



**INTERNATIONAL
MOBILITY CONSULTING
NEWSLETTER**

Global Mobility Alert
Middle East crisis – Duty of care
Obligations for Swiss employers



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Global Mobility Alert Middle East crisis – Duty of care

Introduction & Context

Duty of care obligations under Swiss law

Key employer obligations

- Information Duty
- Prevention and risk anticipation
- Scope regarding family members

Potential liabilities in case of breach

- Civil Liability
- Criminal liability
- Scope regarding family members

Recommended actions for employers



Escalation of tensions in the Middle East

- ▶ **Recent geopolitical developments in the Middle East have significantly increased security risks across several countries in the region.** Military escalations, regional instability, and potential disruptions to infrastructure and transport have created an **environment of heightened risk for expatriates and international assignees** working in affected areas.
 - ▶ For multinational companies with employees on assignment in the region, this raise **serious concerns regarding the health, safety and security of expatriates and business travelers.**
 - ▶ **Various risks incurred:** Military escalation and armed conflict, Terrorism or civil unrest, Infrastructure Disruptions (transportation and evacuation), Reduced access to healthcare services, Potential limitations on mobility and communication, insurance restriction.
- ▶ In this context, **companies must carefully assess their duty of care obligations toward employees on intra-group mobility**, particularly employers established in Switzerland, where the legal framework imposes a **broad duty to protect employees' health and personal integrity**, including during assignments abroad.

- ▶ **Under Swiss law**, employers have a **legal obligation to protect the health and personal integrity** of their **employees** throughout the employment relationship, **including during international assignments**.
- ▶ **This duty arises primarily from:** Article 328 Swiss Code of Obligations (CO), Article 6 of the Swiss Labour Act (LTr), Article 82 of the Federal Accident Insurance Act (LAA)
- ▶ **These provisions pursue the same objective:** ensuring the **protection of employees' health and safety at work**.



- ▶ **Employer must protect & respect personality of the employee** in the employment relationship.
- ▶ **The employer must take all measures necessary to protect the employee's life, health and personal integrity**, taking into account experience, available technology and the specific conditions of the business.
- ▶ **The employer's obligation is an obligation of means** rather than a strict obligation of result.
- ▶ **Employers must therefore demonstrate that they have implemented appropriate and reasonable measures to protect employees.**

➤ In the context of geopolitical risk, Swiss employers are expected to implement several key measures.

➤ **Information duty:** Employers must inform employees of unusual or specific risks incurred in the country of assignment:

- **provide employees with comprehensive information** about the geopolitical situation and security risks,
- **communicate official warnings** issued by foreign ministries, embassies or consulates
- **inform employees about health risks, medical infrastructure and potential evacuation constraints.**

A written acknowledgement confirming that employee's have received and understood the relevant information regarding safety, health conditions and local risks is recommended.

➤ **Prevention and risk anticipation:**

Employers must **actively anticipate and prevent risks related to the employee's work environment.** This may include:

- **conducting geopolitical risk assessments,**
- implementing **security protocols** and **crisis management procedures**
- **providing security briefings** to expatriates and business travelers

The existence of **internal guidelines** to respond to security incidents or crisis situations is **particularly important.** Courts may consider the **absence of such policies as evidence of negligence.** The principle of proportionality applies. Measures must be economically reasonable, proportionate to expected benefit and effectiveness.

Scope regarding family members

- ▶ **Swiss employers do not have contractual obligations toward the employee's spouse or children, as there is no direct contractual relationship.**
- ▶ **However, in practice many companies extend protection measures to accompanying family members for ethical, reputational and risk management reasons.**
- ▶ In the absence of contractual obligation, Family members could only rely on extra-contractual liability provisions, such as Article 41 CO (tort liability), Articles 27–28 Swiss Civil Code (protection of personality).
- ▶ **In practice, it is advisable that the employee's family be treated in the same way as the employee, depending on the circumstances.**

Failure to comply with duty of care obligations may expose employers to civil & criminal liability:

▶ **Civil liability:** Under Swiss law, employer liability follows the rules of **contractual liability**.

- **Employee shall demonstrate a contractual breach, the damage suffered, a causal link between them.**
- In practice, however, employers are often required to demonstrate that they took all necessary preventive measures.
- In the event of a disaster, accident, or illness, **social insurance or private insurances taken out** by the employer **are intended to cover** the costs, **subject to any exclusion clauses**. However, an employee who feels they have been wronged may bring an action for damages directly against the employer, to seek compensation directly from the employer, even where social insurances exist.

▶ **Criminal liability:** In serious cases, **criminal liability may arise** for company & representatives

Relevant criminal offences may include: Negligent homicide (Art. 117 Swiss Criminal Code), Negligent bodily injury (Art. 125 SCC) Endangerment of life (Art. 129 SCC) failure to install protective devices (Art. 230 SCC). Both Representatives and companies may be held liable (Art. 102 SCC) depending on circumstances.

In periods of geopolitical instability and high-risk geopolitical context

Companies should take proactive steps to protect Expat & limit potential liability

Key actions include the following:

- **Monitoring and risk assessment** Companies should:
 - continuously **monitor geopolitical developments**,
 - rely on security intelligence, **diplomatic reports and government advisories**
 - **Coordinate with corporate security teams and external risk providers**
- **Communication** Employees should receive **regular updates regarding the situation & evolving risks**. Information should cover security risks, local restrictions, emergency procedures & evacuation protocols.
- **Security and evacuation planning** Companies should **establish security protocols and emergency procedures, evacuation plans and regular safety briefings for expatriates**. Maintaining contact with embassies and consulates is also recommended. **Temporary relocation** within the country or outside the country **may need to be considered depending on the risk level**.
- **Assistance and repatriation** Employers should verify the scope of their insurance coverage, especially regarding:
 - **Assistance & repatriation conditions:** Usually, assistance repatriation insurance policies **only cover repatriation costs when the employee's health requires medical evacuation**. Costs related to security-driven repatriation may therefore remain partially or entirely borne by the employer.
 - **Life & Disability insurances:** Employers should **verify whether life & disability insurance policies provide for any exclusion** related to war or armed conflict.



Until now, many companies have adopted temporary risk mitigation measures.

Common approaches include:

- **Ensuring regular communication** with Employees, providing regular information
- **Monitoring risk assessment** in coordination **with corporate security teams & external providers**
- **Encouraging remote work** from the employee's residence within the country of assignment
- **Limiting access to high-risk corporate sites** or facilities
- **Stop business trips**



If the security situation deteriorates and temporary relocation to another country shall be decided, employers should carefully consider potential consequences:

- **Extended remote work from another country may trigger social security obligations in that country for the employer, tax residency or permanent establishment risks.** For this reason, remote work from another country should generally remain temporary. If the situation persists, alternatives may include: temporary paid leave arrangements, temporary suspension of duties & exemption to work.
- **In case of Employee's refusal to be repatriated: Employee's refusal to comply with a repatriation instruction issued by the company should be confirmed in writing with company's disclaimer signed by employee.** This would allow to demonstrate that the company has fulfilled its duty of care obligations (information provided & protective measures implemented), confirming employee's personal decision under his sole responsibility, so that the company cannot be held liable for any consequences resulting from this decision.

Conclusions

Swiss employers have a **broad duty of care toward employees, including expatriates working abroad.**

In the context of geopolitical instability, companies must demonstrate that they have taken **reasonable, proportionate and proactive measures** to protect employees' health and safety.

Failure to provide adequate information, risk monitoring or security measures could potentially expose employers to **civil or criminal liability.**

Regular communication, robust crisis management procedures and close coordination between **HR, Global Mobility, Legal and Corporate Security teams** are therefore essential.

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2026

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