

# Helping Haiti: Tips for Companies Offering Aid

**S**wift action must be partnered with careful planning when responding to any disaster. This holds especially true with the 7.0 magnitude earthquake that struck Haiti on Jan. 12, 2010, the worst earthquake in the region in over 200 years. The International Red Cross fears that as many 150,000 people have died and untold numbers are still trapped.

Lack of food, shelter, supplies, expertise, and infrastructure, as well as civil unrest, are only some of the challenges Haiti faces. Companies participating in the multi-national relief effort

**FIRST IN A TWO PART SERIES**

are confronting various employment issues that range from the donation of money, skill, expertise or goods; to personnel management issues of its Haitian workforce.

Many companies maintain non-solicitation policies, which typically prohibit the selling, purchasing or advertising of outside goods or services to avoid disruptions to operations or disturbance of personnel and/or clients. Company requests for donations and aid for the Haiti earthquake victims may violate a company's non-solicitation policies or restrictions on use of e-mail resources. Employers should evaluate whether the circumstances confronting Haiti warrant an exception to a non-solicitation policy. Making exceptions to a written or practical policy may give rise to a claim that the policy doesn't exist or exceptions should be made for other kinds of solicitations, including union-related communications. To avoid these problems, employers should consider controlling directly any relief effort involving its employees.

Corporations often have the expertise and infrastructure to play a critical role in response efforts in medicine, transportation, construction, among other areas. For a company that sends employees to Haiti for relief operations, either by paying them if they volunteer or by sending them on a sponsored trip, many basic wage and hour, workers' compensation, and other issues must be considered for the time the employees are in Haiti. A company will need to determine which U.S. or relevant state laws apply to employees while in Haiti. Some laws, such as the Age Discrimination in Employment Act, the Americans with Disabilities Act and Title VII expressly apply to employees while outside the United States, but many others do not. Aside from asking volunteers to sign releases or waivers of liability associated with the trip, a company must be aware that some worker protections cannot be waived by release.

Similar to sending employees on any business trip, employers should ensure it maintains adequate insurance coverage for employees sent abroad to assist the Haitian relief effort. Workers' compensation is a typical form of mandatory insurance coverage that must be considered. Workers' compensation is state specific and employers should contact their carrier to confirm coverage. In many cases, employees are covered by workers' compensation if the employer sends the employee abroad and compensates the employee.

However, employers should be mindful that coverage may not extend beyond a particular state or the territorial United States, and the company should check the scope of its respective policy. Depending on the company at issue, relief work may be considered "usual and customary" to the company's typical operations. Nevertheless, some workers' compensation carriers may not consider relief efforts to be part of the "covered territory." If there is no coverage, a company could seek a stand-alone policy to cover the foreign relief operations.

A company should also consider alerting employees to the dangers of traveling to a foreign region severely affected by a natural disaster.

For instance, the malnutrition, lack of shelter, proliferation of injuries, and unsanitary conditions that exist in the aftermath of the earthquake in Haiti will increase the risk of the spread of communicable disease. To the extent possible, companies should take precautions for employees, contractors or volunteers exposed to these conditions. One of the best tools to ensure the safety of employees is obtaining as much information about conditions on the ground. For example, the Centers for Disease Control issues guidance for relief workers and others traveling to Haiti for earthquake response offers critical information. ([wwwnc.cdc.gov/travel/content/news-announcements/relief-workers-haiti.aspx](http://wwwnc.cdc.gov/travel/content/news-announcements/relief-workers-haiti.aspx)). The State Department has also issued travel tips that advise on topics including registering with the U.S. embassy, safety and security, crime and criminal penalties. ([travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1134.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1134.html)).

A company with a workforce in Haiti should review or formulate its own emergency response plan, which can be based, for example, on domestic emergency response plans for outbreaks of communicable diseases. These plans should designate a point person, set out protocols for reduced operations during an occurrence of outbreak, put in place travel controls, limit face to face meetings, manage the return to work of contagious individuals, and implement distancing strategies, coughing etiquette and precautions as needed.

Employers who send employees to volunteer in Haiti should remain mindful of compensation issues. With respect to non-exempt employees, it is important to note that the Federal Labor Standards Act, which governs wage and hour issues in the United States, provides an exemption for employment in foreign countries. Consequently, the FLSA would not apply to any full workweek during which an employee performs work in a foreign country, even if the employer has its main office in the United States. In addition, there may be applicable exemptions (including for bona fide volunteer activities) and remedies for those employees that may claim not to have been appropriately compensated. Employers can visit the Department of Labor's Web site at [www.dol.gov/whd/FLSA/index.htm](http://www.dol.gov/whd/FLSA/index.htm). A company should be sure to check whether the state(s) from which they operate seek to cover employees working abroad.

It is estimated the devastating earthquake in Haiti affected more than three million people. The United Nations recently requested \$562 million in aid, earmarking half for food aid, and the remaining half for medical aid, shelter, water, sanitation and food preparation equipment. Many will want to be a part of the global response to Haiti's emergency. The U.S. government has established a Web page with information: [www.whitehouse.gov/haitiearthquake\\_embed](http://www.whitehouse.gov/haitiearthquake_embed). While there are virtually countless organizations accepting donations for the Haiti relief effort, donation opportunities can also be found at: [www.clintonbushhaitifund.org](http://www.clintonbushhaitifund.org); [www.usaid.gov/help/haiti](http://www.usaid.gov/help/haiti); [www.redcross.org](http://www.redcross.org); [www.care.org](http://www.care.org).

Aside from direct contributions or matching employee donations, employers and employees may also consider creative means of contributing. Some companies allow employees to cash out paid time off in exchange for contributions, while a few companies with strict dress codes allow employees to wear jeans and casual wear in exchange for contributions to the relief effort. There are many ways to help and companies and their employees can exercise some flexibility.

During this time of great need, employers may encounter employees interested in adopting a child orphaned by the earthquake. Experts estimate that more than 50,000 children were living in licensed orphanages in Haiti when the quake hit. Out of this, 600 children were in the process of being adopted. In 2009, U.S. citizens adopted approximately 330 children from Haiti. Although failed infrastructure has stalled the adoption process, interested families should visit the Haiti Earthquake & Disaster Information Page, [www.haiti.adoption.com](http://www.haiti.adoption.com).

Immigration issues from a Haitian workforce or family members are inevitable. Fortunately, Homeland Security Secretary, Janet Napolitano, has granted Haiti Temporary Protected Status (TPS) because of the earthquake. As a result, the nearly 200,000 Haitians in the United States when the earthquake struck will be allowed to remain and work



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**TANJA L. DARROW** is a shareholder at Littler Mendelson. Her labor and employment law practice includes discrimination and harassment, ADA, fair employment practices and wage and hour issues.



**JIM E. HART** is a shareholder at Littler Mendelson. He specializes in employment and labor litigation, class action litigation and workplace training.

for up to 18 months. TPS is only temporary immigration status due to "temporary negative conditions," including an environmental disaster that prevents safe return to Haiti. Although shielded from deportation, Haitian TPS holders cannot become permanent U.S. residents or citizens. Additionally, since the earthquake, U.S. Immigration and Customs Enforcement has halted the deportation of Haitians.

In times of disaster, some employees may request leave time to go to the affected area to render aid or engage in search activities. Also, injuries sustained during the disasters may qualify employees for leave. Even if an employer's policies do not allow non-medical leaves of absence, the circumstances of a disaster will probably present extraordinary circumstances that may allow an employer to grant the time off to employees affected by the catastrophe. While strict adherence to leave policies is the prudent management approach for employers in normal operating circumstances, when a disaster strikes, employers should be flexible by at least temporarily relaxing otherwise restrictive leave policies. There are repercussions to a company's public image from its response in times of great public need. This is particularly concerning the duration of bereavement and military leaves pursuant to the Uniformed Services Employment and Reemployment Rights Act for those who may be called to duty to participate in the U.S. effort to provide relief to Haiti.

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