

CEP Magazine – August 2021

Advancing beyond legislation to tackle modern slavery

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More than 40 million people across the world are modern slaves, according to the United Nations.^[1] In the US, 403,000 people continue to live in modern slavery, according to the Global Slavery Index.^[2] Many of these victims are subject to debt bondage, forced labor, and human trafficking. As complex global supply chains allow forced labor and trafficking to thrive, many businesses are unwitting partners in the crime.

While there is a growing body of legislation addressing modern slavery, it is also of paramount importance for businesses to focus on developing policies to mitigate the risks of modern slavery. In this article, we will first review recent legislation and then discuss steps that companies can take to proactively mitigate the risks of modern slavery.

What modern slavery looks like

The umbrella term of modern slavery, as per the International Labour Organization (ILO), encompasses many coercive labor practices, including forced labor, debt bondage, indentured labor, human trafficking, and servitude.^[3] On a basic level, modern slavery is defined as “the total control” exercised by one person or employer over another (employee) for “economic exploitation,” hidden behind various masks and legal smoke screens.^[4] According to the ILO, the means of coercion can include violence, threats, physical abuse, sexual assault, excessive wage reductions, and the withholding of identity documents or wages.^[5]

Modern slavery results in tremendous harm to its victims, including physical and emotional harm, the dehumanization of those affected, and the deprivation of their freedom.

To address the scourge of modern slavery, a number of national and regional laws have been adopted. The next section takes a closer look at examples of anti-modern slavery legislation in the United States, Australia, United Kingdom, and Malaysia.

International anti-modern slavery legislation

Laws to curb forced labor have existed for more than 90 years. In 1930, the ILO created the Forced Labour Convention to protect laborers across the world. With forced labor practices continuing to thrive despite the convention, an amendment was made in 2014 with the formation of the Forced Labour Protocol.^[6] The legally binding instrument mandates member states adopt measures to prevent, protect, suppress, and remedy forced labor. While 43 countries have ratified the protocol, many, including the United States, Japan, and China, have not done so to date,^[7] arguably due to geopolitical reasons.

The United States

In 2010, California passed the landmark Transparency in Supply Chains Act while noting that crimes of modern slavery are often hidden and difficult to uncover and that businesses inadvertently promote and sanction such crimes by purchasing tainted products and goods through their supply chains. In the absence of public disclosures, consumers are unable to make informed choices and distinguish companies that are committed to ending modern slavery.

The Transparency in Supply Chains Act is designed to:

- Ensure manufacturers and retailers provide consumers information on the steps they have taken to eradicate human trafficking and slavery from their global supply chain,
- Educate consumers on purchasing goods from businesses that responsibly manage supply chains, and
- Improve the lives of modern slavery victims.

The act applies to businesses in California with worldwide gross receipts of more than \$100 million. The information needs to be disclosed on the business website or through written disclosures in the absence of a website. The act highlights the format of disclosures, requiring the link to the disclosure be located conspicuously on the home page of the website and can be easily understood. Disclosures must also cover the five topics of verification, audits, certification, training, and internal accountability.

Apart from California's Transparency in Supply Chains Act, several federal laws and orders address modern slavery and require businesses to take measures to eradicate it from their supply chains, including:

- Trafficking Victims Protection Act that prohibits the recruitment or transportation of persons for services or labor by employing coercion or force,^[8]
- Deduction of wages from a person for transporting them to the US,
- Unlawful public contracts with scrutinized companies,^[9]
- Foreign labor recruitment law that requires registration of foreign laborers,^[10]
- Civil Asset Forfeiture Reform Act aimed to curb property owners from being oblivious to criminal activity carried out on their property by other persons,^[11] and
- President Obama's Executive Order 13627 that prohibits contractors and contractor employees from adopting fraudulent recruitment practices.^[12]

In 2015, federal legislation was approved to provide \$1.5 billion of global funding to combat human trafficking. Former senator Bob Corker was the lead sponsor for the bill that sought to positively affect 27 million modern slaves.^[13]

Australia

The Modern Slavery Act of 2018 requires entities with annual revenue of AU \$100 million to assess, report, and address modern slavery risks in their businesses and supply chains annually. Although no financial penalties are imposed for compliance failures, the government agency can "name and shame" businesses that have not

complied, creating a significant reputation risk.^[14] Stricter compliance rules may soon be a reality in New South Wales, where several amendments to the act were proposed in March 2020. The New South Wales Act lowers the reporting threshold to AU \$50 million while introducing financial penalties up to AU \$1.1 million for noncompliance.^[15]

The United Kingdom

The UK enacted the Modern Slavery Act in 2015, which consolidates previous trafficking- and slavery-related offenses. A supply chain clause was added to ensure big businesses make public their efforts to prevent and halt the use of slave labor by their suppliers. Businesses with an annual turnover of over £36 million are required to publish annual statements to confirm the steps they have taken to curb trafficking and slavery.^[16]

Malaysia

A US study in 2014 showed that 28% of the 350,000 workers employed in electronics manufacturing in Malaysia were modern slaves.^[17] Apart from forced labor and dismal salary levels, workers face poor work conditions. Foreign migrants often are forced to surrender their passports to their employers. A slew of Malaysian laws have been passed to curb modern slavery, including the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act of 2007 and the Passports Act of 1966, the latter of which makes it illegal for employers to withhold employees' passports. The Employment Act of 1955 is designed to offer a minimum standard of protection to employees in relation to working hours, health, safety, work conditions, benefits, and holidays.^[18]

While these laws provide a framework, businesses can further help mitigate risk by developing, implementing, and monitoring anti-modern slavery policies and practices.

Ensuring compliance beyond the laws

The intensifying consumer focus on human rights and increasing legislation on modern slavery suggest that businesses stand to benefit from taking voluntary measures to eradicate modern slavery. The following steps can help companies ensure compliance with modern slavery legislation and ethical standards:

1. **Identify and gain insights into the risks of modern slavery based on your industry, sector, country, and products.** From third-party labor to sourcing of raw materials from conflict-affected states, the supply chain is exposed to risks of modern slavery at multiple points. Use resources such as the one provided by the U.S. Department of Labor^[19] to understand what types of goods/raw materials are at high risk for modern slavery.^[20]
2. **Understand the entire supply chain for your product and industry,** including the factories, tiers, and labor involved.
3. **Evaluate the first-in-chain vendors or suppliers to identify the supply chains that are at the highest risk.** While conducting supply chain mapping, use an assessment tool to screen suppliers. Review and strengthen all the existing contracts with vendors and suppliers, including third-party labor companies.
4. **Build and sustain supply chain relationships** based on trust and transparency and nurture strategic, long-term partnerships.
5. **Ensure your processes and systems align with buying processes.** A comprehensive and very clear due diligence process is critical when looking to procure. The key is to have complete, end-to-end visibility of

the business supply chain with the right suppliers in the system.

6. **Review your procurement and recruitment policies and systems** and ensure they are compliant with local, federal, and global forced modern slavery regulations and standards.
7. **Ensure buy-in from all stakeholders** for formulating company policies with respect to modern slavery.
8. **Formulate a corporate social responsibility, code of conduct, and ethical policy to eradicate modern slavery.** You can adopt voluntary principles and standards on modern slavery,^[21] such as the Base Code developed by the Ethical Trading Initiative^[22] or the Fair Labor Association's principles.^[23] Additionally, the UK's Modern Slavery Act of 2015 requires large companies to prepare a statement each financial year disclosing the steps taken to curb modern slavery in the company, business ethics, and code of conduct.
9. **Update agreements with subcontractors or contractors** to include the condition that modern slavery cannot and will not be used by suppliers.
10. **Provide on your website the complete policy and the steps your organization has taken to curb modern slavery in supply chains**, including auditing and due diligence processes. For instance, PGS^[24] and McBride^[25] have their detailed modern slavery policies displayed on their websites. Ensure your policy is easy to understand and conspicuous. Describe the audits you conduct when assessing your suppliers' sustainability performance and commitment to fighting modern slavery.
11. **Provide periodic employee training** and awareness programs on modern slavery.^[26]
12. **Require certification from suppliers** confirming that the materials they supply comply with the modern slavery laws of your country and the country of origin.
13. **Maintain internal accountability standards for employees and suppliers.** Determine who in the company is responsible for the organization's anti-slavery initiatives. Initiatives can include risk assessment, implementation of policies, due diligence, supply chain investigation, and training.
14. **Stay updated on compliance requirements** by consulting external stakeholders such as legal compliance professionals, academics, trade unions, and the government.
15. **Commit to sustainable resources and practices**, and engage with communities and stakeholders to mitigate the environmental, cultural, and social impacts of your business activities.^[27]
16. **Ensure suppliers have appropriate recruitment management systems.** A mechanism is needed whereby businesses can track suppliers' recruitment histories to assess an appropriate risk score. Suppliers who are in line with the business risk appetite and culture can be invited for future bids.
17. **Work closely with your suppliers and contractors** to enable them to understand as well as meet modern slavery standards and laws.^[28]

Name the issue and act against it

Supply chain transparency is a key differentiator and competitive advantage for any company, and compliance officers are responsible for ensuring their organizations are not only operating within the law but that certain operations that can be construed as ethically immoral are addressed. Thus, compliance and ethics programs must provide a framework for business leaders to ensure their organizations are actively fighting against slavery

in all its forms, irrespective of the commercial benefit it might draw in the short or long term. Following regulatory requirements, keeping a high ethical standard, and condemning modern slavery in the organization's vision and mission are essential for not only monitoring and mitigating risk, but also protecting one's brand, revenue, and reputation against the inaudible slavery epidemic.

Takeaways

- To maximize the dollar value, businesses knowingly or unknowingly capitalize on human beings who are victims of modern slavery.
- Despite the regulations in place, businesses are turning a blind eye toward the growing concern of slavery.
- Supply chains across multinationals are becoming so complex that, at times, companies themselves are unaware of how they may be supporting slavery.
- The reach of compliance and ethics programs with the support of the top management is the only deterrent toward such abysmal acts.
- Anti-slavery corporate awareness and advocacy need to be echoed in the boardroom.

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