly and accept accountability

Documented employee acceptance will lower legal risk or transfer risk to employee

Favorably influences courtroom decisions

Improves stakeholder and employee confidence

Tool for Risk Mitigation
Provide guidelines for responding to potential travel incidences

**Objectives**
- Reduce tension during the incident
- Demonstrate corporate commitment and expertise
- Controlling the flow and accuracy of information
- Managing resources effectively

**Typically include the following components:**
- Detailed response checklists for various emergency scenarios
- Response team organization, roles, activation, and escalation procedures
- Emergency Operations Center location and equipment
- Evacuation procedures
- Notification procedures
- Plan updating guidelines and responsibility
- Documentation guidelines

The Best Response is A Trained Response
Process to evaluate incident response and recovery readiness (e.g. mock trials, post incident evaluations)

Helps facilitate further development of risk mitigation and contingency plans

Identifies vulnerabilities and strengths of systems, processes, and relationships (internal/external)

Required for best practice management

Senior Management Involvement is Essential
Understand the importance of the TRM Program

Read, accept, and comply with TRM Program information and directives

Compliance with pre-deployment preparation & incident response procedures

Verify and document training
Implement systems to verify employees have read and adhered to TRM Program directives prior to departure

- Pre-Deployment Requirements

- Non-compliant travelers = mission hold or mission termination

Proof Your Company Has Provided Its DUTY OF CARE!
### TRM – Worse Case Scenarios

<table>
<thead>
<tr>
<th></th>
<th>Company</th>
<th>Process</th>
<th>Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>No TRM Program</td>
<td>Inadequate destination information</td>
<td>Unrecognized risk</td>
<td></td>
</tr>
<tr>
<td>Lack of leadership support</td>
<td>Poor communication</td>
<td>Insufficient preparation</td>
<td></td>
</tr>
<tr>
<td>No program ownership</td>
<td>Slow incident response or lack thereof</td>
<td>Non-compliance</td>
<td></td>
</tr>
<tr>
<td>Absent of policy or processes to mitigate risk</td>
<td>No contingency planning</td>
<td>Mishandling of intellectual property</td>
<td></td>
</tr>
<tr>
<td>Lack of TRM team or engagement amongst team members</td>
<td>Absent or inadequate training of travelers and/or TRM team</td>
<td>Training</td>
<td></td>
</tr>
<tr>
<td>Unrecognized risk</td>
<td>Poor coordination amongst stakeholders (internal/external)</td>
<td>Rogue traveler (books outside of process)</td>
<td></td>
</tr>
</tbody>
</table>

Inadequacies Can Lead to **Multiple** Catastrophic Incidences
My Look Into The Future

- Legal evolution will eventually mandate a TRM program/policy worldwide
- Universal approach to traveler preparedness for domestic and international travel
- Program standardization
- Applicability will widen from traveler focused to asset focused
  - All employees
  - Facilities/satellite locations
  - Intellectual property
- Bridge between TRM and Business Continuity Programs

Industry Changes Impact TRM Policy & Procedures