



Management Alert

Disaster Response Policies: Important Legal Considerations for Multinational Employers

Civil instability in North Africa and the Middle East, the recent earthquake in Japan, last year's volcanic ash cloud over Europe – these events highlight the need for multinational employers to always be prepared with an emergency response policy. For a multinational employer, an international Emergency Response Policy (“ERP”) should address a two tier workforce of international assignees and local employees. This involves taking account of complex human resources and legal issues in the local jurisdiction and those of the home country in respect of international assignees.

Employment laws and legal obligations vary greatly across jurisdictions, yet most jurisdictions impose requirements upon employers to maintain a safe workplace. This duty can extend beyond the physical confines of the workplace and, in the case of international business travelers and international assignees, requires a different risk assessment and management approach than that for the typical workplace.

When facing an unexpected political crisis or natural disaster, multinational employers should be ready with protocols for a variety of response scenarios: evacuation, partial shutdowns, home working, temporary relocation, and alterations to working hours. In conjunction with an ERP, an employer should have an international travel policy that requires notification when its employees are traveling internationally for business, and in some instances, for non-business reasons. Knowing immediately whether an employee is in an area affected by disaster is essential to an effective response. Not every situation can be anticipated, but the ability to react quickly in an emergency can be critical to the safety of employees and business continuity.

Implementing an ERP and business continuity plan requires an examination of a number of legal issues, including employee consultation and notification requirements, health and safety regulations, civil or common law duty of care, workers' compensation and work accident insurance, working time and leave requirements, data protection/privacy laws, and immigration regulations.

Employee Health and Safety

An employer's obligation to provide a safe workplace includes responding to new or evolving situations that may pose a risk to employees. A natural disaster or a heightened state of civil unrest is almost certain to require additional actions by the multinational employer. Risk-mitigation strategies may include: an action plan and emergency contact alert system for employees to report their status; requiring non-essential personnel to remain away from the work location; home working arrangements; and partial shut-down or reduced working hours. These actions designed to help protect employees can lead to other legal issues, such as minimum compensation requirements or consultation procedures in the event of a shut-down or change to working time, as discussed below.

In addition to statutory requirements regarding health and safety in the workplace, many countries, particularly those with mature, sophisticated legal systems, have developed legislation and extensive jurisprudence on the subject of employer duty of care. Many developing legal systems have not, or have passed laws that are unclear, contradictory or otherwise not enforced. This creates ethical dilemmas for multinationals. Should they develop protocols based on local standards or should they adopt global standards that may exceed the legal requirements in some of the countries in which they operate? Many employers are choosing the latter course, even though it comes with a price tag.

Finally, an employer should consider its existing work accident or workers' compensation obligations, which differ from country to country. Some are provided through private insurance; some are run by the government; and some are a combination of the two. In principle, injuries contracted at work due to such external forces should be treated no differently than any other injury suffered while working. This includes accident reporting obligations.

Working Hours, Leave, and Work Attendance

The circumstances of a natural disaster or civil unrest may require an employer to direct employees to stay away from work. As a result, key considerations for an effective emergency-response policy include how to address a reduction in working hours or temporary business closure. In some countries, this may require consent from the employees or employee representative bodies. Local laws may also regulate how employees must be compensated for temporary closures or reduction in work hours, and whether accrued leave or vacation may be applied to periods where the employee is not working. An ERP should anticipate these requirements, so that employees are on notice of the procedures and, where necessary, obtain an employee's consent to the arrangement.

Finally, employers must consider how they will address any potential work refusals or failure to attend work by employees who are neither injured nor eligible or prepared to take leave.

Working Location Issues

When possible, remote working arrangements may be an effective way to minimize risk to employees. If this measure continues beyond a temporary arrangement, this also requires strategies and protocols to monitor and manage employee performance, comply with working time requirements, ensure occupational safety for the employee working at home, and payment of allowances for phone lines, internet connection and home office equipment. Many countries will require employee consent to a change in the work location and can require that this consent be formally documented in an agreement.

For international assignees, a company's global mobility policy or the international assignment terms may require an emergency relocation of the employee or his or her family. An ERP, and global mobility plans, should anticipate how such an evacuation will occur and how the international assignee will continue work. In some cases, there may not be a position in the home country for the returning assignee. Solutions may include a temporary job search period or extended leave, which should be agreed in advance. Employers with a global mobility program should also arrange for services that provide emergency relocation, to the extent possible, even in extreme circumstances.

Immigration requirements also affect an employer's plans for temporary relocation or evacuation to another business location. Most countries require a work permit, even if an employee is performing work in the jurisdiction on a temporary basis.

Employee Consultation/Notification Requirements

Some countries impose affirmative obligations on employers to consult with and obtain an opinion from employees or employee representatives regarding issues that affect the workplace, particularly health and safety issues. For example, where an employer's European operations have works councils, employers may be required to consult with them before any ERP can be put into effect. Similarly, most multinational employers are now aware that the labor law changes in China now mean that employees (or their union) need to be consulted about any important changes to or introductions of employee policies.

Privacy Matters

Many countries outside the United States strictly regulate the collection, use, and transfer of employees' personal information, particularly sensitive personal information such as health and medical data. Employers should not assume that they can demand disclosure of an employee's injury, nor even request employees to do so in certain countries. In circumstances where information about an employee's injury or suspected injury has been disclosed, even with the employee's consent, transferring information such as medical histories, records of absences, and insurance claim information from one country to another—whether internally within the company or to a third-party provider—must be carefully managed. Administrative and technical safeguards must be put in place to protect the data. Many countries in Europe, Asia-Pacific, and South America, as well as Canada, do not recognize the United States as offering adequate privacy protections and so do not recognize that local employers have a right to transfer their employees' personal information to the United States (and often prohibit it). This issue is particularly relevant for U.S.-based companies that wish to centralize disaster-related decision-making in the United States and, in doing so, request reports of absentees and illnesses from their offices around the globe.

ERP and Business Continuity Plans

Lastly, in developing a comprehensive ERP, employers should review and update their current policies and procedures dealing with business continuity processes, including crisis plans, disaster recovery, denial of access, loss of production, alternative management options (virtual or offshore), communication strategies, and travel policies. Some of the key issues businesses should consider when developing a continuity plan include:

- understanding any relevant local legal requirements
- creating a dedicated emergency response committee and appropriate safety representatives that are trained and up to date on the company's ERP

- identifying core business activities, people and skills needed to manage the business in the event of disruption
- mitigation strategies for business disruptions, including in relation to shortage of supply and critical infrastructure
- safety contingencies, such as shut-downs, remote working, or evacuation in relation to both domestic and international employees
- creating an emergency contact system for employees to report their status and whereabouts in the event of emergency
- communication of the ERP protocols and contingencies to employees on a regular basis

Conclusion

The key to an effective international ERP is forethought and implementation. When disaster strikes, it is too late to start contemplating the response options and the consequent legal issues. Employers with international operations should monitor developments in those countries in which they do business and be prepared to act quickly in order to safeguard people, property and business continuity.

For more information, please contact one of our [International Labor & Employment Law Group](#) partners.

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