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AUGUST 2006

With recent events in the UK, employers will need to address employees' concerns regarding air travel and the threat of terrorism.

## Fear of Flying? Addressing Employees' Concerns Regarding the Threat of Terrorism to Business Travel

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In the five years since September 11, 2001, the world has faced a number of actual tragedies and other serious threats involving commercial travel. Most recently, authorities thwarted a plot to blow up ten commercial airliners traveling between Britain and the United States, again striking fear worldwide.

In the wake of these events, employers may encounter resistance to business travel from employees who express fear of flying. For most, this fear may be temporary and should not have significant effect on their ability to perform their job duties. Particularly given the business disruptions, lost productivity and annoyances potentially caused by long airport security lines, increased security searches, restrictive carry-on rules, and resulting flight delays and cancellations following the recent threat, employers may choose to allow employees to temporarily suspend business travel, if doing so would not interfere with business needs. Following September 11, 2001, for example, many employers discovered that allowing employees to participate in remote meetings via teleconference, rather than traveling to meetings in person, was an equally efficient way to conduct business. If such an arrangement does not cause significant disruption to the smooth operation of the employer's business, providing such an option, at least on a temporary basis, may assist employees in getting past a period of anxiety.

However, the decision to provide such alternatives is at the company's discretion and is not required. Of course, in evaluating these options, employers should review employee handbooks and other applicable policies. Employers are also advised to treat similarly situated employees equally so as to avoid possible discrimination claims. Finally, if the affected employees are represented by a union, the company should determine whether it is obligated to notify and involve the union in any discussions regarding changes to working conditions requested by employees.

### ADA Considerations

In some instances, including where an employee suffers from a stress-related disability involving the fear of flying, employers may in fact be required by the Americans With Disabilities Act (ADA) or corresponding state laws to consider an employee's reasonable request for accommodation, such as telecommuting or participating in meetings via teleconference. Under the ADA, an employer is required to provide a qualified individual with a disability with a reasonable accommodation if such accommodation will enable the employee to perform the essential functions of his/her job.

It is important to note, however, that employers are not required by law to eliminate an essential function of an employee's job, as such would not be

“reasonable.” Essential functions are those duties which are fundamental to the position in question and not merely marginal. An employee who is unwilling or unable to perform the essential functions of his/her job, with or without reasonable accommodation, is not protected by the ADA. Thus, if travel is an essential function of an employee’s job, an employer would not legally be obligated to eliminate such duty, for that would not be a reasonable accommodation under the circumstances. Therefore, such an employee would not be protected under the ADA as a qualified individual with a disability because he or she cannot perform the essential functions of his or her position with or without reasonable accommodation. Accordingly, an employer may simply have no other alternative but to terminate such employee’s employment for refusing to fly.

## NLRA Protections to Consider

A related question arises in the context of unionized employees. Under the National Labor Relations Act (NLRA), workers are protected if they refuse to perform a duty that is unsafe. However, under the current state of air travel, the NLRA would not protect an employee who refuses to fly as part of his or her job because the United States Government has declared that air travel is safe.

## Corporate Liability and Other Concerns

Although generally not required to accommodate employees who refuse to fly as part of their jobs, employers may be concerned about potential liability if they insist that an employee travel and the employee is subsequently injured or killed in an airplane disaster while traveling on business. An employer should not be liable under such circumstances, however, because workers’ compensation typically provides the exclusive remedy for all injuries or death sustained by an

employee while working.

Finally, many employers have employee assistance programs (EAP), which are typically capable of providing individual or group counseling and support. Employers should not forget to make available and encourage employees to take advantage of any EAP the employer provides. EAP counseling can provide a much-needed outlet for employees to express and address their fears and concerns, before such issues impact their ability to perform their jobs.

## Conclusion

In sum, while employers may make the business decisions to accommodate employees’ fears and concerns regarding air travel by providing alternatives such as telecommuting and teleconferencing, companies are generally not required to do so, unless an employee suffers from a disability that precludes air travel and such travel is not an essential function of the employee’s job. With these principles in mind, employers can make decisions regarding how best to address employees’ needs in these potentially frightening times, while simultaneously protecting their business interests.

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