

Human Trafficking and Your Supply Chain: New Disclosure Requirements for Companies Doing Business in California

10.07.2011

Is your company a retailer or manufacturer with over \$100 million in worldwide sales? Do you do even a small part of your business in California? If so, get ready to tell the world what you are doing to combat human trafficking.

On January 1, 2012, the California Transparency in Supply Chains Act (Civil Code § 1714.43) takes effect. Its goal is to eradicate slavery and human trafficking from business supply chains by informing consumers of information which may influence their buying decision. Because January 1 is right around the corner, it's important to understand whether section 1714.43 will apply to your company, what it will require, and what consequences your company may face if those requirements are not met.

What Companies Must Comply?

Section 1714.43 will apply to companies that meet each of these three criteria:

- Retail sellers and Manufacturers: Section 1714.43 will only apply to entities whose principal business activity is either "retail trade" or "manufacturing," as reported on the entity's tax return.
- \$100 Million Gross Receipts: Section 1714.43 will only apply to entities with annual worldwide gross receipts that exceed \$100 million.
- Doing Business in California: Section 1714.43 will only apply to entities that are "doing business" in California, but the statute sets a pretty low standard. A company is considered to do business in California if any one of the following is true: the company (i) is organized or domiciled in California, (ii) has sales (including by agents or independent contractors) in California that exceed \$500,000 or that account for at least 25% of the company's total sales, (iii) has real property or tangible personal property in California that exceeds \$50,000 or that accounts for at least 25% of the company's total real property or tangible personal property, or (iv) pays compensation (wages, salaries, commission, etc.) in California that exceeds \$50,000 or that accounts for at least 25% of the company's total paid compensation.

The California Franchise Tax Board will yearly provide the Attorney General with a list of retailers and manufacturers who must comply.

What Must You Do?

Essentially, section 1714.43 will require companies to publicly disclose their efforts to combat human trafficking and slavery. These disclosures must be on the company's website, and the company's homepage must have a direct link to the disclosures. If a company does not have a website, they must provide written

disclosures within 30 days after receiving a request. Companies must disclose:

- The extent that the company engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery, and if this verification was not conducted by a third-party, that fact must also be stated;
- The extent that the company conducts audits of suppliers to evaluate their compliance with company standards for trafficking and slavery in supply chains, and if this audit was not independent and unannounced, that fact must also be stated;
- The extent that the company requires direct suppliers to certify that materials incorporated into the product comply with the slavery and human trafficking laws of the countries in which they are doing business;
- The extent that the company maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking; and
- The extent that the company provides training on slavery and trafficking to employees and management with direct responsibility for supply chain management.

Section 1714.43 does not require companies to engage in any of the activities described in these disclosures, but the fact that the company does not do so must be disclosed.

Risks

The exclusive remedy for violating the statute is an action by the California Attorney General for an injunction. But the statute expressly provides that remedies that exist under other statutes remain available.

One such risk is a class action based on misleading disclosures - that is, false advertising. If your company complies with the statute but inaccurately describes its practices, that could trigger a class action based on affirmative misrepresentation. Although it is debatable whether a plaintiff could win class certification on such a theory, the expense of such a suit - and the public relations damage - could be significant. So, it's important to be careful about what you say.

Further, fair trade activists are likely to be aggressive in using the statute to shame corporations that have deficient anti-human trafficking programs. Such activists may push the envelope in litigation to try to find ways to use the statute without Attorney General involvement, or they may use extra-judicial methods to publicize violations. For this further reason, companies would be well advised both to have reasonable fair trade practices in place and, in complying with the statute, to disclose those practices accurately.

Attorneys

John T. Brooks