

# Duty of Care

Denny Marlin

## **Good corporate social responsibility means implementing effective workplace health and safety measures.**

Additionally, occupational health and safety laws tend to impose a general duty of care requiring employers to offer reasonable safety protections. What, specifically, constitutes adequate safety measures depends entirely on context: In a factory it might mean supplying gloves, machine guards and emergency-stop buttons. In an office it might mean supplying keycards, ergonomic keyboards, and staircase hand rails. In a war zone it might mean supplying guards, body armor and evacuation services. But in contexts like war, terrorism and crime, health and safety regulations can be vague, leaving employers with only the broadest default legal advice—"heed the duty of care." In the real world, employers need answers to highly specific questions.

Duty of care is not a new term. In fact, Duty of Care was first addressed in court cases in England as early as 1842 and in

the U.S. as early as 1916 involving Buick Motor Co. While the concept of Duty of care has been around for a long time it has gained significant traction in the past several years around many topics including, and perhaps especially, as it relates to corporate travel policy. No longer just a moral concern for employers, recent legislation demands that businesses ensure business travel safety for its employees.

Until recently, Duty of Care, as it relates to travel, was often discussed only in the context of international travel. The Duty of Care focus was focused on providing support in situations when a traveler may need health or security provisions while in a foreign country.

## **Duty of Care has always pertained to providing a level of support for anyone who is deemed to be under an organization's care at the time of an incident.**

Obviously, this may address an employer's responsibility at any time and virtually anywhere.

Companies have a duty of care to employees and that includes ensuring they are safe and looked after while travelling on business. For companies looking to implement an effective duty of care policy, there are several challenges, however.

Being able to determine just who is under an organization's care at the time of an incident, as well as what services are within the Duty of Care scope, is one of the challenges that organizations face today. Since each of the 50 U.S. states maintains its own separate sovereignty, free to develop its own tort law under the Tenth Amendment, there are several tests for finding a duty of care in United States tort law. It is important to understand the legal ramifications for a business not only in the state in which it resides, but also in every state where its employees may travel.

Additionally, a company's duty of care may apply during events as wide-ranging as severe weather phenomena (ash clouds, tsunamis, hurricanes and more) to smaller scale emergencies, such as a hotel fire, or even an infectious disease outbreak among a group of travelers or within their geographical location.

Finally, Duty of Care applies not only to travelers but also to locals and even dependents.

## **Experts agree that one of the most effective ways to protect travellers from potential danger – and the companies they work for from liability – is good communication.**

This includes a comprehensive and readily available travel policy that clearly addresses the expectations of the travelers and ongoing confirmation of the travel policy. Other best practices include briefing of travellers before they depart access to information while travelers are on the move; using traveller tracking systems; and employer/employee communication channels in the event of an emergency. Companies need to protect employees from perceived danger and protect themselves from liability.

Companies of all shapes and sizes, that require business related travel, realizing that carrying out duty of care policies is not only good for their corporate social responsibility, but can also save the business money. With a reduction in the seriousness and frequency of accidents, consequent reductions in insurance premiums and a decline in down-time for both staff and their vehicle, policies can result in significant financial savings.

Stress is another factor that companies must consider, although there is a limit to how much any

company can tend to their employees. In today's business climate it is not uncommon to have people who are on-call 24 hours a day. Even for those who are not on-call many will constantly be checking their email through mobile devices. It is challenging to regulate how much people may work but if they are exceedingly tired or ill they may underperform, which impacts the organizations reputation, or they may face physical risk.

The questions surrounding these issues often do not have clear-cut answers, and determining the scope of Duty of Care typically involves several key stakeholder groups across an organization including Security, HR, Travel, Safety, Legal, Risk Management, Finance and others. Additionally, since Duty of Care issues can often escalate to become an incident or crisis impacting a company, it is imperative that crisis management leaders are involved in their organizations' Duty of Care programs to ensure that needing to be made during a crisis event are the correct Duty of Care policies and plans are typically stand-alone documents that may reference existing plans or procedures within the organization, but they should be integrated with an organization's overall Business Continuity Management and Crisis Management Programs, so that all relevant aspects of response and

recovery are aligned and can work effectively together.

Trying to sort out the details of one's Duty of Care program may initially seem complex, but focusing on a few key areas will help in the formation of a proactive risk management program that supports an organization's comprehensive and effective management of its wide variety of Duty of Care responsibilities.

**Another consideration is that while typically the covered population for an organization is thought of as its employee base, some elements of the Duty of Care program may extend beyond just day-to-day employees.**

Within the workforce specifically, an organization's Duty of Care program may extend to its contractors, consultants and vendors. Beyond the workforce and depending upon the nature of the incident, an organization's Duty of care scope may extend to numerous other groups within the covered population, including employee family members and dependents, guests, visitors, employment candidates and event attendees, with each potential covered population type posing its own unique set of considerations.

Having a clear understanding of the Duty of Care elements is the

first step towards a sound Duty of Care program. However, just understanding how to apply the program is not enough. An organization needs to be prepared and have actionable plans and resources in place to respond to the incident while following the guidelines set forth by its Duty of Care program.

When thinking through a Duty of Care program there are a number of challenges to overcome and on which to reach consensus. The biggest challenge is defining the scope of the program, including what services are provided, in which situations and to whom. The policies and plans that define the Duty of Care program's scope need to be clear and well-communicated and involving the right set of stakeholders to consider the breadth of questions that can arise related to Duty of Care will be critical as you consider updating and/or enhancing your organization's Duty of Care program.

#### Key Questions for Consideration when Developing a Duty of Care Program

- What are your organization's specific legal requirements for Duty of Care?
- Who are the stakeholders involved in the Duty of Care program process?
- If an employee goes on a business trip and adds on vacation time, for what

duration of the trip do your organization's Duty of Care responsibilities apply?

- Does your Duty of Care program apply for employees with remote work arrangements? What if the employee is just working at home by choice?
- Who has Duty of Care responsibility for an off-site event sponsored by your organization, your company or the hosting location company?
- What services or support would you extend to non-workforce members?
- Can you reach your people in a timely manner who are in an area impacted by a Duty of Care incident?
- Have you assessed the risks in regions where you are operating or sending people to work on your behalf?
- Have you clearly defined what non-traditional expenses will and will not be reimbursed during a crisis event?
- Will you give priority of support to employees over other population types during a crisis?

## How can CLC Lodging help?

Ensuring that your employees, as well as any contractors, consultants and/or vendors that may fall under your Duty of Care, get a good night's sleep at a safe location is an excellent first step towards ensuring the safety of your travelers. A better night's sleep translates into fewer workplace accidents, better productivity and generally happier travelers. Per Diem travelers or any traveler worried about expense as well as travelers lacking a clear travel policy may cut corners on their lodging in order to save money. As well as being able to support our clients in the development of travel and travel safety policies, CLC Lodging has a suite of products designed to assist our customers in managing key aspects of their lodging including meeting their duty of care obligations and generally providing travellers with greater peace of mind. Additionally, our programs provide significant savings through pre-negotiated rates at more than 16,000 hotels across North America. Our programs provide 24/7/365 traveller support, last room availability, 24-hour length of stay and walk-in availability. Our portfolio of lodging solutions gives both the employer and the traveller peace of mind that dedicated support and backup is accessible around the clock – while still controlling expenses, and rooms will be available nearby the traveler's final destination.



### **ABOUT THE AUTHOR:**

Denny Marlin is a marketing executive with experience in lodging management for workforce travelers. He has written a generic corporate travel policy that can be adapted by a broad spectrum of travelers to fit their corporate needs and requirements. He is familiar with travel issues in virtually every major industry including, oil & gas, trucking, telecom, energy, rail, and many more. He has also been responsible for managing and continuously improving safety programs.

### **ABOUT THE COMPANY:**

CLC Lodging is a leading negotiator of workforce lodging rates. CLC has more than 30 years of experience as a leading provider of lodging management programs to businesses, serving thousands of clients in North America. CLC serves thousands of businesses with crews, drivers, field reps, maintenance teams and other workforce travelers on the road. CLC Lodging is a division of FleetCor, the Global Fleet Card Company. CLC's clients purchase more than 12 million room nights annually across CLC's proprietary network of thousands of hotels.

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