

# The California Transparency in Supply Chains Act

## *A Resource Guide*



2015

Kamala D. Harris, Attorney General  
California Department of Justice



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# Table of Contents

<b>Executive Summary</b> .....	i
Summary of Requirements and Overview of Model Disclosures .....	ii
<b>Introduction</b> .....	1
<b>What is the California Transparency in Supply Chains Act?</b> .....	3
<b>Recommendations for Compliance and Model Disclosure Practices</b> .....	5
Complying with the Format Requirements .....	5
Placing a Direct Disclosure Link on a Business’s Homepage .....	5
Making the Disclosure Link Conspicuous .....	6
Making the Disclosure Link Easy to Understand .....	8
Complying with the Content Requirements .....	9
Specific and Limited Content .....	9
Requirement to Disclose the Extent of Efforts .....	11
Verification .....	11
Supplier Audits .....	14
Certification .....	16
Internal Accountability .....	18
Training .....	20
Inadequate Disclosures .....	21
<b>Conclusion</b> .....	23
<b>Acknowledgments</b> .....	24
<b>Appendix A:</b> Transparency in Supply Chains Act Statutory Language .....	25
<b>Appendix B:</b> Beyond Required Disclosure: Other State and Federal Anti-Trafficking Laws .....	27
<b>Appendix C:</b> Anti-Slavery and Human Trafficking Resources .....	31



# Executive Summary

An estimated 21 million people – 11.4 million women and girls and 9.5 million men and boys – are victims of forced labor around the globe.<sup>1</sup> These victims work in virtually every industry and across sectors, including manufacturing, agriculture, construction, entertainment and domestic service. California, which boasts the world’s seventh-largest economy and the country’s largest consumer base, is unique in its ability to address this issue, and as a result, to help eradicate human trafficking and slavery worldwide.

In recent years, California consumers have demanded that producers provide greater transparency about goods brought to market. Consumers utilize this additional information to drive their purchasing decisions, and various indicators suggest that Californians are not alone. A recent survey of western consumers revealed that people would be willing to pay extra for products they could identify as being made under good working conditions.<sup>2</sup>

A recent law in California is poised to help California consumers make better and more informed purchasing choices. The California Transparency in Supply Chains Act (Steinberg, 2010) (the “Act”<sup>3</sup>) provides consumers with critical information about the efforts that companies are undertaking to prevent and root out human trafficking and slavery in their product supply chains – whether here or overseas.

This Act requires large retailers and manufacturers doing business in California to disclose on their websites their “efforts to eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale.”<sup>4</sup> The law applies to any company doing business in California that has annual worldwide gross receipts of more than \$100 million and that identifies itself as a retail seller or manufacturer on its California tax return. Companies subject to the Act must post disclosures on their Internet websites related to five specific areas: verification, audits, certification, internal accountability, and training.

The California Transparency in Supply Chains Act does not mandate that businesses implement new measures to ensure that their product supply chains are free from human trafficking and slavery. Instead, the law only requires that covered businesses make the required disclosures – even if they do little or nothing at all to safeguard their supply chains. Companies subject to the Act must therefore disclose particular information within each disclosure category, and the Act offers companies discretion in how to do so.

This Resource Guide is intended to help covered companies by offering recommendations about model disclosures and best practices for developing such disclosures. In each disclosure category, the Guide discusses how a company can provide disclosures that comply with the law, as well as enhance consumers’ understanding of its anti-trafficking and anti-slavery efforts.

## Summary of Requirements and Overview of Model Disclosures

All disclosures must be posted on the company's website and accessible by a "conspicuous and easily understood" homepage link.<sup>5</sup> If a company subject to the law has no website, it must provide written disclosures within 30 days of receiving a written consumer request for the information.

The Resource Guide addresses each of the Act's requirements and provides model disclosures based on actual company disclosures that fit with the language and spirit of the law. Of course, the model disclosures provided in this guide are merely examples. There is no formula for a model disclosure because one size does not necessarily fit all. The best disclosures are those that are specific to the company and explain the company's efforts in clear, concise language.

### Conspicuous Format Requirement

**Statute:** "[P]osted on the retail seller's or manufacturer's Internet Web site with a conspicuous and easily understood link to the required information placed on the business' homepage."<sup>6</sup>

**Key Requirement:**

- The disclosure link must be conspicuous, easily understood, and located on a retailer's and manufacturer's homepages.

**Model Disclosures:**

- Insert a direct link to the disclosure information on the company's corporate website and the websites of all of the company's brands.
- Place the link in a conspicuous location, such as at the top or bottom of the homepage, and consider the use of conspicuous textual attributes as appropriate.
- Use a descriptive title for the link, such as "California Supply Chains Act," or another relevant title that plainly alerts consumers to the content of the linked page.
- Devote the entire linked page to the five required disclosures.

### The Five Topic Areas

Companies subject to the law must disclose information about five specific topics related to human trafficking and their product supply chains. Each topic has a number of model disclosure suggestions that provide depth and context to consumers, while also recognizing a company's legitimate interest in protecting confidential, proprietary, and trade secret information. These model disclosure suggestions should make clear that compliance with the Act requires more than oblique and vague statements; instead, a covered company should look to its supply chain practices and make disclosures tailored to those practices.



## Verification

**Statute:** “[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer... [e]ngages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.”<sup>7</sup>

### Key Requirements:

- Confirm whether the company engages in verification activities to identify, assess and manage the risks of human trafficking in its product supply chain.
- If the company conducts verifications, additionally disclose whether the company uses a third-party verifier.

### Model Disclosures:

To explain the extent to which the company engages in verification, we recommend that the company:

- Describe the general methodology the company uses to verify entities in the product supply chain in assessing those risks, including general information about the frequency of verifications.
- Describe whether the company assesses and manages potential risks related to the presence of labor brokers or third-party recruiters in its supply chain.

## Audit

**Statute:** “[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer... [c]onducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.”<sup>8</sup>

### Key Requirements:

- Confirm whether the company audits suppliers in evaluating compliance with the company’s standards for trafficking and slavery in its supply chains.
- State whether the audits are independent and unannounced.

### Model Disclosures:

To explain the extent to which the company engages in auditing, we recommend that the company:

- Generally describe the audit methodology.
- Generally describe how the company selects suppliers to audit.
- Provide statistics on the general timeline, frequency, and number of announced and unannounced audits.

### **Certification**

**Statute:** “[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer... [r]equires 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.”<sup>9</sup>

### Key Requirement:

- State whether the company requires its direct suppliers to make the certification.

### Model Disclosures:

To explain the extent to which the company engages in this activity, we recommend that the company:

- Provide a general description of the certification requirement and the consequences for violating it.
- Disclose whether the company requires its direct suppliers to further certify they comply with the labor laws of the countries in which they do business.
- Discuss any additional actions the company takes to encourage direct suppliers to comply with all relevant laws.

## **Internal Accountability**

**Statute:** “[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer... [m]aintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.”<sup>10</sup>

### **Key Requirement:**

- Disclose whether the company has internal procedures for determining whether employees or contractors are complying with company standards regarding slavery and human trafficking.

### **Model Disclosures:**

To explain the extent to which the company maintains those standards and procedures, we recommend that the company:

- Generally describe those standards and procedures, including who has responsibility for monitoring compliance.
- Provide a link to the company’s code of conduct related to supplier workplace standards.
- Provide general information on the types of preventative and corrective actions it takes.
- Disclose any mechanisms in place to help workers understand the company’s fair labor requirements, including protections for workers who lodge grievances or report violations.

## **Training**

**Statute:** “[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer... [p]rovides company employees and management, 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.”<sup>11</sup>

### **Key Requirement:**

- Confirm whether the company engages in the specified training.

### Model Disclosures:

To illustrate the extent to which the company engages in relevant training, we recommend that the company:

- Identify levels of employees being trained by category or type.
- Provide a general description of the nature of relevant training, including topics and general statistics regarding the duration and frequency of the training sessions conducted.

# Introduction

Consumers of retail goods and manufactured products are often unaware that their purchases may be tainted by forced labor. Likewise, businesses may inadvertently promote human trafficking through their supply chains. In 2013, the U.S. Department of Labor's Bureau of International Labor Affairs identified 122 goods (from 72 countries) believed to be the product of forced or child labor. These goods range from everyday items like coffee, cotton and shoes to more complex products such as carpets, minerals, or furniture.<sup>12</sup>



In her 2012 report on the state of human trafficking in California, Attorney General Kamala D. Harris emphasized that the crime is routinely “hidden in plain sight,” with victims often going unrecognized.<sup>13</sup> Unsuspecting consumers across the United States – including those in California – routinely make purchasing and business choices that “inadvertently promote the crime of trafficking.”<sup>14</sup>

The California Transparency in Supply Chains Act, which became effective on January 1, 2012, empowers California consumers to join the fight against human trafficking by giving them access to information about retailers’ and manufacturers’ efforts to eradicate such labor practices from their supply chains.

This Resource Guide explains each of the Act’s requirements and provides model disclosures inspired by actual company website disclosures. These model disclosures should help businesses develop their own effective disclosures – ones that not only comply with the Act, but also more fully educate the public about the integrity of their supply chains. The model disclosures provided in this guide should provide direction, but there are many ways of structuring disclosures to comply with the Act. Likewise, the examples of inadequate disclosures illustrate some specific deficiencies, however they do not exhaust the full range of possible inadequate disclosures that would violate the Act.

Importantly, the guide does not supplement, replace or supersede the law and does not create any enforceable rights. It is not a set of regulations, mandates, legal opinions, or legal advice. We hope it will be a useful tool for your company, but it is not a substitute for the Act. Anyone with questions regarding whether a company is subject to the law, or

how a company should post disclosures without compromising confidential, proprietary and/or trade secret information, should refer to the California Transparency in Supply Chains Act or consult legal counsel.

# What is the California Transparency in Supply Chains Act?

Starting January 1, 2012, California law requires that certain large companies disclose to the public the extent of their efforts, if any, to ensure that the goods they sell are not produced by workers who are enslaved, coerced, or otherwise forced into service or who have been the victims of human trafficking. Many companies doing business in California already post disclosures about human trafficking.<sup>15</sup>



Numerous state and federal laws prohibit coercive labor practices and human trafficking; several are summarized in Appendix B. The Transparency in Supply Chains Act is slightly different. The Act does not regulate a company's labor practices, nor does it require companies to reveal confidential, proprietary and/or trade secret information. Instead, it requires businesses subject to the law to simply disclose their practices in five discrete areas so that interested consumers can make better informed purchasing decisions.

## The Law Applies to Businesses That . . .

- Do business in California,
- Have annual worldwide gross receipts exceeding \$100 million, and
- Are identified as manufacturers or retail sellers on their California state tax returns.

A company is "doing business in the state" if it is actively engaging in any transaction for the purpose of financial or pecuniary gain or profit, as further defined in the California Revenue and Taxation Code.

Each year, the California Franchise Tax Board evaluates information from state tax returns to determine which companies must comply with the Act, and provides a list of those businesses to the Attorney General. The most recent list produced by the Franchise Tax Board identified approximately 1,700 companies that are likely subject to the law.

## Disclosures Must Take a Particular Form

The Act directs companies with websites to post "a conspicuous and easily understood link to the required information... on the business' homepage."<sup>16</sup> Companies without websites must provide a written disclosure within 30 days of receiving a consumer request.<sup>17</sup>

## Disclosures Must Address Certain Topics

A company must address five topics in its supply chains disclosure.<sup>18</sup>

- 1. Verification.** At a minimum, disclose 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. The disclosure shall specify if the verification was not conducted by a third party.
- 2. Audits.** At a minimum, disclose to what extent, if any, that the retail seller or manufacturer conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.
- 3. Certification.** At a minimum, disclose to what extent, if any, that the retail seller or manufacturer 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.
- 4. Internal Accountability.** At a minimum, disclose to what extent, if any, that the retail seller or manufacturer maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
- 5. Training.** At a minimum, disclose to what extent, if any, that the retail seller or manufacturer provides company employees and management, 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.

## Even Companies Taking No Actions Must Comply

The Act applies even to companies that take no actions related to these five disclosure categories. In this circumstance, a company could simply disclose that, as to each category, it does not take any actions.

## Enforcement

The Attorney General has exclusive authority to enforce the Transparency in Supply Chains Act and may file a civil action for injunctive relief.<sup>19</sup>



# Recommendations for Compliance and Model Disclosure Practices

The Act has specific requirements regarding both the form and content of the disclosures. Disclosures must – at a minimum – comply with these requirements, but they may go further. Companies are encouraged to consider what information would be most helpful to consumers concerned about human rights and fair labor practices and to craft disclosures that most effectively convey that knowledge.



## Complying with the Format Requirements

For the required disclosures to be useful, a consumer must first be able to find them. Therefore, a company subject to the law with a website must post a conspicuous and easily understood link to the required disclosures on its homepage.<sup>20</sup>

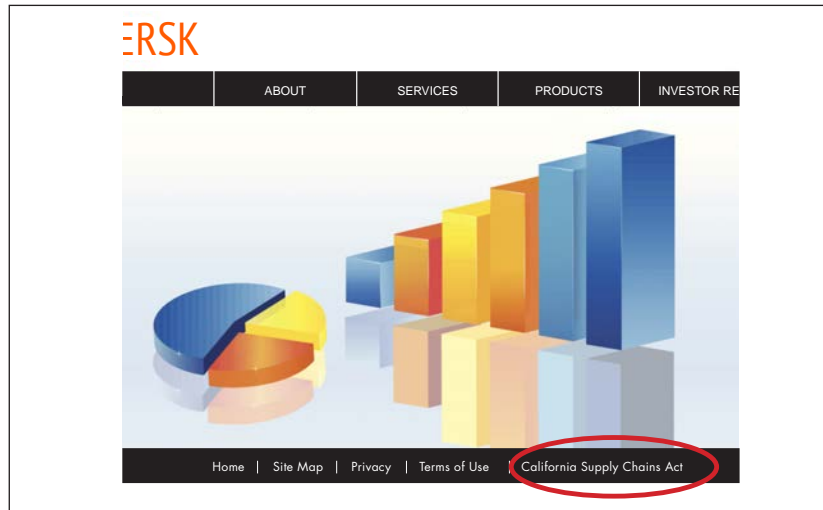
### Placing a Direct Disclosure Link on a Business's Homepage

The homepage is generally understood as the page first encountered on a website that typically contains links to other pages of the site. The Act is expressly intended to “educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains,”<sup>21</sup> and therefore disclosures should be made in a manner that best serves this public policy. For example, a good practice would be to include the link to the supply chains disclosure information on the homepages of both a company's corporate and retail websites, and the websites of all of the company's brands, so that consumers and other interested parties can easily locate the link regardless of which website they visit.

To be most effective and avoid confusing or losing the viewer, the link should go directly to the disclosure page, without requiring the consumer to click multiple links to access the information. Anyone forced to locate and click on several links may get misdirected and may never reach the disclosure page. A direct link to the disclosure page maximizes a consumer's ability to learn about a company's efforts, which furthers the intent of the Legislature.

Figure 1 below demonstrates this best practice that allows the consumer to access the company's disclosure information by clicking a single link on the homepage.

**Figure 1**



By contrast, Figure 2 below illustrates a website that does not have a direct link to the disclosure information on the homepage. Rather, it requires the consumer to click a "corporate governance" link on the homepage to get to a second link on the next page that then takes the consumer to the disclosures.

**Figure 2**



### Making the Disclosure Link Conspicuous

The Act requires that the website link be "conspicuous." A conspicuous link will be obvious or attract attention. For example, a link may be conspicuous because of its prominent location on a webpage or its textual attributes, such as font size. Using both strategies

is the best way for a company to ensure that its disclosure link is conspicuous and that the information is easily accessible.

### **Conspicuous Location**

Although companies employ many different website styles, text tones, and formats, a good way to ensure that the disclosure link on the website's homepage is conspicuously displayed is to place it at the top or bottom of the page. Consumers scanning a website's homepage regularly start by viewing the main links at the top or bottom of the page. Having the disclosure link in either of those locations will enable consumers to locate the link more quickly.

### **Conspicuous Text**

Companies can also ensure that their disclosure links are conspicuous by emphasizing the overall visual impact of the links. This can be done, for example, by making the link text no smaller and no less readable than the text of surrounding links, tabs, or drop-down menu items.<sup>22</sup> Another practice would be to make the disclosure link font larger and darker than surrounding items,<sup>23</sup> as larger and darker text can be easier for consumers to locate and read.

Figure 3 shows an example of a conspicuous link. The font and color of the link are larger and darker than most of the surrounding text.

**Figure 3**

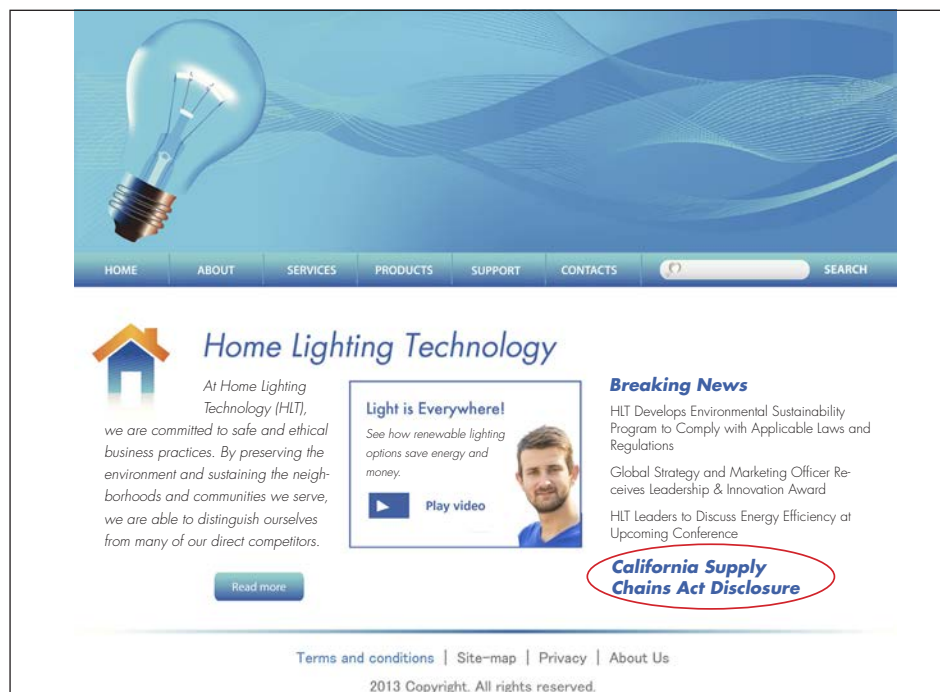
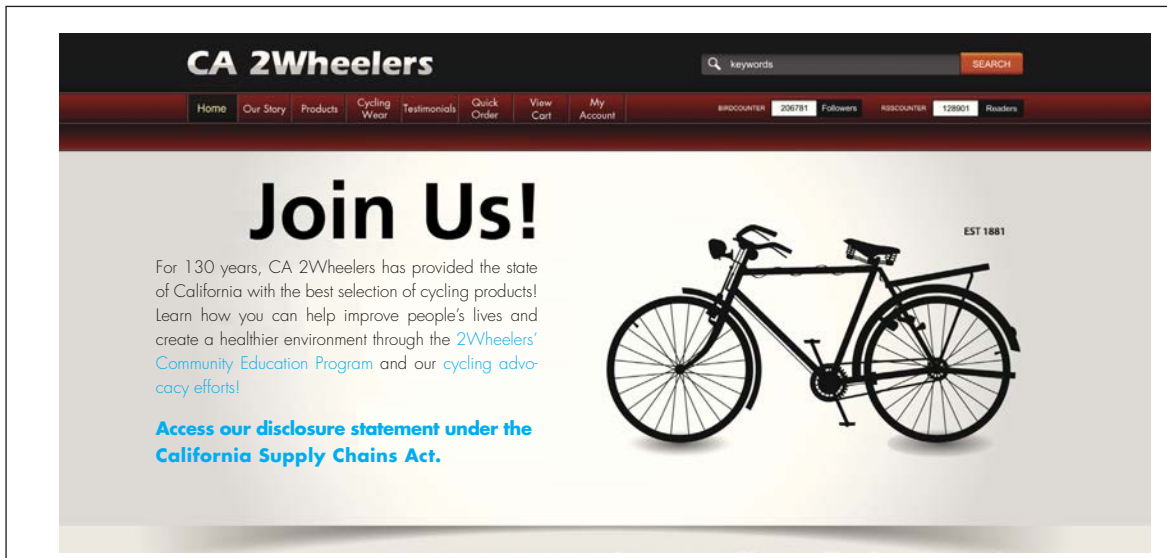


Figure 4 presents an example of how a company can incorporate its link into a user-friendly narrative about the company's activities.

Figure 4



### Making the Disclosure Link Easy to Understand

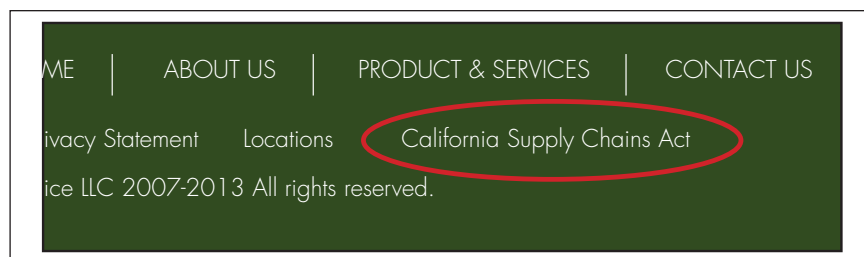
The Act requires that the link to a business's disclosure be "easily understood." This can be achieved by using a title for the link that is descriptive and specific to the supply chain disclosures.

### Suggested Descriptive Title

The link's title must enable website visitors to easily understand that it is the link to the company's disclosures under the Act. A good descriptive link title would be "California Supply Chains Act." This kind of uniform title is easy for consumers to identify and understand.

Figure 5 shows a link that comports with this best practice.

Figure 5



In contrast, *Figure 6* presents a link entitled “Corporate Responsibility,” which a consumer would not necessarily understand to refer to disclosures regarding supply chain management. The term “Corporate Responsibility” typically refers to a broad range of issues and is not limited to supply chain practices.

**Figure 6**



### **Complying with the Content Requirements**

The Act does not mandate that a company make any specific statements about confidential, proprietary and/or trade secret information. Instead, the law provides flexibility for a qualifying business to make disclosures appropriate to its own supply chain practices, so long as the disclosures fully respond to the five topics set forth in the statute. In making their disclosures, companies are guided by both the technical requirements of the Act, and by the public policy of “educat[ing] consumers on how to purchase goods produced by companies that responsibly manage their supply chains.”<sup>24</sup> The disclosure requirements apply equally to companies that aggressively manage their supply chains and businesses that do very little management.

### **Specific and Limited Content**

Although not necessarily required by the Act, some companies have exclusively devoted a single page to their supply chain disclosures. By providing all disclosures on one page, consumers will not have to sift through other information in evaluating a company’s disclosures in each of the Act’s five critical areas.

Figure 7 exemplifies this best practice. The heading on the webpage is the full title of the Act, and the subheadings are the Act's five critical areas. The page provides information in a coherent and visually accessible manner.

Figure 7

**Breakthru**

California  
Transparency in  
Supply Chains Act  
of 2010

**Risk Assessment**

**Accountability Standards**

**Training on Human Trafficking and Slavery**

**Supplier Audits**

**Direct Supplier Certification**

**Anti-Slavery Resources**

- Confidential Ethics Hotline for Suppliers
- New Laws and Policies

## Requirement to Disclose the Extent of Efforts

To comply with the Act, a company must do more than make mere conclusory statements. The Act requires it to disclose “to what extent, if any” it engages in activities related to five categories. In other words, a company must provide information about the nature of its engagement, not just the fact of it.

Under each disclosure category, several examples are provided. First are model disclosures inspired by actual disclosures from companies. At the end of each section, an example is provided to demonstrate how a company that does little in that area could adequately comply with the disclosure requirements.

## Verification

**Requirement:** “[D]isclose to what extent, if any, [the company]... [e]ngages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.”<sup>25</sup>

Verifying a product supply chain can include any efforts to identify, assess, and manage the risks of human trafficking in the production of the company’s products.

### Recommended Disclosures:

- 1. Verification Protocols.** Generally describing the protocols followed as part of a company’s verification process will better enable consumers to assess the extent to which companies have evaluated and addressed the risks of human trafficking in their supply chains. For example, consumers would benefit from knowing whether a company verifies all of its product supply chains, or only those in certain countries. In the example below, the disclosure explains that a third-party monitor is responsible for verifying details about the company’s new and existing suppliers, how risks are identified and evaluated, how that assessment is made, and how the company uses that information to manage the potential risks.

#### Example:

*We are committed to fair labor practices within our supply chain. We therefore engage a third-party monitor who uses a multi-level process to identify and evaluate the potential risks for human trafficking and slavery in our supply chain. Prior to partnering with any new suppliers, and annually thereafter, our monitor conducts an initial screening of those suppliers. The monitor’s evaluation of human trafficking risks is based on a variety of factors. They include the business’s geographic location and*



*manufacturing processes, a workforce profile, the history of human trafficking and slavery in the sector, the U.S. Department of Labor's list of goods identified as vul-*



*nerable to forced labor, and third-party reports concerning the supplier's human rights record, if available. During the next level of review, our monitor requires prospective and current suppliers to respond in writing to questions regarding areas of concern raised during the initial screening process. The monitor then assesses which suppliers pose the highest risk in human trafficking, and reports these findings to our internal executive management team. We include these high-risk suppliers in the group of suppliers we annually audit.*

- 2. Frequency.** A helpful description of the verification process would also include generally how often (e.g., monthly, annually) the company evaluates its supply chain for risks of slavery or human trafficking. The disclosure below specifies that verifications occur annually for existing suppliers and before production orders are authorized from new suppliers.

**Example:**

*Every year we identify all of our direct suppliers, and a third-party partner examines relevant information about each supplier on an annual basis to evaluate risks and vulnerability to slavery or human trafficking in the production of supplier goods. That third-party partner also subjects new suppliers to this examination process before we place any production orders.*

- 3. Labor Brokers.** Workers are a critical component of a company's supply chain. Within a supply chain, labor brokers or third-party recruiters sometimes serve as the intermediary in the recruitment, hiring, and even management of workers. A company's disclosure of whether it verifies and manages the risks associated with the presence of labor brokers in its supply chain is relevant to consumers because the presence of labor brokers may increase the risk of slavery and human trafficking.<sup>26</sup> When labor brokers hire migrant workers, the conditions of their recruitment of workers are no longer under the control of, or even apparent to, the hiring companies. Some workers are expected and forced to pay off large debts, making them vulnerable to slavery or servitude. These risks are exacerbated when labor brokers use sub-brokers or subcontractors.



Recognizing the increased risk of slavery and human trafficking with labor brokers, the California State Legislature in 2014 passed a bill to require foreign labor contractors to register with the Labor Commissioner and post bonds. Effective 2016, Senate Bill 477 (Steinberg) will also create an enforcement mechanism against employers who use unregistered foreign labor contractors.

In the example below, the disclosure provides information about the company's efforts to determine whether its suppliers use labor brokers and to root out illegal labor practices.

**Example:**

*Last year, we joined XYZ Fair Labor Organization to collaborate with others in our industry to track illegal labor recruitment practices. XYZ members often work with the same manufacturers and suppliers, and benefit from sharing audit results that can contribute to setting consistent industry-wide expectations.*

*Through our involvement with XYZ, we are better able to understand and monitor risks associated with labor recruitment practices generally, as well as the use of specific labor intermediaries in our supply chain.*

**Less Informative Disclosure:**

The preceding examples were inspired by companies that are proactive in safeguarding their supply chains from human trafficking and slave labor. But even companies that are less proactive can provide disclosures that meet the requirements of the Act. In such cases, a company may need to disclose that it makes little or no effort to verify the integrity of its supply chain. But so long as the company clearly discloses the extent to which it "[e]ngages in verification" and whether its verification is conducted by a third party, its disclosures will comply with the law.

The example below adequately discloses the extent of a company's verification efforts by both indicating that it conducts biannual verifications of 30% of its product suppliers and providing information on how the verification process takes place. It also specifies the limitations of its verification process.

**Example:**

*We conduct biannual assessments of 30% of our product suppliers to verify that they are not at risk for violating anti-slavery and human trafficking laws. We do not use third-party verifiers. Our own risk-management team spearheads the verification process using an internally developed rubric and multi-part assessment. Our risk-management team is currently unable to verify whether our subcontractors use labor brokers.*

## Supplier Audits

**Requirement:** “[D]isclose to what extent, if any, [the company]... [c]onducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.”<sup>27</sup>

Disclosures explaining the extent of auditing efforts should provide consumers with information that aids in understanding those efforts, such as the methodology or review process by which the company evaluates compliance with its policies regarding trafficking and slavery in its supply chains. The disclosures must also state whether the supplier being audited had advance notice of the audit and whether the review was performed by an independent auditor. While the best auditing programs are unannounced and unknown to suppliers being audited, companies can and should disclose some information about their audits to enable consumers to assess their auditing process.

### Recommended Disclosures:

- 1. Audit Methodology.** A best practice for a company generally explaining its auditing procedures is to include information on how it selects and prioritizes suppliers for auditing, as in the example below. Auditing is an important part of a company’s efforts to eliminate human trafficking from its supply chain, since human trafficking and forced labor are complex and often hidden.<sup>28</sup> Both human trafficking and forced labor are characterized by deception, and are the result of pressures, abuses, and exploitation levied not by a single employer, but by a number of abusive actors at different stages of the recruitment, hiring, and employment process.<sup>29</sup> Thus, companies may seek to develop new assessment strategies, strengthen their audit procedures, improve auditor training, and ensure that a spotlight is shone on the areas of greatest risk, including sub-contracted facilities and the companies that provide labor, both foreign and domestic.<sup>30</sup>

#### Example:

*Each year we audit at least 30% of our suppliers to determine if they are complying with our company standards aimed at ensuring human trafficking is not tainting our products. We decide which suppliers to audit based on our assessment of the level of risk for slave labor or human trafficking practices in the country where the supplier operates.*

- 2. Audit Statistics.** Consumers would also benefit from having some data about the auditing process, such as statistics regarding announced and unannounced off-site worker interviews, the breakdown of audits by each component of the supply chain,

and the number and percentage of suppliers audited. There is a growing recognition that independent audits uncover more than audits completed using a company's internal staff, and that advance warning of audits can allow unscrupulous suppliers to correct misconduct in the short term, providing a false sense of compliance. Without revealing a company's confidential, proprietary and/or trade secret information, or undermining the deterrent effect of surprise unannounced audits, a company can disclose general audit statistics to provide consumers with quantifiable information about the effectiveness of the company's auditing program. These statistics also enable consumers to more readily compare the auditing efforts of different companies.

In the adapted disclosure model below, the company provides audit statistics information.

**Example:**

*We have completed a total of X supplier audits since 2010, with some factories receiving more than one assessment in a year. Approximately Y% of our active direct-supplier factories received at least one assessment in 2012. We assessed 3 of our 6 direct-supplier factories in the first quarter, A% of which were found to be in compliance with our standards and B% of which were not.*



- 3. Auditor Information.** If audits are performed, the company must disclose whether the auditors are independent.

**Example:**

*We monitor supplier behavior and compliance through our own internal auditors who perform extensive announced and unannounced investigations. Internal auditors are trained to recognize and report non-compliance as part of their hiring process. Furthermore, if and when our internal auditors report an instance of abuse, our company then sends a professional third-party auditing firm to independently evaluate the suspicion.*

**Less Informative Disclosure:**

A company's auditing practices disclosure may comply with statutory requirements even if it reveals that the company conducts no reviews or that its practices are likely to result in audits that are incomplete or unreliable. The test is not whether the company's auditing



practices are sound and effective, but whether the company adequately discloses its practices, including whether the audits are independent and unannounced.

The example below is a sufficient disclosure that explains the extent to which the company engages in supplier audits. Pursuant to the statute, the disclosure describes generally what an audit entails and specifies that the company's annual auditing process is an announced, internal one.

**Example:**

*Our internal auditing team annually conducts announced audits of 20% of our direct suppliers to evaluate their compliance with our anti-slavery and human trafficking company standards. Audits consist of individual and group interviews with supervisors and management, as well as exhaustive facility tours.*

## **Certification**

**Requirement:** “[D]isclose to what extent, if any, [the company]... [r]equires 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.”<sup>31</sup>

In this category, the company must disclose whether and to what extent it requires its direct suppliers to certify that they comply with the trafficking laws of the countries in which they do business.

### **Recommended Disclosures:**

- 1. Certification Requirements.** If a company does, to some degree, require its direct suppliers to certify that materials incorporated into its products comply with the country's laws, a general description of the certification requirement and the consequences for violating it would be beneficial to consumers.

**Example:**

*To ensure that our contractors and suppliers respect and enforce our company standards, we include a clause in the commercial agreement governing our contractual*

*relationship with suppliers, which stipulates that our suppliers must abide by our anti-slavery and human trafficking standards. Thus, as a condition of doing business with us, and as a means of self-certification, the commercial agreement clause reads: “1) Supplier represents that it complies with all applicable laws and regulations, including eradication of forced, indentured, involuntary or compulsory labor in its facilities, and requires its suppliers, including labor brokers and agencies, to do the same; 2) Supplier represents that its supply chain and materials incorporated into its products comply with national and international laws prohibiting slavery and human trafficking; and 3) Supplier agrees to treat workers with dignity and respect, provide them with a safe work environment, conduct business in compliance with applicable environmental, labor and employment laws, and refrain from corrupt practices and engaging in human rights violations.”*

- 2. Accountability Efforts.** Companies may also wish to explain any additional efforts they make to encourage their direct suppliers to comply with labor and anti-trafficking laws. For instance, as in the model disclosure below, a company could disclose what records it requires suppliers to maintain to support their certification. Through periodic updates of such disclosure efforts, companies can best show how they are addressing human trafficking risks over time within their supply chains.

**Example:**

*Our company requires each manufacturing partner to maintain records that are sufficiently detailed to substantiate that all materials it supplies to us are produced in compliance with the anti-slavery and human trafficking laws of the country or countries where they are produced. Our partners must produce these records to our company auditors upon request. Such records may include: (1) proof of age for every worker; (2) every employee’s payroll records and timesheets; (3) written documentation of terms and conditions of employment; (4) local health and safety evaluations or documentation of exemption from law; and (5) records of employee grievances and suggestions, and any employer responses. We also use independent country, commodity, and product risk data annually provided by a global risk advisory firm to score, rank, and evaluate the human trafficking risks associated with what we buy and where we buy it. The results help us decide whether direct suppliers should complete a human trafficking risk self-assessment, or whether an independent human trafficking audit is justified. When we require that our direct suppliers complete a human trafficking risk self-assessment, we provide them with an affidavit through which they must affirm that they will review and comply with human trafficking and worker protection laws in all jurisdictions where our products are made. We also use the Free Labor Data Exchange, a secure database where direct suppliers record their ability to manage human*

*trafficking risks. Suppliers that may pose a risk are required to complete a self-assessment, and these results also help us evaluate whether an independent audit is needed.*

#### Less Informative Disclosure:

A company can comply with statutory requirements by disclosing that it makes little or no effort to determine whether its direct suppliers abide by the laws in the countries in which they do business. The example below meets the minimum statutory disclosure requirements by conspicuously stating that the company does not engage in certification of its direct suppliers.

#### Example:

*Currently, we do not require our direct suppliers to certify that they comply with anti-slavery and human trafficking laws in the country or countries in which they do business.*

### Internal Accountability

**Requirement:** “[D]isclose to what extent, if any, [the company]... [m]aintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.”<sup>32</sup>

In this category, a company should focus on its compliance program. A company might begin by generally describing its internal procedures, if any, for holding employees and contractors accountable for complying with its anti-slavery and human trafficking standards. Without revealing confidential, proprietary, and/or trade secret information, this could include, among other things, what those standards are, who has responsibility for monitoring compliance, and general examples of what the penalties are for non-compliance.

#### Recommended Disclosures:

- 1. Identification of Policies.** A company must, at a minimum, disclose whether it has internal procedures for determining whether employees or contractors are complying with company standards regarding slavery and human trafficking. In order to further explain its supplier workplace standards, a company may wish to provide a link to its code of conduct. If a company has internal procedures for determining whether employees or contractors are complying with company standards, the company should generally explain what these are in order to clarify the extent of its activity. Companies should also consider providing some general information on the types of corrective and preventive action they have taken.



**Example:**

*Non-compliance with our company standards regarding slavery and trafficking can result in corrective action or termination, depending on the number of non-compliances found and their severity. Our team of internal auditors works with employees and contractors to develop action plans to resolve any such instances of non-compliance. While we believe in sustainable remediation, we reserve the right to terminate a business relationship with an employee or contractor if it is deemed necessary.*

- 2. Worker Protections.** To illustrate the extent of companies' internal accountability procedures, we encourage companies to disclose any mechanisms in place to help workers understand the company's fair labor requirements. This might include procedures for reporting violations, as well as confidentiality and whistleblower protections. Internal whistleblower protections help ensure that workers are free from coercion, intimidation, and involuntary servitude, and that they have a meaningful right to organize to improve their lives.<sup>33</sup> Additionally, companies may wish to generally describe the number of safeguards in place that ensure objective investigations when complaints are filed.



**Example:**

*In the last year, our team conducted visits to our supplier factories to audit internal grievance mechanisms. We evaluated the existing communication channels in these factories and assessed their adequacy, reviewing the frequency of grievances reported and resolved. We also evaluated the responsiveness of management in addressing anonymous complaints, as well as employee privacy and retaliation concerns.*

**Less Informative Disclosure:**

The disclosure below is not very descriptive, but it properly describes the extent to which the company maintains internal accountability standards and procedures. It is unambiguous that the company provides written notice to employees and contractors who violate company standards and a distinct time frame in which to address such violations.

**Example:**

*In 2013, we developed internal accountability standards and procedures for employees and contractors failing to meet our company standards regarding slavery and trafficking.*

*If and when our company uncovers employee or contractor compliance problems, we provide written notice and a specified period of time to take corrective action.*

## Training

**Requirement:** “[D]isclose to what extent, if any, [the company]... [p]rovides company employees and management, 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.”<sup>34</sup>

A company must identify what, if any, efforts it undertakes to train its personnel who directly oversee the supply chain on how to reduce potential risks of human trafficking and slavery. A good practice is to disclose, at a minimum, some general information and/or examples about the substance and frequency of such training, as well as the level of employees (by category or type) who receive such training.

Providing consumers with information regarding a company’s training on human trafficking is important because effective training programs can help employees, suppliers, contractors, and auditors better understand company policies, how to effectively implement them, and ways to avoid trafficking risks associated with inaction. It would therefore be helpful to consumers to know whether the training includes ways to identify trafficking, how to report suspected cases and how to protect victims involved.

### Recommended Disclosures:

- 1. Training Methodology.** An appropriate disclosure could provide a general description of the nature of relevant training provided, including highlights of the curriculum’s content and the duration and the frequency of the training. Some companies collaborate with commercial partners, suppliers, agents, contractors, and other stakeholders in establishing protocols and trainings, and they have begun to incorporate this information into their disclosures, as in the example on the next page.



#### Example:

*Last summer, we conducted our three-day annual seminar for our employees and managers who are directly responsible for selecting and overseeing our suppliers. One day of the seminar was exclusively*



*devoted to mitigating risks of human trafficking and slavery within our company's supply chains of products. We partnered with XYZ Institute and experts from ABC Organization to provide the annual 6-hour training to our supply chain management staff, existing suppliers, and new vendors. Last month, we also joined the ZZZ Association to gain access to its future trainings on workers' rights. We plan to collaborate with ZZZ's independent auditors to add another layer of corporate accountability.*

- 2. Personnel Being Trained.** It is also a good practice to identify examples of the level of employees by category or type who undergo training, as illustrated below.

**Example:**

*Our supply chain management staff consists of two vice-presidents and one operations manager. Every member of our supply chain management staff receives training on all company policies, practices, and procedures designed to ensure that our supply chain is free of any type of coerced labor, including how to spot warning signs of potential human rights violations.*

**Less Informative Disclosure:**

In the example below, it is clear that the company does not provide any training for employees or contractors on mitigating risks within the supply chains of products.

**Example:**

*Our company does not provide employees or contractors with training on human trafficking and slavery.*

## **Inadequate Disclosures**

A company subject to the Act that provides no human trafficking disclosures on its website is in violation of the law. In addition, the law does not provide companies discretion to choose which of the five mandated disclosures they will make; companies must disclose the required information as to each of the five categories.

The following example illustrates several disclosure deficiencies. Although it provides an explanation of the company's auditing efforts, it does not discuss verification, certification, or internal accountability, as required by the Act. Also, while it does mention training, it does not provide any information as to the extent of the company's training activities. Such a disclosure does not provide a sufficient basis on which consumers may evaluate the company's practices.

**Example:**

*As a part of our extensive vetting process, we require each vendor to adhere to our Code of Conduct. Additionally, our unannounced, third-party audits provide current data on sourcing factories' working conditions, including our company's standards for trafficking and slavery in supply chains, compliance with local and international labor laws, and management policies. The audits are conducted quarterly. Further, we provide company employees and management who have direct responsibility for supply chain management training on human trafficking and slavery.*

Similarly, a general statement opposing human rights violations, while well-intentioned, does not suffice because it does not address the five areas outlined in the statute.

**Example:**

*Our company is committed to respecting the human rights of our employees. Our Code of Ethics and company policies adhere to the principles of free choice of employment, nondiscrimination, and humane treatment. We ensure compliance with regulations governing child labor, minimum wage, and maximum working hour limitations.*

# Conclusion

The California Attorney General's Office will continue to work with stakeholders and to engage in an ongoing dialogue regarding compliance with the Act. This Resource Guide should help companies in their efforts to develop protocols that are in compliance with both the letter and legislative intent of the Act.



Disclosures will not help consumers or companies unless the information is understandable, accurate, and widely available. We encourage stakeholders – from industry, NGOs, and labor organizations – to collaborate in developing systems for consumers to learn about companies' efforts to prevent trafficking and slavery in their supply chains.

Ultimately, companies stand to gain from their compliance with the Act. They will not only strengthen their relationships with consumers, but their prevention efforts will help reduce the demand for tainted materials and labor in product supply chains and improve the quality of the goods they bring to market.

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# Appendix A

## The California Transparency in Supply Chains Act

California Civil Code section 1714.43:

- (a) (1) Every retail seller and manufacturer doing business in this state and having annual worldwide gross receipts that exceed one hundred million dollars (\$100,000,000) shall disclose, as set forth in subdivision (c), its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale.
- (2) For the purposes of this section, the following definitions shall apply:
  - (A) “Doing business in this state” shall have the same meaning as set forth in Section 23101 of the Revenue and Taxation Code.
  - (B) “Gross receipts” shall have the same meaning as set forth in Section 25120 of the Revenue and Taxation Code.
  - (C) “Manufacturer” means a business entity with manufacturing as its principal business activity code, as reported on the entity’s tax return filed under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.
  - (D) “Retail seller” means a business entity with retail trade as its principal business activity code, as reported on the entity’s tax return filed under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.
- (b) The disclosure described in subdivision (a) shall be posted on the retail seller’s or manufacturer’s Internet Web site with a conspicuous and easily understood link to the required information placed on the business’ homepage. In the event the retail seller or manufacturer does not have an Internet Web site, consumers shall be provided the written disclosure within 30 days of receiving a written request for the disclosure from a consumer.
- (c) The disclosure described in subdivision (a) shall, at a minimum, disclose to what extent, if any, that the retail seller or manufacturer does each of the following:
  - (1) Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.
  - (2) Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.

- (3) 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.
- (4) Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
- (5) Provides company employees and management, 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.
- (d) The exclusive remedy for a violation of this section shall be an action brought by the Attorney General for injunctive relief. Nothing in this section shall limit remedies available for a violation of any other state or federal law.
- (e) The provisions of this section shall take effect on January 1, 2012.

California Revenue & Taxation Code section 19547.5:

- (a) (1) Notwithstanding any provision of law, the Franchise Tax Board shall make available to the Attorney General a list of retail sellers and manufacturers required to disclose efforts to eradicate slavery and human trafficking pursuant to Section 1714.43 of the Civil Code. The list shall be based on tax returns filed for taxable years beginning on or after January 1, 2011.
- (2) Each list required by this section shall be submitted annually to the Attorney General by November 30, 2012, and each November 30 thereafter. The list shall be derived from original tax returns received by the Franchise Tax Board on or before December 31, 2011, and each December 31 thereafter.
- (b) Each annual list required by this section shall include the following information for each retail seller or manufacturer:
  - (1) Entity name.
  - (2) California identification number.

# Appendix B

## Other State and Federal Human Trafficking Laws

Several state and federal laws address human trafficking and slavery and/or require companies to implement certain practices to eradicate such abuses from their supply chains. Some key laws include:

### California Laws

#### Trafficking Victims Protection Act

Through the California Trafficking Victims Protection Act (AB 22) of 2005, as amended in 2010, the California Legislature defined human trafficking as “[a]ny person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services...”<sup>35</sup> The Act also adopts the federal definition of “severe forms of trafficking in persons” which is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>36</sup> The Act established human trafficking as a felony under Penal Code section 236.1;<sup>37</sup> directed the California Attorney General to give human trafficking high priority status along with other crimes;<sup>38</sup> provided for mandatory restitution to trafficking victims<sup>39</sup> and allowed them to bring a civil action against their traffickers;<sup>40</sup> and provided for a human trafficking victim-caseworker privilege to protect confidential information.<sup>41</sup>

#### Unlawful Wage Deduction for Transport to U.S.

AB 1278 (2008) provides that any provision of a contract that purports to allow a deduction from a person’s wages for the cost of emigrating and transporting that person to the United States would be void as against public policy.<sup>42</sup>

#### Unlawful Public Contracts with Scrutinized Companies

California law authorizes contracting between state agencies and private contractors and sets forth requirements for the procurement of goods and services by state agencies and the various responsibilities of state agencies and the Department of General Services in implementing state contracting procedures and policies. SB 861 (2011) prohibits a scrutinized company (e.g., one that supports conflict minerals)<sup>43</sup> from entering into a contract with a state agency for goods or services.

#### Posting of Public Notices Regarding Slavery and Human Trafficking

SB 1193 (2012) requires businesses, transit hubs, and other locations that are sites vulnerable to sex and labor trafficking to post notices publicizing human trafficking resources.<sup>44</sup>

## **Foreign Labor Recruitment Law**

The California Foreign Labor Recruitment Law, or SB 477, will go into effect on July 1, 2016.<sup>45</sup> The statute will require foreign labor contractors to register with the Labor Commissioner and post bonds; provide full and fair information to foreign workers in a language they understand, about the terms and conditions of their work in California; and institute a no-fees policy for labor recruitment. The law will also create an enforcement mechanism against employers who do not use registered foreign labor contractors.

## **Federal Laws**

Federal law defines human trafficking as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age;” or “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>46</sup>

## **Trafficking Victims Protection Act**

In 2000, Congress enacted the Trafficking Victims Protection Act (TVPA), Public Law 106-386 (22 U.S.C. § 7101, et seq.), to prosecute traffickers, protect victims, and prevent human trafficking. TVPA was the first comprehensive federal law to address the crime of human trafficking and—together with its reauthorization acts—it forms the cornerstone of federal laws protecting victims of human trafficking.

The TVPA made human trafficking a federal crime, with its core criminal offenses codified in sections 1589 (forced labor) and 1591 (sex trafficking) of Title 18 of the United States Code.<sup>47</sup> These codified offenses carry strong penalties, as delineated in the federal sentencing guidelines. The TVPA also provided monetary remedies for victims; implemented health services, immigration relief and witness protection for victims; and created the T Visa—a pathway to permanent residency in the United States for trafficking victims and their families. It also created the Office to Monitor and Combat Trafficking in Persons, and an interagency task force to coordinate global anti-trafficking efforts.

Congress reauthorized the Act four times, in 2003, 2005, 2008 and 2013. These reauthorizations:

- Allowed victims to sue traffickers; expanded the Racketeering Influenced Corrupt Organization (RICO) Act’s list of crimes to include human trafficking; provided deportation protections for victims and their families; and required annual reports to Congress on efforts to prevent human trafficking in the U.S. (2003);



- Authorized more than \$5 million in treatment programs and shelters for human trafficking victims in the U.S. and abroad, and included prohibitions against government contracts with those complicit in human trafficking (2005);
- Required the government to notify all applicants for work and education visas about workers' rights in the U.S. and screen all unaccompanied immigrant children; strengthened T-visa protections; expanded definitions of trafficking; and increased criminal penalties (2008); and
- Blocked countries that use child soldiers from receiving U.S. foreign aid; extended jurisdiction to prosecute child sex traffickers to those living abroad; and established grants for emergency responses to disaster areas prone to trafficking (2013).

### **Civil Asset Forfeiture Reform Act of 2000 (CAFRA)<sup>48</sup>**

CAFRA was intended to stop property owners from turning a blind eye to criminal activity committed on their property by another. It requires notifications to be sent to the owners of properties identified as sites of human smuggling or trafficking abuse.

### **Intelligence Reform and Terrorism Prevention Act of 2004, Section 7202<sup>49</sup>**

Section 7202 created the Human Smuggling and Trafficking Center to help coordinate the United States government's response to trafficking worldwide, as related to terrorism.

### **Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>50</sup>**

The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law by President Barack Obama on July 21, 2010. One relevant aspect of the legislation is that it requires those who file with the Securities Exchange Commission and use minerals originating in the Democratic Republic of Congo in manufacturing to disclose measures taken to exercise due diligence on the source and chain of custody of the materials and the products manufactured.

### **President Obama's Executive Order 13627<sup>51</sup>**

In September 2012, President Obama signed Executive Order 13627 prohibiting U.S. federal contractors, contractor employees, and subcontractors from engaging in misleading or fraudulent recruitment practices;<sup>52</sup> charging employees recruitment fees; destroying, concealing, confiscating or denying access to employee identity documents; and failing to pay for return transportation costs upon the end of non-U.S. employment. The Executive Order also requires that any federal contractor and subcontractor permit access to audits by the U.S. contracting agencies. For those U.S. federal contracts and subcontracts for non off-the-shelf products where more than \$500,000 is performed outside the United States borders, the Executive Order further requires the creation of an "awareness program" to prevent subcontractors at any tier from engaging in trafficking of persons, and requires the

contractor's monitoring, detection, and termination of any subcontractor who has engaged in such activity.

### **National Defense Authorization Act of 2013 (NDAA)<sup>53</sup>**

Sections 1701 to 1708 of the NDAA allow government agencies to terminate without penalty any contract or grant entered into with an organization or individual that engages in human trafficking. It also creates investigative and reporting mechanisms to identify possible cases of human trafficking tied to government contracts and grants. A written certificate promising to refrain from supporting human trafficking is required between parties where grants and contracts are valued above \$500,000.

### **Revisions to Existing Anti-Human Trafficking Federal Acquisition Regulation (FAR) Clauses**

On January 29, 2015, the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) issued a final rule amending the Federal Acquisition Regulation (FAR)<sup>54</sup> to strengthen and promote the United States policy prohibiting trafficking in persons by creating a stronger framework and additional requirements for awareness, compliance, and enforcement in order to prevent trafficking in Government contracts. These changes are intended to implement Executive Order 13627 and Title XVII of the National Defense Authorization Act for Fiscal Year 2013.

### **Revisions to Defense Federal Acquisition Regulation Supplement (DFARS)**

On January 29, 2015, the Department of Defense (DoD) also issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to further implement DoD trafficking in persons policy, and to supplement Government-wide changes proposed in connection with Executive Order 13627, meant to improve awareness, compliance, and enforcement with respect to defense contractors.<sup>55</sup>

# Appendix C

## Anti-Slavery and Human Trafficking Resources

### Statistics

- *Annual Trafficking in Persons Reports* from the U.S. Department of State
- *United Nations Report on Human Trafficking (February 2009)* from the United Nations Office on Drugs and Crime
- *Human Trafficking 2012 Fact Sheet* from the U.S. Department of Health and Human Services

### Anti-Slavery & Human Trafficking

- *Combating Forced Labor: A Handbook for Employers and Business* from the International Labour Office
- *Help Wanted: Fair Hiring Toolkit* from the U.S. Department of Labor and Verité
- *Reducing Child Labor and Forced Labor: A Toolkit for Responsible Business* from the U.S. Department of Labor
- *Findings on the Worst Forms of Child Labor* from the U.S. Department of Labor

### Supply Chains

- *Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains (January 2015)* from the U.S. Department of State and Verité
- *Human Trafficking and Global Supply Chains: A Background Paper* from the United Nations Office of the High Commissioner for Human Rights and Verité
- *List of Goods Produced by Child Labor or Forced Labor* from the U.S. Department of Labor
- *Corruption and Labor Trafficking in Global Supply Chains* from Verité
- *Chain of Custody and Traceability* from ISEAL Alliance
- *Commodities Atlas* from Verité

### California SB 657

- *Compliance is Not Enough: Best Practices in Responding to The California Transparency in Supply Chains Act* from Verité
- *Effective Supply Chain Accountability: Investor Guidance on the Implementation of the California Transparency in Supply Chains Act and Beyond* from the Interfaith Center on Corporate Responsibility; Christian Brothers Investment Services, Inc.; and Calvert Investments



# Endnotes

- <sup>1</sup> International Labour Organization, *Forced Labour, Human Trafficking and Slavery*, <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (as of Feb. 6, 2015).
- <sup>2</sup> Hiscox and Smyth, *Is There Consumer Demand for Improved Labor Standards? Evidence from Field Experiments in Social Product Labeling* (2011), p. 2, <http://scholar.harvard.edu/hiscox/publications/there-consumer-demand-fair-labor-standards-evidence-field-experiment> (as of March 11, 2015).
- <sup>3</sup> Cal. Civ. Code, § 1714.43.
- <sup>4</sup> Cal. Civ. Code, § 1714.43, subd. (a)(1).
- <sup>5</sup> Cal. Civ. Code, § 1714.43, subd. (b).
- <sup>6</sup> *Ibid.*
- <sup>7</sup> Cal. Civ. Code, § 1714.43, subd. (c)(1).
- <sup>8</sup> Cal. Civ. Code, § 1714.43, subd. (c)(2).
- <sup>9</sup> Cal. Civ. Code, § 1714.43, subd. (c)(3).
- <sup>10</sup> Cal. Civ. Code, § 1714.43, subd. (c)(4).
- <sup>11</sup> Cal. Civ. Code, § 1714.43, subd. (c)(5).
- <sup>12</sup> U.S. Dept. Labor, List of Goods Produced by Child Labor or Forced Labor (Sept. 30, 2013).
- <sup>13</sup> Cal. Atty. Gen., *The State of Human Trafficking in California: 2012* (2012), p. 7.
- <sup>14</sup> *Id.* at p. 90.
- <sup>15</sup> A recent study jointly published by the American Bar Association and Arizona State University noted that the majority of Fortune 100 companies in a field involving global supply chains or production had publicly available policies addressing human trafficking. (American Bar Association and Arizona State University, *How Do Fortune 100 Corporations Address Potential Links to Human Rights Violations in a Globally Integrated Economy* (June 2, 2014) [http://www.mccaininstitute.org/applications/Fortune\\_100\\_Report\\_on\\_Trafficking.pdf](http://www.mccaininstitute.org/applications/Fortune_100_Report_on_Trafficking.pdf) (as of Oct. 15, 2014).)
- <sup>16</sup> Cal. Civ. Code, § 1714.43, subd. (b).
- <sup>17</sup> *Ibid.*
- <sup>18</sup> Cal. Civ. Code, § 1714.43, subd. (c).
- <sup>19</sup> Cal. Civ. Code, § 1714.43, subd. (d).
- <sup>20</sup> Companies without websites must provide a written disclosure within 30 days of receiving a written consumer request.
- <sup>21</sup> Sen. Bill No. 657 (2009-2010 Reg. Sess.) § 2(j).
- <sup>22</sup> Cal. Bus. & Prof. Code, § 17601.

- <sup>23</sup> Cal. Bus. & Prof. Code §22577, subd. (b)(3).
- <sup>24</sup> Stats. 2010, ch. 556, § 2, subd. J.
- <sup>25</sup> Cal. Civ. Code, § 1714.43, subd. (c)(1).
- <sup>26</sup> U.S. Dept. of State, Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains (Jan. 2015), <http://www.state.gov/documents/organization/237137.pdf> (as of March 11, 2015).
- <sup>27</sup> Cal. Civ. Code, § 1714.43, subd. (c)(2).
- <sup>28</sup> Hunter & Kepes, *Human Trafficking & Global Supply Chains: A Background Paper* (Nov. 2012), p. 23, <http://www.ohchr.org/documents/issues/trafficking/consultation/2012/backgroundpaper.pdf> (as of Nov. 13, 2014).
- <sup>29</sup> *Ibid.*
- <sup>30</sup> *Ibid.*
- <sup>31</sup> Cal. Civ. Code, § 1714.43, subd. (c)(3).
- <sup>32</sup> Cal. Civ. Code, § 1714.43, subd. (c)(4).
- <sup>33</sup> Cal. Labor Federation letter (Sept. 3, 2010) to Governor in support of S.B. 657.
- <sup>34</sup> Cal. Civ. Code, § 1714.43, subd. (c)(5).
- <sup>35</sup> Cal. Pen. Code, § 236.1, subd. (a).
- <sup>36</sup> Cal. Pen. Code, § 236.1, subd. (g) (incorporating 22 U.S.C. § 7102(8) as equivalent to the definition used in the Penal Code.)
- <sup>37</sup> Cal. Pen. Code Section 236.1 establishes human trafficking for forced labor or services as a felony crime punishable by a sentence of 3, 4 or 5 years in state prison and a sentence of 4, 6 or 8 years for trafficking of a minor.
- <sup>38</sup> Cal. Pen. Code § 14023. Related law enforcement training and penalty provision laws include: the Human Trafficking and Collaboration and Training Act (SB 180) of 2005 (Cal. Pen. Code, § 13519.14) which required the Commission on Peace Officer Standards and Training (POST) to establish a training course and guidelines for law enforcement human trafficking response efforts; AB 2810 (2008) (Cal. Pen. Code, § 236.2) which requires law enforcement agencies to use due diligence to identify victims of human trafficking and allows any person who claims to have been forced to commit prostitution because they are a victim of human trafficking to have their name and address kept confidential; the 2009 Amendments to the California Control of Profits of Organized Crimes Act (AB 17—Cal. Pen. Code, § 18, et seq.) which expand the definition of criminal profiteering to include abduction or procurement by fraudulent inducement for prostitution, and increase the maximum amount of additional authorized fines to \$20,000 for any person convicted of procuring a child under 16 years of age; the Abolition of Child Commerce, Exploitation and Sexual Slavery Act (AB 12) of 2011 (Cal. Pen. Code, § 261.9), which requires that a person convicted of seeking the sexual services of a minor pay an additional fine (not to exceed \$25,000) used to help fund programs

and services for minors who are human trafficking victims in the counties where the underlying offenses were committed; the Californians Against Sexual Exploitation Act (CASE) Act of 2012 (Cal. Pen. Code, § 236.1), a ballot initiative that strengthens criminal penalties for human trafficking, including maximum fines of \$1.5 million and prison sentences of 15 years to life; AB 1791(2014) (Cal. Pen. Code, § 47) which increases penalties for human trafficking crimes involving minors, and expands the scope of the Sex Offender Registration Act to include individuals who recruit, harbor, transport, provide, sell, purchase, obtain or attempt to do any of the preceding acts against a minor for the purpose of engaging that minor in a commercial sex act.

<sup>39</sup> Cal. Pen. Code, § 1202.4. Related victim resources laws include: The Access to Benefits for Human Trafficking and Other Serious Crime Victims Act of 2006 (SB 1569—Cal. Welf. & Inst. Code, §§13283, 18945), which allows non-citizen human trafficking victims to access state-funded social services such as cash assistance, employment assistance, and other social services for up to one year, and after one year, the bill allows these services to continue if the victim attempts to remain in the U.S. legally; AB 1844 (2010) which provides that any person who commits human trafficking involving a commercial sex act where the victim of human trafficking was under 18 years of age shall be punished by a fine of not more than \$100,000 to be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund services for victims of human trafficking; SB 677 (2010—Cal. Pen. Code, § 236.1) which authorizes real property used to facilitate acts of human trafficking to be declared and treated as a nuisance, allowing the property to be seized; SB 1133 (2012) (Cal. Pen. Code, § 236.7), which expands the scope of property subject to forfeiture in human trafficking cases and provides a formula to redirect those resources to community groups that aid victims of human trafficking; AB 2466 (2012) (Cal. Pen. Code, § 236.6) which allows a court to order the preservation of the assets and property of criminal defendants charged with human trafficking; AB 2212 (2012) (Cal. Civ. Code, § 3496) which provides that every building or place used for the purpose of human trafficking, or upon which acts of human trafficking are held or occur, is declared a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance; SB 1388 (2014) (Cal. Pen. Code, § 266k) which increased criminal penalties for crimes of child prostitution: \$25,000 for placing a minor into prostitution or furnishing a minor to another for sex, and mandatory penalties of two days to one year in jail for those convicted of knowingly soliciting a minor for prostitution.

<sup>40</sup> Cal. Civ. Code, § 52.5.

<sup>41</sup> Cal. Evid. Code, § 1038.

- <sup>42</sup> Cal. Civ. Code, § 1670.7. Two years later, Senate Concurrent Resolution 76 (2010) encouraged the Legislature, businesses and organizations to bring visibility and support to efforts to recognize and combat human trafficking and slavery. (Legis. Counsel's Dig., Sen. Conc. Res. No. 76 (2009-2010 Reg. Sess.)) Available online at [http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0051-0100/scr\\_76\\_bill\\_20100813\\_enrolled.html](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0051-0100/scr_76_bill_20100813_enrolled.html).
- <sup>43</sup> Cal. Pub. Contract Code, § 10490, subd. (b) states, "For purposes of this section, a 'scrutinized company' is a person that has been found to be in violation of Section 13(p) of the Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission and the person has not remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement."
- <sup>44</sup> Cal. Civ. Code, § 52.6.
- <sup>45</sup> Cal. Bus. & Prof. Code, §§ 9998.5, 9998.2, 9998.2.5.
- <sup>46</sup> 22 U.S.C. § 7102(9) (2012).
- <sup>47</sup> Other related codified sections of Title 18 include: Conspiracy against rights, 18 U.S.C. § 241; Conspiracy to commit federal offenses, 18 U.S.C. § 371; Holding a confiscation of passport or immigration documents, 18 U.S.C. § 1592; Asset Forfeiture, 18 U.S.C. § 1594(b); Bringing in and harboring certain aliens, 8 U.S.C. § 1324; Subordination of perjury, 18 U.S.C. § 1622; Interstate transmission of threats, 18 U.S.C. § 875; False statements in any matter within the jurisdiction of the executive, legislative, or judicial branch, of the U.S. government, 18 U.S.C. § 1001; Aiding and abetting a federal offense, 18 U.S.C. § 2; Money laundering, 18 U.S.C. § 1956; Peonage, 18 U.S.C. § 1581; Involuntary Servitude, 18 U.S.C. § 1584; Forced Labor, 18 U.S.C. § 1589; Sex Trafficking of Children or by Force, Fraud or Coercion, 18 U.S.C. § 1591; Trafficking with Respect to Peonage, Slavery, Involuntary Servitude or Forced Labor, 18 U.S.C. § 1590; Unlawful Conduct with Respect to Documents in Furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude or Forced Labor, 18 U.S.C. § 1592; Mandatory Restitution, 18 U.S.C. § 1593; Attempted Human Trafficking, 18 U.S.C. § 1594(a); Private Right of Action, 18 U.S.C. § 1595; Visa Fraud, 18 U.S.C. § 1546.
- <sup>48</sup> 18 U.S.C. § 983.
- <sup>49</sup> 8 U.S.C. § 1777, et seq.
- <sup>50</sup> 15 U.S.C. § 78m(p).
- <sup>51</sup> Exec. Order No. 13627, 77 Fed. Reg. 60029 (Oct. 2, 2012).
- <sup>52</sup> Such as failing to disclose basic information or making material misrepresentations regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, living conditions and housing (if employer provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work.
- <sup>53</sup> 22 U.S.C. §§7103, 7104(a) to 7104(d); 18 U.S.C. § 1351; 41 U.S.C. § 2313; 8 U.S.C. § 1101.



<sup>54</sup> Amendments to the Federal Acquisition Regulation (FAR) were codified at 48 C.F.R. pts. 1, 2, 9, 12, 22, and 52. Some changes include: FAR 22.1702, Definitions, and FAR 52.222-50, Combating Trafficking in Persons, to add the definitions of “agent,” “sub-contract,” and “subcontractor;” FAR 22.1703, Policy, and FAR 52.222-50, Combating Trafficking in Persons, to require contractors to use recruiters that comply with local labor laws of the country in which the recruiting takes place, and require contractors to provide employees with a work document if it is required by law or contract.

<sup>55</sup> Amendments to Defense Federal Acquisition Regulation Supplement (DFARS) are codified at 48 C.F.R. pts 203, 204, 212, 222, and 252.

