

Combating Human Trafficking

Effective Compliance Strategies

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Human Trafficking

The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, or the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, including sexual exploitation and forced labor.

Source: 2000 UN Protocol to Prevent Trafficking in Persons

Severe Forms Of Trafficking In Persons

Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or

The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sources: Trafficking Victims Protection Act of 2000 (TVPA) and US Federal Acquisitions Regulations (FAR)

Key Statistics

- The International Labor Organization (ILO) estimates 40.3 million victims of human trafficking globally
 - 81% of them are trapped in forced labor.
 - 25% of them are children.
 - 75% are women and girls.
 - Forced labor and human trafficking is a \$150 billion industry worldwide.
- The U.S. Department of Labor has identified some 139 goods from 75 countries made by forced or child labor.
- More than 40,000 domestic cases of human trafficking have been reported to the National Human Trafficking Hotline in the last 10 years.

Human Trafficking Within the United States

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|------------------------------------|----------------------------------|----------------------------------|
| • Escort Services | • Peddling & Begging | • Commercial Cleaning Services |
| • Illicit Massage, Health & Beauty | • Agriculture & Animal Husbandry | • Factories & Manufacturing |
| • Outdoor Solicitation | • Personal Sexual Servitude | • Remote Interactive Sexual Acts |
| • Residential | • Health & Beauty Services | • Carnivals |
| • Domestic Work | • Construction | • Forestry & Logging |
| • Bars, Strip Clubs & Cantinas | • Hotels & Hospitality | • Health Care |
| • Pornography | • Landscaping | • Recreational Facilities |
| • Traveling Sales Crews | • Illicit Activities | |
| • Restaurants & Food Service | • Arts & Entertainment | |

Source: Polaris, The Typology of Modern Slavery – Defining Sex and Labor Trafficking in the United States

Debt Bondage

The status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

https://youtu.be/uEHBy-tX_QQ
(Tristan Forster, FSI)

Compliance Considerations

- Global scourge of epidemic proportions
- Corrupt subcontractors and suppliers will not admit trafficking
- Transnational criminal enterprises are involved
- Human Trafficking is often a hidden crime – fear, shame, desperation
- Increased Public attention – the arc of history
- Government enforcement on the rise
- Impact litigation is on the rise

Know Your Company’s Legal Landscape

Before you can determine HOW to comply, you must understand WHAT you must comply with...

Legal Framework: International

- UN Guiding Principles on Business and Human Rights
- UN Global Compact (Human Rights and Labor Standards)
- UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons
- ILO Convention on Forced Labor (#29)
- ILO Convention on Abolition of Forced Labor (#105)
- ILO Convention on the Worst Forms of Child Labor (#182)
- ILO Convention on Domestic Workers (#189)
- Optional Protocol to the UN Convention on the Rights of the Child (Trafficking)
- NATO Policy on Combatting Trafficking in Human Beings (2004) (2007)

Legal Framework: Federal

- Trafficking Victims Protection Act of 2000 (as amended)
- Uniform Code of Military Justice, Article 134
- U.S. Criminal Code, Title 18, Chapter 77
 - Section 1589 (Forced Labor)
 - Section 1590 (Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor)
 - Section 1591 (Sex Trafficking of Children or by Force, Fraud, or Coercion)
 - Section 1592 (Unlawful Conduct with Respect to Documents in Furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude, and Forced Labor)

Legal Framework: Federal

- National Defense Authorization Act (NDAA) for Fiscal Year 2013, XVII (“Ending Trafficking in Government Contracting Act”)
- Executive Order 13627: Strengthening Protections Against Trafficking in Federal Contracts, 2012
- Federal Acquisition Regulation Subpart 22.17
- Defense Acquisition Regulation Supplement (DFARS) Procedures, Guidance, and Information (PGI) 222.1703
- Justice for Victims of Trafficking Act of 2015 (JVTA)
- Military Extraterritorial Jurisdiction Act (MEJA) of 2000

Legal Framework: Federal

- National Security Presidential Directive 22 of 2002 (NSPD-22)
- PROTECT Act (Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act)
- Child Soldier Prevention Act of 2008
- Child Soldier Accountability Act of 2008
- Fraud in Foreign Labor Contracting Act

Legal Framework: California

- Requires large retailers and manufacturers doing business in California to disclose on their websites their “efforts to eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale.”
- Law applies to any company doing business in California that has annual worldwide gross receipts of more than \$100 million and that identifies itself as a retail seller or manufacturer on its California tax return.
- Companies subject to the Act must post disclosures on their Internet websites related to five specific areas: verification, audits, certification, internal accountability, and training.
- Act does not mandate that businesses implement new measures to ensure that their product supply chains are free from human trafficking and slavery. Instead, the law only requires that covered businesses make the required disclosures.

Legal Framework: Non-U.S. Examples

- U.K. Modern Slavery Act
- U.K. Criminal Finance Act
- French Corporate Duty of Vigilance Law
- Dutch Child Labor Due Diligence Law
- Qatar Domestic Workers Law
- Australia Commonwealth Procurement Rule 10.18
- Australia Modern Slavery Act

Legal Framework: Soft Law Standards/Initiatives

- Swiss Responsible Business Initiative
- European Commission NFRD (Non-Financial Reporting Directive)
- ISO 18788/PSC.1
- Supplier Ethical Data Exchange (SEDEX)
- Fair Labor Association
- AIM-PROGRESS initiatives on ethical sourcing
- Corporate Human Rights Benchmark
- International Code of Conduct Association (ICoCA)

Federal Contractors



Federal Contractors – Prohibited Conduct

ALL contractors, subcontractors, and their employees are prohibited from engaging in the following conduct:

- Engaging in severe forms of trafficking in persons during the period of performance of the contract
- Procuring commercial sex acts during the period of performance of the contract
- Using forced labor in the performance of the contract
- Destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents, such as passport or drivers' licenses
- Using misleading or fraudulent practices during the recruitment of employees

Prohibited Conduct, continued

ALL contractors, subcontractors, and their employees are prohibited from engaging in the following conduct:

- Using recruiters that do not comply with local labor laws in the country that the recruiting takes place
- Charging employees recruitment fees
- Failing to provide return transportation for an employee who is not a national of the country where the work is taking place
- Providing or arranging housing that fails to meet the host country housing and safety standards
- Failing to provide an employment contract or recruitment agreement, if required by law or contract
- Failing to make minimum disclosures to all employees (e.g. key terms and conditions of employment, including wages and fringe benefits, location of work, living conditions, housing and associated costs, significant costs to be charged to the employee, information about the hazardous nature of the work)

Contractor Requirements

- Contractors are required to inform employees and agents of the aforementioned requirements and possible penalties
- Contractors are required to fully cooperate with government investigations and provide "reasonable access"
- Contractors must notify employees of the human trafficking policies, provide a hotline number for employee reporting, and ensure that reporting employees are protected from retaliation.
- Contractors shall immediately notify the CO, agency IG, and if appropriate, law enforcement, of any "credible information" regarding a violation
- Contracting officers shall enter any substantiated allegations in the Federal Awardee Performance and Integrity Information System (FAPIIS), and consider appropriate remedies
- Contractors will be allowed to respond to any report, to include mitigating factors such as a compliance plan or awareness program

Additional Requirements for Contracts Exceeding \$500,000 Outside the U.S.

- Contracts for supplies or services, others than COTS items, outside of the United States where the estimated value exceeds \$500,000
- The successful offeror must provide, before contract award, a certification that the offeror and its subcontractors have:
 - Implemented an anti-human trafficking compliance plan and implemented procedures to prevent any prohibited activities and to monitor, detect, and terminate the contract with a subcontractor or agent engaged in prohibited activities
 - After due diligence, either: (1) to the best of the offeror's knowledge and belief, neither it nor any of its agents or subcontractors has engaged in such activity; or (2) if abuses were identified, appropriate remedial actions were taken
 - Subcontractors must provide the same certifications
- Contracting officers may request a copy of the compliance plan at any time.

Compliance Plan Minimum Requirements

- Awareness program. Employees must be notified about human trafficking policies and actions that will be taken for violating the policies. Compliance plans must be posted in the workplace, on the contractor's Web site, or provided in writing to each worker.
- Reporting process. Employees must be able to report, without fear of retaliation, activity inconsistent with the policies, including through a hotline number and e-mail address provided in the Final Rule.
- Compliant recruitment and wage plans. Plans may only permit the use of recruitment companies with trained employees, must prohibit recruitment fees charged to the employee, and ensure wages meet host-country legal requirements.
- Housing plan. Plans must ensure housing meets host-country housing and safety standards, if housing will be provided or arranged.
- Procedures to prevent violations by agents and subcontractors. Plans must include procedures to **monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in prohibited acts at any tier and at any dollar amount.**

Enforcement Mechanisms

- Requiring contractor to remove employee or terminate subcontract
- Suspension of contract payments
- Loss of award fee
- Declining to exercise options
- Termination for default
- Suspension or debarment
- Civil or criminal penalties for false statements and false claims

DoD Added Protections

- Amends DFARS to improve awareness, compliance, and enforcement of DoD policies on combating trafficking in persons
- Requirements
 - Requires the display of hotline posters on combatting trafficking in persons and whistleblower protections for contracts exceeding \$5M, inside or outside the U.S.
 - Requires all contracts and solicitations that exceed the simplified acquisition threshold to include a contractor representation regarding anti-human trafficking policies
 - Requires a contractor employee bill of rights to be displayed (and enforced) in all areas where contractors are supporting U.S. Armed Forces outside the U.S

How should my company's ethics and compliance program address this risk?

Elements of Effective Compliance Programs

1. Commitment from Senior Management and Clearly Articulated Policy
2. Code of Conduct and Compliance Policies and Procedures
3. Oversight, Autonomy and Resources
4. Risk Assessment
5. Training and Continuing Advice
6. Incentives and Disciplinary Measures
7. Third Party Due Diligence and Payments
8. Continuous Improvement: Periodic Testing and Review
9. Mergers and Acquisitions: Pre-Acquisition Due Diligence and Post-Acquisition Integration

Sources: USSG Elements of an Effective Compliance Program; Hallmarks of Effective Compliance Programs from Joint DOJ/SEC 2012 FCPA Guide

Effective Compliance – Oversight/Leadership

- This issue must be championed by senior management
- The message must be formalized, clear, communicated
- Company's anti-human trafficking policies should be approved and endorsed by senior management and the board of directors.
- Someone within the organization must be responsible for oversight of human trafficking compliance: these duties should be incorporated into job description and performance evaluation
- Autonomy and sufficient resources are key
- Formally consider and incorporate human trafficking issues in the development and review of corporate strategy (e.g. direct hiring)

Effective Compliance – Standards and Controls /Code of Conduct

- The Code Of Conduct should be the foundational document
- Policies must address conduct, due diligence, reporting obligations, investigations
- Ensure 3rd party contract language plays offense by making due diligence & reporting obligations applicable throughout supply chain
- Directly address and prohibit practices that are known to contribute to human trafficking
- Address risks particular to your business operations
- Include grievance mechanisms/reporting obligations and options
- Provide policies and procedures in native languages.

Effective Compliance – Risk Assessment

- Formal, documented, recurring process
- Thoroughly research legal frameworks pertaining to your business
- Understand human trafficking red flags
- Assess labor supply chain to identify specific risks
 - Sector/Industry-specific Risk Factors
 - Risk Factors Related to the Country of Production and/or Service Delivery
 - Risk Factors Related to the Country Supplying the Labor
- Due diligence on new and existing subcontractors and suppliers
- Establish a way to monitor the changing legal landscape to identify and respond to new laws and regulations

Effective Compliance – Training and Communication

- Train employees to look for and detect human trafficking red flags
- Train employees on:
 - Sector/Industry-specific Risk Factors
 - Risk Factors Related to the Country of Production and/or Service Delivery
 - Risk Factors Related to the Country Supplying Labor
- When appropriate, train new and existing subcontractors and suppliers
- Train employees on how to respond if they uncover red flags
- Use multiple means of communication: company intranet, workplace postings, employee handbook, etc., in native language
- Pre-departure orientation training for foreign migrant workers before they leave their home country for the place of work. Arrival training before commencement of work.

Effective Compliance – Monitoring

- Verify that supplier practices and performance are in line with the company's Code of Conduct
- Look for indicators of risk in recruitment and labor conditions
- Conduct risk-based due diligence
- Make an anonymous hotline/reporting mechanism available
- Track how many red flags employees identify – look for trends
- Contractually require 3rd parties to proactively monitor and report

Effective Compliance – Audits and Site Assessments

- Formal process to audit both the Company’s own high-risk operations and those of its direct suppliers (including labor agents) on an annual basis
- Management interviews, workplace observations, review of records
- Interview high proportion of workers
- Skilled and experienced interviewers in native language
- Interviews at safe location without presence of supervisors
- Unannounced to the maximum extent possible
- Audit full scope of policy conformance, customer requirements, all applicable legal requirements.

Effective Compliance – Corrective Action

- Include audit findings and identify root causes
- Specific actions required to remedy each
- Assign responsibility for action items
- Method of verification
- Deadlines/milestones
- Potential consequences to include contract or offender termination
- Verify closure of items
- Suppliers and other business partners should similarly address audit findings of their operations.

Effective Compliance –Supplier Engagement

- Enhance compliance through capacity building programs and training
- Incentivize suppliers through preferred supplier programs
- Clarify roles and responsibilities for company personnel
- Empowering workers through good communication and grievance channels, worker education and skills development
- Industry partnership for common standards
- Use contract clauses to require/prohibit behaviors as part of your extended “P2P” compliance program

Compliance Resources

- Verite Responsible Sourcing Tool
- Know The Chain
- UNODC (UN Office on Drugs and Crime) Knowledge Portal
- CA Transparency In Supply Chains Act Resource Guide
- Department of Labor "Comply Chain" Toolkit
- Department of Labor "Sweat and Toil" App
- Department of Defense Trafficking in Persons Toolkit
- Fair Labor Association Resources
- International Labour Organization TIP Webpage
- Polaris

Compliance Resources

- Department of State Annual TIP Report
- SEDEX Ethical Trade Best Practices
- OECD (Organization for Economic Cooperation and Development) Human Trafficking and Corruption Resources
- State / DOL / OMB (Joint Draft) 2016 "Anti-Trafficking Risk Management Best Practices & Mitigation Considerations"
- Report of the President's Interagency Task Force
- USAID Field Guide and Related Policy/Guidance Publications
- UN Global Compact Human Rights and Business Learning Tool
- Modern Slavery Registry

Questions?

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