



CALIFORNIA ENVIRONMENTAL UPDATE

New California Website Disclosure Law On Human Trafficking And Slavery Applicable To Retailers And Manufacturers

Disclosure Date: January 1, 2012.

What is the Law? SB 657, the “Transparency in Supply Chains Act of 2010” requires certain retailers and manufacturers to post on the homepage of their Internet Website a “conspicuous and easily understood link” to a disclosure detailing whether, and to what extent, they investigate or monitor slavery or human trafficking in their “direct” product supply chains. SB 657 mandates certain statements on this topic, detailed below.¹

Who does SB 657 Cover? SB 657 covers every “*retail seller and manufacturer*” with annual worldwide gross receipts exceeding \$100 million and “*doing business in the State*” of California. Basically, an entity is deemed a “manufacturer” or “retail seller” if “manufacturing” or “retail trade” is the principal business activity code on its California tax return. As of January 1, 2011 “doing business in the state” for purposes of SB 657 means any one or more of the following:

- The entity is organized or domiciled in California;
- Sales “in California” for the applicable tax year exceed the lesser of \$500,000 or 25% of the entity’s total sales;²
- The value of the real and tangible personal property of the entity in California exceeds the lesser of \$50,000 or 25% of the entity’s total real and tangible personal property; or
- Compensation the entity pays in California exceeds the lesser of \$50,000 or 25% of the total compensation paid.

Having world-wide gross receipts exceeding \$100 million and meeting any one of the criteria above will trigger application of SB 657. Estimates are that SB 657 will cover about 3000 entities. Beginning with the returns filed for the tax year commencing January 1, 2011, the Franchise Tax Board must “make available” to the California Attorney General a list of the covered retailers and manufacturers. One can only assume that interested parties will file California Public Records Act requests to view the list.

What Must be Disclosed on the Website? SB 657 does not mandate *auditing* of product supply chains. Rather, it mandates *disclosures* on the following topics. Did the entity do each of the following tasks or conduct the following inquiries:

- Review its product supply chains “to evaluate and address risks of human trafficking and slavery”? The entity must state whether it employed a third party auditor or evaluator.

¹ The Act will be codified at Civil Code § 1714.43 and Revenue and Taxation Code § 19547.5.

² Sales of tangible personal property are “in California” if (1) the property is delivered to a purchaser in California (excluding the US government); (2) the property is shipped from a store, office, warehouse or other storage facility in California and the purchaser is the US government or the entity is not taxed in the state of the purchaser. Also if all, or a high proportion, of income-producing activity is performed in California, then sales other than the sale of tangible personal property likewise are deemed to be “in California” for purposes of SB 657.

- Establish entity “standards” and then conduct supplier audits to evaluate whether suppliers comply with entity standards on human trafficking and slavery? The entity must state if the audits are not independent, unannounced audits.
- Require “direct suppliers to certify that materials incorporated into the product comply with the laws addressing human trafficking and slavery of the country or countries in which they are doing business”?
- “Maintain internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking”?
- “Provide company employees and management, who have direct responsibility for supply chain management, training” on slavery and human trafficking and how to “mitigate risks” along the product supply chain?

The minimum disclosure “shall” include statements as to “what extent, if any,” the entity undertakes measures on each topic listed above. Disclosures will vary depending on specific facts, existing “social responsibility disclosures,” disclosure practices and sensitivity to customer or public pressure.

How will Enforcement Work? The Attorney General may file suit seeking an injunction to compel compliance. There is no citizen suit provision, nor provision for penalties. A savings clause states nothing in SB 657 limits prosecution under any other law.

What are the Other Considerations? In recent years, press over product supply chains has impacted some entities and, for some, reputational concerns may be paramount. Some sponsors of SB 657 expressly stated their intentions to employ publicity to pressure entities to alter their product supply chain management practices or to galvanize consumers to wield economic clout by reviewing websites before purchasing products. Some “social responsibility” entities are offering to conduct third party audits for fees.

Some entities may elect to develop or enhance internal policies on procurement, employee accountability, or enhance first or third-party auditing and training. Some may require that suppliers certify that they do not engage in human trafficking or use products procured through slavery. Of possible relevance for some, the US Department of Labor has created a list of countries and products which it deems to have included child or forced labor. See <http://www.dol.gov/ILAB/programs/ocft/tvpra.htm>. Some entities may attempt to catalogue relevant laws in jurisdictions where their suppliers operate. Other than the mandatory disclosures, SB 657 affords broad flexibility on which actions, if any, an entity elects to take. Finally, we note that questions may arise due an absence of definitions (e.g., “slavery and human trafficking” is not a defined phrase) and textual inconsistencies (e.g., a duty to “disclose” but also phrases which reference “eradication” of slavery and human trafficking).

If there are questions, please contact: Judith Praitis (jpraitis@sidley.com, 213.896.6637) and Chris Bell (cbell@sidley.com, 202.736.8118).

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