

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

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

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)

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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