Human Trafficking Prevention in the Supply Chain

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On January 29, 2015, the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) were revised to establish comprehensive human trafficking prevention requirements for government contractors. Although specifically directed to government contractors, these regulations have broad implications for corporate compliance programs generally for both government contractors and non-contractors alike.

Defining Human Trafficking

It is estimated that more than 20 million men, women, and children throughout the world are victims of various forms of human trafficking. Such trafficking can include:

- Sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion;
- Recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion;
- Threats of or actual violence or punishment for the purpose of involuntary servitude, peonage, debt bondage, or slavery.
Trafficking is a lucrative industry, representing an estimated $150 billion per year in international trade as of 2014.\[3\]

People are most often at risk of being trafficked for unskilled work. Forms of forced labor can include domestic servitude, agricultural labor, sweatshop factory labor, janitorial or food services and other service industry labor, and begging.

These cases often involve people “trafficked” from impoverished countries and communities into wealthier and more developed areas. Efforts to combat these horrible human rights abuses have historically been underfunded and the purview of various NGOs operating without a great deal of coordination.

Multiple sets of legislation have been introduced and, in fact, implemented to help address this problem while others are still pending but expected soon.

**Is There a Difference Between Human Trafficking and Sex Trafficking?**

Sex trafficking is one form of human trafficking. Many people think of sex trafficking as relating to children who are abducted and/or sold into the sex trade by traffickers. A 2017 International Labour Organization (ILO) report estimated that more than 1 million children are exploited worldwide through sex trafficking, unfortunately much of it in within the United States.\[4\] For example, two Maryland men were convicted in 2018 of criminal sexual exploitation of three minor girls in an East Coast prostitution ring lasting several months. They had posted online advertisements of the victims offering them for commercial sex; drove them to locations in several cities where the commercial sex acts would occur; collected the money given to the victims, and threatened them if they tried to leave.\[5\] In another 2018 case, the FBI and New York State authorities indicted 19 people for running a years-long sex trafficking operation that exploited at least 15 vulnerable girls and young women in residential care facilities in the state child welfare system.\[6\] The problem isn’t limited to children, however. The ILO estimated that in 2016 there were over 4.8 million persons worldwide that were victims of sex trafficking.\[7\] The National Human Trafficking Resource Center reports many fake businesses are actually engaged in sex trafficking. Many massage parlors, strip clubs and spas are actually using force, fraud or coercion to force people
into performing commercial sex acts. Some sources estimate up to 70% of the
workers in strip clubs, massage parlors and spas are victims of sex trafficking
and are there by force, fraud or coercion.

Methods often used in these types of businesses include:

**Force:** Isolation and confinement to the place of business; regular and frequent
transportation to other locations or other cities by drivers working for the
trafficking network; physical or sexual abuse.

**Fraud:** False promises of a better life; misrepresentation of the work, working
conditions, and immigration benefits of the job; visa fraud.

**Coercion:** Heavy debts, increased through exorbitant fees for food, housing,
personal items, transportation, and “security”; restrictions on communication
to family or others outside the network; threats of deportation and arrest;
confiscation of passports and visas; rumors of, or witnessed violence at the
hands of traffickers or police used as threats.

What are the FAR and the DFARS—To Whom Do They Apply?

You can think of the FAR as the “rules of engagement” for persons and entities
seeking to conduct business with the U.S. government. They are designed to
ensure the purchasing process used by the government is clearly defined,
consistent and standard; their goal is to ensure government purchases are
made in a fair and impartial manner. The FAR is issued under the authority and
with the oversight of the U.S. Department of Defense (DOD), the General
Services Administration (GAS) and the National Aeronautics and Space
Administration (NASA) and can be found at [48 C.F.R. Chapter 1](#).

Any agency of the U.S. government wishing to purchase services or goods will
issue a solicitation. In their solicitation, the agency will specify the FAR
provisions applicable to the specific solicitation. These provisions might
include, for example, which contract terms will be required and applicable to
the solicitation.

In addition to the FAR, most government agencies have issued additional
contracting requirements specific to their particular agency. One example of such additional requirements is the DFARS, the Defense Federal Acquisition Regulation Supplement[8] used by the Department of Defense.

Any company seeking to become a government contractor is presumed to know and have a full understanding of the procurement regulations that apply to the particular government agency they are seeking to contract with, which will include the FAR and any agency-specific supplement thereto.

**Existing Obligations Under the FAR**

It is important to note the requirements of the amended regulations strengthen previously established FAR human trafficking rules, specifically subpart 22.17[9], which was already designed to combat the trafficking of persons. These earlier regulations, however, had much less detail than the amended set of regulations.

For example, FAR subpart 22.17 prohibited any government contractor, contractor employee, subcontractor, or subcontractor employee from: engaging in so-called severe forms of trafficking in persons, procuring a commercial sex act, or using forced labor during the period of performance of the contract. The term “commercial sex act,” however, was not defined anywhere other than to say it was “any sex act on account of which anything of value is given to or received by any person.” This left open the question: What exactly was considered a commercial sex act? Was a lap dance at a strip club a commercial sex act? Was purchasing access to an Internet pornography site a commercial sex act?

The earlier regulation raised further questions by stating that an employee of a government contractor was likely violating this clause if he procured commercial sex acts even during his own personal, non-work time. As the regulation posited, violations were much more likely to occur during “personal” time than during work hours, which while perhaps true, did not bring much clarity. Did this mean, that a contractor’s employee who hired a stripper for his best friend’s bachelor party held on a Saturday night had violated the FAR’s prohibition against human trafficking? Many commentators had argued this was overly broad and difficult if not impossible to enforce.

Under the previous regulations, other questions were also left open; for
example, the definition of “employee.” The only guidance given was that an employee was someone who was “an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.” What did “other than a minimal impact” mean? Which employees were deemed to be “directly engaged” in the performance of a contract?

**Why Were the FAR and DFARS Human Trafficking Rules Amended?**

On September 25, 2012, President Barack Obama issued Executive Order 13627, focused on human trafficking related to federal contracts. The order called for a “zero-tolerance” approach towards all forms of human trafficking and forced or indentured labor. In addition to seeking to clarify some of the open questions and issues mentioned above, the order was issued to strengthen U.S. response to human trafficking in the wake of a series of scandals related to U.S. government contractors and employees engaging in human trafficking.

For example, the June 2011 issue of *The New Yorker* included an in-depth article about a group of women from Fiji lured away from home by the promise of high-paying jobs in Dubai. These women paid thousands of dollars (often borrowed from local loan sharks) in “recruiting fees” to a local agent who promised jobs paying $3,800 a month, more than 10 times the average monthly income in Fiji. Instead of cushy jobs in luxury surroundings in Dubai, however, these women found themselves working 12 hours-a-day, 7 days-a-week on a military base in Iraq making $350 a month; or an hourly wage of approximately $0.97. They were forced to live in old shipping containers and were often raped by their government-subcontractor-employed supervisors. These women were only a few of what was alleged to be a group of over 20,000 Fijian workers who were similarly defrauded and trafficked. The article also profiled other workers in similar circumstances, many who had been “abandoned” in foreign countries with no way to get back home after their government subcontractor employers lost their service contracts.

In July of 2011, the ACLU, through a Freedom of Information Act request, began uncovering information on the under-reporting of human trafficking on U.S. military bases in Iraq and Afghanistan. They alleged in excess of 70,000 low-wage third-world country nationals were employed on such bases performing food service, construction and janitorial work. The ACLU further asserted many of these workers ended-up on military bases against their will through a
complex and obscure series of sub-contracting relationships using coercion, abuse and debt bondage among their “methods” of recruitment.

In April of 2012, 11 government employees including Secret Service employees, members of elite U.S. Army Special Forces, or Green Berets, plus two people from the Navy, two from the Marines and one from the Air Force were questioned in connection with an investigation related to heavy drinking and use of prostitutes while in Cartagena, Colombia as part of a support team sent to Colombia in advance of a visit by President Obama. These allegations were eventually substantiated and it was also subsequently discovered that Drug Enforcement Administration agents also had “sex parties” with prostitutes hired by local drug cartels in Colombia over a period of several years.

These high-profile incidents served as the impetus for the issuance of an executive order by President Obama to strengthen the existing rules.