



Fearing they may contract the Zika virus, some people who planned to attend the Olympic Games in Brazil on business have backed out, raising questions about how employers should balance work requirements with the need to protect their staff.

Employees at major TV networks, for instance, have decided against attending the games in Rio de Janeiro because of fears about Zika, the mosquito-borne virus linked to a birth defect known as microcephaly, according to news reports.

"It's very simple," an NBC staffer told the Daily News. "I have a family. I have small children and for me, at least, the trip seems too risky. I might want to get pregnant soon."

While most employers will likely want to accommodate those fearful of traveling to Rio, they probably aren't—other than for cases involving pregnant employees—legally required to do so, legal experts say.

"Where travel is an expected job duty for the individual, they should receive some training on the available scientific information establishing how low the risk is and some training on the personal protections they should take, and then they should be expected to do their job," said Ben Huggett, a shareholder in the Philadelphia office of the Littler law firm. "Given the current scientific information and the lack of travel restrictions [directed to the general public] from the government and the CDC [Centers for Disease Control and Prevention], there is no objective basis to refuse to travel because of Zika." Pregnant employees, however, may have a better claim.

Other Workers Not Attending

Some staffers at the BBC, the U.K.'s major broadcaster of the games, are refusing to cover the Olympics because they're afraid of contracting the virus, according to news reports.

Boston-based Global Rescue, which provides medical and security information to organizations whose workers travel, told SHRM Online that many of its clients are avoiding going to Brazil during the Olympics.

Dan Richards, the organization's CEO, said that "the majority of our members decided to skip the games and not go, which is a really sad statement about the Olympics because they're a wonderful event. People are concerned, and their concerns are not unwarranted."

Said Global Rescue's public relations manager, Ann Shannon: "Organizations have a duty of care to provide employees with the necessary information, resources and reasonable care to ensure their health, safety and security. Employers need to be aware of the risks that they may face and associated liability in face of emerging situations or crises."

An official with Coca-Cola, one of the main sponsors of the Olympics, told USA Today that the company would support any worker's decision to not travel to a country where Zika is prevalent. Asked if any Coca-Cola employees had declined to travel to the games, a Coca-Cola spokeswoman told SHRM Online that "we generally don't discuss publicly our employee policies or practices."

Several athletes have also decided to skip the games because of fears about Zika.

The U.S. Centers for Disease Control and Prevention (CDC) has advised:

- Women who are pregnant should not travel to any area of Brazil below 6,500 feet in elevation.
- A pregnant woman's partner who has traveled to Brazil should use condoms or refrain from sex during the pregnancy.
- Women who want to become pregnant should wait at least eight weeks before trying to get pregnant after traveling to Brazil.
- Men who exhibit symptoms of Zika should wait at least six months after symptoms begin before trying to impregnate a partner.

The Zika outbreak began in early 2015 in Brazil then spread to other parts of South America and North America.

In April, the Brazilian government confirmed it had documented 91,387 cases of Zika thus far in 2016, with more than 7,000 cases involving pregnant women, according to the Brazilian newspaper *Folha de S. Paulo*.

What Employers Can—and Shouldn't—Require

There's a sound basis for organizations to have a policy that allows pregnant employees to refuse to travel to Zika-affected areas, Huggett acknowledged. But aside from pregnant women, he noted, the World Health Organization (WHO) has said there should be no general restrictions on travel to Rio de Janeiro because of Zika. Instead, business travelers should follow the CDC's suggested precautions about using condoms, refraining from sex or waiting a specified time after traveling before trying to get pregnant.

Under the Occupational Safety and Health Act, employees are not protected if they refuse to work unless there is an objectively "reasonable belief that there is imminent death or serious injury."

"With Zika, it is not yet clear where that line is drawn," said Michael Oliver Eckard, an attorney with Ogletree Deakins in Atlanta. "Health authorities point out that it can be largely prevented through appropriate precautions, meaning this OSHA [Occupational Health and Safety Administration] standard is not likely to be met in most cases."

While it's likely that pregnant employees will meet the Occupational Safety and Health Act standard, the prudent employer should do its best to accommodate all employees worried about traveling to Zika-affected regions, even if the employer isn't legally obligated to do so, Eckard said.

Employees who refuse to work in perceived unsafe conditions may also be protected under the National Labor Relations Act, and some collective bargaining agreements provide contractual rights for employees to refuse to work under certain safety-related circumstances, Eckard said.

Olympic Committee Notes Low Risk

Richard Budgett, medical and scientific director for the International Olympic Committee (IOC) in Lausanne, Switzerland, did not respond to questions regarding the IOC's advice to Olympic staffers, contractors, vendors and sponsors who may want to avoid the games for fear of Zika. But he said in an e-mail that the IOC "fully respects the decision made by an athlete for very personal reasons not to attend the Olympic Games in Rio."

"It should be noted that the Olympic Games Rio 2016 will take place during the winter months of August and September, when the drier, cooler climate significantly reduces the presence of mosquitos and therefore the risk of mosquito-borne infection," he wrote.

Huggett noted that if an employer allows workers to refuse to travel because of concerns about Zika, it "will need to consider how it will address such requests for other locations and other, as-yet-unidentified diseases or conditions in the future."

"Employers need to ensure that they will be able to maintain a consistent policy going forward," he said. "For example, now that it is known that Zika virus is spreading locally by mosquito around Miami, can employees refuse to travel there?" The CDC this month cautioned pregnant women against traveling to a section of Miami Beach in Florida that's been identified as the second area in the state where mosquitos are spreading the Zika virus. Earlier in the month, the CDC warned against travel to a 1-square-mile neighborhood just north of downtown Miami.

Avoiding Discrimination Charges, Liability

Employers must avoid prohibiting certain employees from traveling to Zika-prone regions, or even suggesting that certain employees may wish to avoid such travel. In the case of *Automobile Workers v. Johnson Controls Inc.*, the Supreme Court held that Title VII of the Civil Rights Act of 1964 prohibits companies from excluding or firing women from jobs that might pose reproductive health hazards.

Instead, employers should issue a blanket statement informing all workers about the CDC's and the WHO's warnings about pregnant women traveling to Zika-prone regions, said Suzanne Fahl, HR editor and senior adviser at ThinkHR, an HR knowledge company in Pleasanton, Calif.

"An employer must tread carefully in this discussion, ensuring that communications are not discriminatory but fact-providing, enforcing the CDC's message that pregnant women and those planning to become pregnant in the near future should avoid travel to exposed areas and take extra precaution," Fahl said. "Employers seeking to protect their companies from liability should consult with legal counsel to draft a formal liability waiver relevant to exposure to an unborn child when a pregnant individual insists on travel to exposed areas."

Because the CDC specifically recommends that pregnant women not go to the 2016 Olympics in Rio, there is no harm, Eckard said, in making sure that pregnant employees are aware of that. Some employers have asked employees to sign acknowledgments stating that they have been educated about Zika and advised that they can opt out of assignments in affected areas, Eckard added.

Fahl said such acknowledgments should constitute "an agreement of understanding as it pertains to traveling and working in exposed areas."

She said it "should provide options [for] what the employee and employer will extend in relation to the agreement. For example, if and when the employer will provide testing, preventative guidance, travel costs affiliated with special needs to avoid exposure, travel coverage, and medical evacuation in the event of illness, along with hazard pay."

Eckard also recommended that HR professionals remind managers to avoid any actions that may be perceived as retaliatory—such as refusing to assign future travel assignments to workers who seek reassignments or accommodations due to the Zika virus.