New Disclosure Requirements for Retailers and Manufacturers

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The California Transparency in Supply Chains Act of 2010 will go into effect Jan. 1, 2012. This Act, which imposes disclosure requirements on retailers and manufacturers, will apply to many California businesses and non-California businesses alike. All business owners with connections to California should understand whether the Act applies to them, familiarize themselves with the requirements, and know how to best prepare for compliance.

The Act applies to any business that: is a retail seller or manufacturer; does business in California; and has annual worldwide gross receipts that exceed $100 million.

Businesses should note that the annual gross receipts are measured worldwide, and not just in the state of California. If a business falls under the Act, it must make certain disclosures that show its efforts to eradicate slavery and human trafficking from its direct supply chain as well as inform consumers on how to avoid indirectly supporting slavery and human trafficking.

The Act only applies to businesses that are retail sellers or manufacturers. A business is a retail seller or a manufacturer only if it lists retail sales or manufacturing as its principal business activity on its tax return.

The business must do business in California. “Do[ing] business in California,” according to the Act, requires satisfaction of one of the four following tests: the business is organized or commercially domiciled in California; has sales within the state that exceed $500,000 or 25 percent of its total sales, whichever is less; has property (real or tangible) in California that exceeds $50,000 or 25 percent of its total real and tangible property, whichever is less; or pays compensation in California in excess of either $50,000 or 25 percent of total compensation paid, whichever is less.

Non-California businesses should pay close attention to the final three parts of the “do[ing] business in California” tests, as they have the potential to ensnare many businesses stationed outside of California.

Generally, to comply with the Act, the business must make certain disclosures on its website. These disclosures are intended to show its efforts, if any, to eradicate slavery and human trafficking from its direct supply chain. The good news for businesses is that the Act does not otherwise impose any substantive regulation on the supply chain or any affirmative obligations on the business to perform diligence on its supply chain. As a matter of corporate social responsibility and to promote a positive public image, however, companies may wish to implement policies or procedures to mitigate the risk of human trafficking and slavery as they will be required to disclose these policies, or lack thereof.

The required disclosures must be posted on the business’ website, with at least a “conspicuous and easily understood link” to this information on its homepage. For businesses that do not have a website, those must be prepared to provide this same information in writing within 30 days of receiving a written request for the disclosure from a consumer.

At a minimum, the business must disclose, to what extent if any, whether it does the following: engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery, specifying if the verification was not conducted by a third party; conducts audits of suppliers to evaluate compliance with company standards for

trafficking and slavery in supply chains, specifying if the verification was not done by an independent, unannounced audit; 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 management, who have direct responsibility for the supply chain, training on human trafficking and slavery, particularly with respect to mitigating risks.

Businesses should note that the Act requires disclosure of its efforts, "if any," which provides some flexibility in the content of the disclosures.

The sole remedy for a violation of the Act is injunctive relief in an action by the state attorney general, and the Act provides no private right of action. The Franchise Tax Board will also make available to the attorney general a list of retail sellers and manufacturers that are required to disclose their efforts to eradicate slavery and human trafficking.

Even though the Act only imposes disclosure requirements and not any substantive requirements, some businesses may wish to implement internal policies to ensure that its disclosures will reflect that the business is taking steps to prevent slavery and human trafficking in its supply chain. Some steps a business may consider include:

Review internal policies and standards applicable to the product supply chain and human rights issues, looking at whether the policies address slavery and human trafficking, how suppliers are informed of the policies, and whether procedures are in place to evaluate the risk of trafficking and slavery with the manufacturing of its products.

Review and/or implement company procedures to ensure suppliers comply with human rights policies and have a mechanism for auditing suppliers.

Review and/or implement internal procedures to monitor as well as train employees involved with the supply chain, so that all are informed of and capable of carrying out the policies.

By following these steps, a business should be prepared not only to comply with the disclosure requirements under the Act, but should also be able to demonstrate its awareness of and efforts to combat slavery and human trafficking.

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