

Understanding Informed Consent in Employment: An Essential Element of Duty of Care

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If you've been following the latest news on duty of care in recent months you'll have noticed a large number of articles and forums discussing how organisations can be sued for neglecting their responsibilities, or duty of care, towards the health and safety of their personnel. This includes their employees, volunteers, consultants - basically all those with whom there is a degree of control. When personnel work in higher-risk environments, organisations are expected to go above and beyond normal practice and enhance their health and safety measures accordingly. Putting the health and well-being of our personnel at the heart of everything we do enables safer and more effective work.

Every stage of the employment cycle involves organisational duty of care. In a recent [article written for Devex](#), I argued that organisations which excel at recruitment lay the best foundation for a continued healthy and safe working environment. One of the critical items in recruitment and induction practices is informed consent.

A recent publication called, *Voluntary Guidelines on the Duty of Care to Seconded Civilian Personnel*, defined informed consent as:

“...an employee’s agreement to being deployed [employed] after all the relevant facts - the organisation provides their personnel with the best available information and knowledge about the operational environment, the objectives and the tasks to be performed, the related safety and security risks, and risk treatment measures, crisis management plans and redress measures, and they understand and accept these facts [sic].”

Essentially, informed consent is the organisation being diligent about doing its homework on risk management – knowing what the risk is to their personnel and operations in every location, and then being upfront and honest with potential and new employees about what those risks are. Organisations should detail how they mitigate those risks, how they support the employee to prepare for those risks and what level of ‘residual risk’ remains. At times, employers shy away from informed consent because they don’t have a good picture of the risks which exist or they’re afraid that full disclosure of the risks will ‘scare away’ good people. However, I believe the exact opposite is true. Potential employees want to know that the organisation they are joining is taking risk seriously and has their best interests at heart, which is evidenced by a full and honest approach to informed consent.

So, how do organisations go about collecting informed consent in the appropriate way?

1. Provide the best information available about the role and environment as early as possible

Organisations should provide a clear understanding of the working environment, objectives and tasks they would like an employee to undertake. This includes any risks and the measures taken to limit them. Pre-assignment briefings and inductions are useful forums to convey this information. Information should be provided by competent specialists as close to the starting date of the new role as possible.

2. Provide clear and accessible procedures and training on health, safety and security

An organisation’s health, safety and security policies should directly correlate to the organisation’s legal responsibilities and the risks present in the environment. Employees should have access to training on the organisation’s day-to-day health, safety and security policies and procedures, including critical incident procedures and redress, and know how to engage with them. Training should also help employees prevent and respond to the threats they are likely to face. Organisations should use competency-based training and assessments to ensure the training has truly ‘sunk in’ and been absorbed by new employees.

Many organisations believe working in a high-risk environment requires training on preventing and responding to kidnap. Statistically, there are only a small number of places globally where kidnap is likely. Employees not going to those locations would be better served learning how to respond to detention, interrogation, or hostile surveillance.

3. Document relevant information and keep it up to date

Keeping a clear record of what information has been conveyed, to whom, and when is a critical element of informed consent. There should be a clear paper trail and record for future use. Changes or revisions from outcomes of learning reviews and risk assessments should be shared with employees and documented. During an employment process, organisations should have a clear record of decisions that were taken during the process and what was shared with them – such as briefing and induction materials, training and written informed consent (see point 5).

4. Ensure that employees have the competence to understand and accept risks

Organisations must do their best to ensure employees have the right competencies and experience to work in the role and the environment – especially if that workplace is a high-risk environment. If an individual is not competent in either of these, they may not be competent enough to sign and give their informed consent.

Organisations must ensure their decision-makers on the health, safety and security of personnel also have the right competencies to undertake their role. The decision-makers must receive enhanced assessments during recruitment and their decisions be continually monitored.

It's one thing for a new, or potential, employee to like the of working in rural Afghanistan but it's another thing entirely for that employee to have the to give their informed consent. If the person has never worked in Afghanistan, or a similar high risk environment, if they are new to the organisation, role or country how confident can the organisation be that consent is competent? Not everyone is familiar with all the risks everywhere in the world. Organisations will often deploy people into completely new environments and contexts but in this case the responsibility of the organisation is heightened to make sure employees are informed of the new role, or context, and the risks associated. That is the only way an organisation can be assured of an employee's competence.

5. Obtain informed consent that is legal and written

Employers should seek a formal commitment in the form of a signed document to establish informed consent. This document should set out:

- The employees' responsibility to comply with health, safety and security risk management procedures and to adapt their behaviour accordingly;
- That employees have received a verbal and written explanation of what it means to assume the risk of travelling and working in the intended working environment;
- Acknowledgement that they understand and accept this assumed risk;
- That the employee has the relevant professional experience to fulfil the role (and if additional training is necessary).

It's important to encourage and help employees to regularly review their individual position with respect to the health, safety and security risk assessment, and to bring their observations and concerns to the attention of the management of their organisation. Informed consent is not meant to be a waiver, disclaimer or abdication of employer responsibility. Whether informed consent is an appropriate defence against a negligence claim will depend on the local legal framework. Organisations

should obtain legal advice in order to have a full understanding of the requirements and limits of informed consent, waivers and disclaimers.

6. Provide trustworthy mechanisms by which health, safety and security concerns can be monitored and raised

Organisations should have various mechanisms to ensure good health, safety and security practices are in place and good decisions are being made. These mechanisms should test and measure quality, monitor compliance and discipline of employees (with sanctions) and provide a channel for employee complaints and concerns (grievance).

Providing very well designed, well managed and transparent mechanisms in these areas are essential in every workplace. They contribute towards trust and confidence and can improve the quality of work by helping to identify areas for improvement. Informed consent plays an integral role in allowing the employee space to raise concerns they have and say 'no' to a role or situation that they feel compromises their health, safety or security. Even in high risk environments, where risks tend to develop and grow more quickly, no one should feel powerless or uninformed. Good organisations make informed consent a regular part of their business and they start from day one.

For more information and practical ways to manage your duty of care contact:
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Merkelbach, M. (2017). Voluntary Guidelines on the Duty of Care to Seconded Civilian Personnel. Swiss Federal Department of Foreign Affairs (FDFA), Stabilisation Unit (SU) and Center for International Peace Operations (ZIF). This article was a key resource for the structure and content of this article.