

NEW CALIFORNIA LAW AIMED AT ERADICATING SLAVERY AND HUMAN TRAFFICKING GOES INTO EFFECT

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On September 30, 2010, Governor Arnold Schwarzenegger signed into law the California Transparency in Supply Chains Act of 2010. The Act took effect on January 1, 2012 and requires many companies doing business in California to disclose on their websites the steps they have taken to eradicate slavery and human trafficking from their direct supply chains. The Act applies to retail sellers or manufacturers with more than \$100 million in annual worldwide gross receipts that have even minimal contacts with California, such as \$500,000 in sales, or personal property or compensation in excess of \$50,000. The Act is the first law in the U.S. to specifically target supply chains and hold companies accountable for the methods by which they produce tangible goods. One of the chief purposes of the passage of the Act is to enable California consumers to use their purchasing power to influence companies' policies addressing slavery and human trafficking.

Applicability of the Act

The Act applies to every "retail seller or manufacturer" having annual worldwide gross receipts in excess of \$100 million and "doing business in the state" of California under the terms of California's Revenue and Tax Code. A company is a retail seller or manufacturer under the Act if it lists "manufacturing" or "retail trade" as its principal business activity on its California tax return. A company is considered to be doing business in California if any of the following four conditions are met:

1. The company is organized or commercially domiciled in California.
2. Sales in California for the applicable tax year of the company exceed the lesser of \$500,000 or 25 percent of the company's total sales.
3. The real property and tangible personal property of the company in California exceeds the lesser of \$50,000 or 25 percent of the company's total real property and tangible personal property.
4. The amount paid by the company in California for compensation exceeds the lesser of \$50,000 or 25 percent of the total compensation paid by the company.

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To help lawmakers determine which companies are required to comply, the Act requires that the California Franchise Tax Board provide the California attorney general annually with a list of all retail sellers and manufacturers that are subject to the Act, based on tax returns for taxable years beginning on or after January 1, 2011.

Disclosure Requirements

If applicable, the Act requires each retail seller and manufacturer to conspicuously disclose on its website to what extent, if any, it does each of the following:

- Reviews its product supply chains to evaluate and address slavery and human trafficking risks
- Conducts supplier audits to evaluate whether suppliers comply with company standards on slavery and human trafficking
- Requires direct suppliers to certify that materials incorporated into the company's products comply with the laws addressing slavery and human trafficking
- Maintains accountability standards and procedures for company employees or contractors that do not meet company standards concerning slavery and human trafficking
- Provides training on slavery and human trafficking to employees and management with direct responsibility for supply chain management

There are no money damages for a violation of the Act; the exclusive remedy for failure to make the appropriate disclosures is an action brought by the California attorney general for injunctive relief. However, the Act makes clear that it does not limit remedies available for a violation of any other state or federal laws.

Of course, a company could come into compliance by simply disclosing that it has no policies and makes no inquiries regarding the labor conditions involved in the production of its products, but such disclosure could lead to negative publicity. At a minimum, businesses subject to the Act should review their supply chains for slavery and human trafficking risks and make the appropriate disclosures on their websites. Some businesses may find it necessary to go further by auditing their suppliers or developing policies on slavery and human trafficking and communicating such policies to their suppliers on a regular basis. Hodgson Russ is prepared to assist companies in determining the most appropriate course of action to come into compliance with the Act.

As attention to slavery and human trafficking continues to grow, it is expected that the passage of the Act will lead to similar legislation in other states and on the federal level. On August 1, 2011, Representative Carolyn B. Maloney of New York introduced H.R. 2759 in the U.S. House of Representatives, a bill modeled after the California law. If it passes, H.R. 2759 will require similar supply chain disclosures by publicly traded or private companies that submit annual reports to the Securities and Exchange Commission. Hodgson Russ will continue to monitor H.R. 2759 and will keep you updated on the legislative process.