

Legal Risks to agency/church around HR in sending people overseas and how we can mitigate around those risks - Jenny Shone

Introduction – Background

- Who I am
- What I do
- How I feel I can help you

What is ‘Acceptable Risk’?

We do not live in a ‘risk free’ world. Everything we do carries some level of risk be that physical or emotional.

A society which is sometimes seen as ‘risk adverse’ – still has a population who drive too fast, drink too much, smoke, take recreational drugs and even indulge in high risk thrill seeking activities such as bungee jumping and more scarily ‘tombstoning’.

So some level of risk is seen as acceptable. As an employer you cannot and the courts will not expect you to eliminate risk for your employees.

However, you will be looked at to show an awareness of risk and of the need wherever possible to minimise it.

This is the stage at which I fall into the risk of trying to teach ‘granny to suck eggs’.

You know your field of work far better than I do. You will have experienced the sort of problems your people are likely to face when sent out on God’s work. The important thing is that you utilise that knowledge and experience to properly risk assess and prepare for the risks that they are likely to face and to make those risks ‘acceptable’.

How to risk assess

Checklists are essential

Consider issues such as those set out in this checklist: -

Safety when working overseas – Manager’s Checklist

		Check	Comment
Fitness to undertake work	<ul style="list-style-type: none">• Fitness to work overseas under given conditions evaluated• Appropriate skills (e.g. driving, boat handling, diving)		
Access	<ul style="list-style-type: none">• Provision made for disabled, if necessary• Medical assistance arranged, if required• Special medical requirements met (e.g. need to keep medicines in a fridge)		

Pre-planning	<ul style="list-style-type: none"> Local conditions evaluated Adequate local advisory arrangements are in place Risk assessments carried out Health questionnaires completed and action taken Next of kin and GP recorded Medical problems noted Vaccination (tetanus, plus any other suggested for the area to be visited) received by all participants Ensure that vaccinations or any other medication are started early enough to give protection, and continued if necessary after your return Recent dental check up carried out “Base” contact in UK informed of all necessary details 		
Health	<ul style="list-style-type: none"> First-aid kit(s) including sterile syringes and cannulae obtained Sterile packs organised/received 		
Training	<ul style="list-style-type: none"> First-aid cover appropriate for work Hygiene/health education advice given to participants 		
Equipment taken overseas	<ul style="list-style-type: none"> Suitability and availability of equipment assessed 		
Accommodation/ Catering for fieldwork	<ul style="list-style-type: none"> Reasonable living quarters available Drinkable water or water purification tablets/sterilisation kits available Ability to cater for special dietary needs actioned Availability of food provisions checked Food preparation and storage facilities acceptable Availability of fuel for cooking (remote fieldwork) checked and OK 		
Personal Safety	<ul style="list-style-type: none"> Risk of attack/harassment assessed and provided for (if necessary) Method of routine communication established System for communication in an emergency in place Reporting schedule established Accident and emergency plans in place 		
Hazards	<ul style="list-style-type: none"> Work through Hazard Checklist 		

Hazards particular to location

In the current political climate, employees sent abroad increasingly face the risks of terrorism and kidnapping.

In spreading God's word some may be prepared to take risks considered unacceptable to other 'employees'. I am presently reading of Brother Andrew's exploits in the Middle East – and whilst filled with admiration at his faith it is clear that he is fully aware of the risks to which he is exposing himself. He is informed and that is what your employees need to be. Knowledge again is the important factor. Before sending employees abroad an employer should check the Foreign and Commonwealth Office (FCO) website (www.fco.gov.uk) to see whether there is a recommendation against travelling to that particular country. Occasionally, the FCO will advise against all travel to certain countries, and if that is the case, employees should not be sent there at all. More often there will be a recommendation against non-essential travel.

If the country to which you are to send people falls within this category you need to consider whether the visit is essential or whether the work can be carried out by any other means.

Local Custom

Whenever employees are sent abroad it is imperative that basic travel advice and information about the country, its customs and its culture be given.

For example:

- Advice should be given about cultural attitudes to alcohol, smoking, dress and taking of photographs
- Be risk aware and maintain high levels of vigilance, particularly in public places frequented by foreigners
- Look out for people acting suspiciously near Western institutions or gatherings
- Vary route made for regular journeys
- Avoid unlit streets at night
- Carry only the minimum amount of cash required for the day
- Never resist violent theft
- Avoid political or other demonstrations

Be ready for the unexpected

There are many parts of the world which may appear politically stable but where trouble can break out at short notice e.g. Kenya, South Africa.

You need to ensure that employees have embassy details and know how to enlist help should problems arise, and that arrangements can be put in hand to get people out at short notice should that prove necessary.

So what are the legal requirements on Employers

Employers are often uncertain about their legal responsibilities to employees working abroad, because neither legislation nor official guidelines make the position clear.

In terms of criminal liability employers have an 'overriding duty' to ensure the health and safety of all employees at work regardless of where their work is carried out. Assessments of significant risks must always be carried out as we have already discussed regardless of location. The general principle is that health and safety legislation only applies to workplaces and work conditions in the United Kingdom – but despite this, in respect of those who work mainly in the UK and only operate occasionally overseas the criminal duties imposed by the Health and Safety at Work Act and its regulations will certainly apply.

However, where employees are working on a full time basis or for a prolonged period overseas, UK health and safety legislation would be unlikely to be upheld. The employer would need to know the health and safety laws of the country where the employee was working in order to comply with them.

Civil Law

The position under civil law is less clear. If problems arise which give rise to a civil claim the general principle is that the defendant is sued where it is domiciled rather than where the accident occurred.

Under the Brussels Convention if an employee of a UK company is injured in France and sues his employer either the French or the UK courts would have jurisdiction depending on where the Claimant chooses to bring the claim.

If the accident occurred in a country outside of the scope of the Brussels Convention then that country may also be able to hear the claim, provided its own jurisdiction rules permitted this, as most currently do.

In practice most employees would be more comfortable bringing the claim in the UK.

Which law applies?

In Britain the decision would be made based on the Rome Convention, which says that the applicable law would be that as agreed in the employment contract. In the absence of such a clause in the employment contract then the law of the country where the employee “habitually carries out his duties” would be applied.

Such clauses are advisable because of the potential cost and complexity of defending cases in foreign courts.

To conclude

- As a responsible employer you should be aware of risks and hazards to which your employees are likely to be exposed wherever in the world that might be.
- Risk assessment should be a primary concern in sending vulnerable people into alien environments.
- So long as you do this and you have an informed workforce the chance of your falling foul of civil liability or health and safety regulations is slim.
- However, vigilance is important, education is a process – an informed workforce will be mindful and report risks and hazards which you may not have come across – there need to be in place processes by which this information to be included in risk assessment and acted on.
- Make sure that you are properly insured!!

No one could have anticipated that a teacher working abroad would face imprisonment and potential execution for naming a teddy bear ‘Mohammed’ – but you can guarantee that all agencies sending teachers to the Middle East now have a warning about that on their checklist!!