



Legal Alert: Will Your Business be in Compliance with the California Transparency in Supply Chain Act by the January 1, 2012 Deadline?

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Executive Summary: On January 1, 2012, retail sellers and manufacturers doing business in the state of California will be required to disclose their efforts to remove slavery and human trafficking from their direct supply chains for tangible goods offered for sale.

Background

The purpose of the California Transparency in Supply Chain Act is to bring visibility to forced labor and human trafficking and also provide information to consumers who may make certain purchasing decisions based on a company's efforts, or lack thereof, when purchasing products. As recently as September 2009, the United States Department of Labor reported that 122 goods from 58 countries were believed to be produced by forced labor or child labor in violation of international standards.

What Are The Requirements Of The Act?

The Act applies to any retail seller or manufacturer having at least \$100 million in annual worldwide gross receipts.^[1] If a company meets this requirement, it must post a conspicuous and easily understood link on its website to a disclosure statement that sets forth to what extent, if any, that the retail seller or manufacturer:

- Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery;
- Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains;
- Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business;
- Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking; and
- Provides company employees and managers, who have direct

responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.[2]

How Will The Act Be Enforced?

The Act will be enforced by the California Franchise Tax Board and the California Attorney General's Office. At the end of the 2011 tax year, the Tax Board will compile a list of businesses that are primarily engaged in manufacturing or retail trade and have gross receipts of \$100 million or more. This list will be sent to the Attorney General's office who will review each company's website and determine whether it is in compliance with the Act. The exclusive remedy to the Attorney General for violations of the Act is an action for injunctive relief. The Act does not create a private right of action.

What Should Businesses Do To Prepare For Compliance?

First, determine whether the legislation applies to your company. Consult with your tax advisor to determine whether the "principal business activity code" on your tax return falls within the category of "manufacturing" or "retail trade" and whether the company's annual gross receipts reported on your tax return exceed \$100 million. Additionally, determine whether the company qualifies as "doing business in California" pursuant to the California Revenue and Taxation Code.[3]

Second, determine whether the company has in place human rights policies and standards applicable to the company's product supply chain. If so, evaluate whether the company has procedures to evaluate the risk of forced labor or human trafficking associated with the manufacture of its products.

Third, review, or implement, auditing and verification mechanisms. Determine whether the company has systems in place to audit its suppliers' compliance with human rights policies and whether its overseas suppliers are complying with the human rights laws in their home country.

Fourth, review, or implement, internal accountability mechanisms and training procedures. A company may consider providing training to its employees regarding human rights and supply chain issues and implementing procedures for employees and contractors to follow to ensure compliance with standards regarding human rights issues.

Finally, draft a compliance statement that discloses the company's efforts, if any, and make sure it is posted on the company's website by the January 1, 2012 deadline.

Employers' Bottom Line:

Companies who will be covered by the new law should begin the process now of determining the content of the company's disclosure and what efforts the company is willing to make regarding this issue.

If you have any questions regarding the new law or other labor or employment related issues, please contact the author of this Alert, Michelle Abidoye, mabidoye@fordharrison.com, or the Ford and Harrison attorney with whom you usually work.

[1] See Senate Bill 657, which adds Section 1714.43 to the California Civil Code and Section 19547.5 to the California Revenue and Taxation Code.

[2] See California Civil Code § 1714.43(c).

[3] Section 23101 of the California Revenue and Taxation Code defines doing business in California if any of the following conditions has been satisfied: (1) The taxpayer is organized or commercially domiciled in this state; (2) Sales exceed the lesser of five hundred thousand dollars (\$500,000) or 25 percent of the taxpayer's total sales; (3) The real property and tangible personal property of the taxpayer in this state exceed the lesser of fifty thousand dollars (\$50,000) or 25 percent of the taxpayer's total real property and tangible personal property; or (4) The amount paid in this state by the taxpayer for compensation exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent of the total compensation paid by the taxpayer.