

Global HR Hot Topic

June 2011

Global Health and Safety Initiatives



Challenge:

Global risks like pandemics and crises (terrorism, natural disasters) can make cross-border health and safety initiatives a business imperative. But multinationals' emerging efforts to launch these programs run into problems because countries regulate workplace health/safety at the local level.

Multinationals' workplace health and safety concerns increasingly transcend national boundaries. Proactive multinationals now take steps toward aligning, across worldwide operations, those aspects of health and safety with a cross-border dimension. In general, headquarters-driven cross-border health/safety initiatives fall into two categories:

- Targeted health/safety programs addressing serious risks that transcend national borders, such as pandemic policies and crisis plans focused on terrorism and natural disasters.
- General health/safety standards imposed across worldwide operations, such as a global code of conduct safety provision, a set of company "cardinal safety rules" or a manifesto on health/safety principles like Sony's "Global Policy on Occupational Safety and Health" (see <http://www.sony.net/SonyInfo/csr/employees/safety/>).

In a perfect world, a single set of global legal principles would govern these global health and safety policies. Indeed, there is such a thing as "international workplace health and safety law"—the International Labor Organization, the European Agency for Safety & Health at Work, NAFTA, industry associations and others have promulgated robust sets of cross-jurisdictional workplace health/safety standards. But even so, regulation of health/safety in actual workplaces remains stubbornly local. Every country seems to impose its own workplace safety code comparable to US OSHA, with hundreds or thousands of detailed regulations addressing minutely specific workplace risks. Any employer needing to know, for example, how to store chemicals, how to guard a paper shredder, or how to administer vaccine during a pandemic needs to start by checking law in each affected jurisdiction and also checking local collective agreements.

Our question, therefore, becomes: *How, in the face of disparate local safety regulations, does a multinational implement a workplace health/safety initiative across worldwide operations?* The answer is to tailor the initiative accounting for legal compliance in each affected country. Keep the global initiative flexible and modify it in each jurisdiction.

Pointer:

A cross-border health/safety policy or initiative must factor in local legal issues. Tailor or adapt a program accordingly.

Each monthly issue of *Global HR Hot Topic* focuses on a specific challenge to globalizing HR and offers state-of-the-art ideas for ensuring best practices in international HR management and compliance. White & Case's International Labor and Employment Law practice helps multinationals globalize business operations, monitor employment law compliance across borders and resolve international labor and employment issues.

For further information, contact:

Donald C. Dowling, Jr.
International Employment Partner
New York
+ 1 212 819 8665
ddowling@whitecase.com

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
United States
+ 1 212 819 8200

In addition to aligning with local safety regulations, nine other issues can come into play:

- **Duty of care:** Most countries impose a duty of care on employers, and one big reason multinationals launch global health/safety initiatives is to comply with this duty, reducing legal exposure in new contexts like pandemics and terrorism. Breaching safety duties can mean criminal penalties—in May 2010, for example, Russia joined many other countries in criminalizing certain workplace safety violations. As to civil lawsuits, the first defense to an employee personal injury claim alleging breached duty of care should be to assert any local equivalent to the US state “workers’ compensation bar” defense—but some jurisdictions (such as England) offer no such defense while others (such as in Latin America) let an employee surmount the bar by proving mere negligence.
- **Existing policies and rules:** Countries from Finland to Malaysia and beyond require employers to issue written *health and safety policies*, and countries from France to Japan and beyond require employers to post written *work rules*. Any new global health/safety initiative will likely bump into issues addressed in existing local health/safety policies and work rules. Amend accordingly.
- **Employee representatives:** Many jurisdictions, including Australia, Brazil, China, Finland, France, Malaysia, Mexico, Norway, Poland, Quebec, South Africa, Sweden and Thailand, require employers (at least in some contexts) to sponsor health/safety representatives or committees, and then to consult on workplace health and safety. In amending local health/safety plans to accommodate some new headquarters-level health/safety initiative, be sure to involve these representatives as necessary. Specialized health/safety representatives aside, many countries confer on ordinary labor representatives—trade unions, works councils, worker committees—a “mandatory subject of bargaining” right to consult on health/safety issues affecting terms and conditions of employment. (In some countries, government labor agencies may also play a role.) Representatives may not have an absolute right to veto a new health/safety initiative, but they may be able to void a plan that an employer implements unilaterally. And failing to consult can amount to an unfair labor practice.
- **Medical attention:** Those global health/safety initiatives focused on pandemics and crises often implicate the special issue of workplace *medical care*. Employer-provided medical care raises legal issues including: employer (or workplace nurse) practicing medicine, doctor/patient privilege, regulation of prescriptions, drug importation and employer distribution of drugs/vaccines. In some countries, including Brazil and Italy, large employers have on-staff doctors who can facilitate solutions. But outside of “staff doctor” countries, a particular challenge is how an employer can require employees, during a pandemic, to submit to diagnostic exams or to take vaccines/medicines. The analysis often depends on whether the employer mandate is reasonable. A related issue is employee medical care *outside* the workplace: In countries where government medical care systems or insurance pick up sick employees’ medical costs, even employees who succumb in the workplace may be able to access medical treatment without adding to the employer’s marginal costs. But be sure to account for the special problem of immigrants, expatriates, mobile employees and business travelers unable to access home-country medical systems.
- **Isolation:** Another issue particular to pandemic plans is how to reserve an employer’s right to isolate, keep out, or “quarantine” employees who might be infected by a communicable disease outbreak. Pandemic plans may seek to restrict employee travel—business and personal—into infected areas, or restrict return-to-work after a trip into a problem region. Isolation orders and travel bans get scrutinized in light of employee rights, so a global plan should spell out procedures anchored in reasonable medical advice.
- **Shut-downs:** Global crisis policies often cover workplace shut-downs, such as in case of a pandemic, hurricane or terrorism. The main employment liability here is *pay*: In many countries, an employer that shuts down temporarily will be obligated to pay those employees willing to work. (*Sick* workers often collect sick pay from either the employer or the state under local sick-pay systems.) Some countries, though, let employers suspend operations—and pay—because of a genuine *force majeure*. Other countries allow mandatory furloughs.
- **Data privacy:** Routine workplace health/safety procedures involve tracking and reporting accidents and incidents. In a global pandemic or crisis, employers may want workers to disclose whether they or their family members are affected, where they have recently traveled and whom they have been exposed to. Some employers use employee-travel-tracking software to monitor employees’ whereabouts. But jurisdictions with robust privacy laws restrict employers from collecting (or forcing workers to divulge) much personal data—particularly health information, which in the European Union is subject to special rules for “sensitive” data. Therefore, process employee health-status data carefully. A global crisis or health plan should spell out the situations where workplace safety or public health concerns reasonably justify personal inquiries. Invoke any employer duty to report incidents to public authorities or to maintain a safe workplace.
- **Discipline:** All global health/safety protocols should be flexible as to the discipline imposed for any given safety infraction, because this issue implicates local law. Global pandemic and crisis policies often implicate discipline issues around employees refusing to report for work, refusing business travel or insisting on working from home. Local law may support a no-show employee whose refusal to work is reasonable, leaving employers free to discipline only for *unreasonable* absences. As such, pandemic or crisis protocols should impose clear rules prohibiting unreasonable employee behaviors. Build in procedures for communicating when the workplace is safe.
- **Language:** Some jurisdictions, including Belgium, France, Indonesia, Mongolia, Quebec, Turkey and much of Central America, specifically require that employee communications, or at least work rules, be communicated in the local language. (See our August 2008 *Global HR Hot Topic*.) Even in places with no “language law,” any health/safety plan addressed to local employees should be comprehensible to them.