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The Complete Compliance and Ethics Manual 2023
Human Trafficking Prevention in the Supply Chain

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On January 29, 2015, revisions to the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) were published to create new, comprehensive human trafficking prevention requirements for government contractors.[2] Although specifically directed to government contractors, these new regulations have broad implications for corporate compliance programs generally for both government contractors and noncontractors alike.

What Exactly Is Human Trafficking?

It is estimated that more than 40 million men, women, and children throughout the world are victims of various forms of human trafficking, including nearly 25 million in forced labor—of which a startling 1 in 4 victims are children.[3] 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; and
- 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 2020.[4] 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 non-governmental organizations 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.

Did the COVID-19 Pandemic Make Human Trafficking Worse?

Unfortunately, the answer appears to be yes. The pandemic caused a confluence of factors that served to make the existing crisis even worse. We saw the collapse and shutdown of many portions of the world's economies, resulting in large swaths of people suddenly unemployed as many of the service industries in the world shut down. People who used to work in restaurants and bars and hotels and for airlines and cruises and other travel-related industries suddenly had no work, making them more vulnerable to being trafficked. This was especially true for foreign nationals living and working away from their home country and, quite literally, unable to return home due to pandemic-related travel restrictions.

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At the same time, a huge percentage of the world's children were out of school. In many cases, children were now trapped at home with abusers or with unemployed parents and caregivers, making them even more vulnerable to being trafficked or joining their caregivers who were also being trafficked.[5] In addition, there was also a burgeoning demand for online exploitation, as people were now locked down with as many as 150,000 new online escort ads placed per day in the United States alone.[6]

Added to this was the sudden global shortage of personal protective equipment (PPE), including face masks, shields, and gloves. This resulted in PPE manufacturers, many located in countries like China where human trafficking is especially prevalent,[7] ramping up their production and running around-the-clock operations, which was, in some cases, accomplished using forced labor. See, for example, the case of the latex glove manufacturer in Malaysia whose goods were banned from entry into the United States after U.S. Customs imposed sanctions against them for the use of forced labor.[8]

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. An International Labor Organization report[9] issued in 2017 estimated that there are more than 1 million children being exploited worldwide due to sex trafficking, unfortunately much of it in within the United States. For example, an organized prostitution ring in Minneapolis, Minnesota, recruited underage girls and took them to Las Vegas, Nevada, where they were threatened with violence and forced to perform at strip clubs and prostitute themselves[10]. In May of 2021, a Texas woman was sentenced to federal prison for recruiting and coercing a child to engage in commercial sex acts and to produce child pornography. She also transported the child from Texas to New Mexico and Nevada with the intent that she engage in prostitution.[11] Infamously, former Subway spokesperson Jared Fogle pleaded guilty to crossing state lines to pay for sex with minors, among other charges.[12] He is alleged to have offered to pay various witnesses what he allegedly referred to as "finder's fees" for helping him find minors to have sex with.

The problem isn't limited to children, however. The International Labor Organisation estimates that as of 2017 there were over 4.8 million people worldwide who were victims of sex trafficking.[13] 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.[14] Some sources estimate up to 70% of trafficking victims are sent to work in strip clubs, massage parlors, and spas and are there by force, fraud, or coercion.[15]

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 by traffickers or police used as threats.

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

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You can think of the FAR as the "rules of engagement" for people and entities seeking to conduct business with the US 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. § 31 .

Any agency of the US 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 US government agencies have issued their own additional contracting requirements specific to their particular agency. One example of such additional requirements is the DFARS used by the DOD.

Any company seeking to become a government contractor will be 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 new regulations are in addition to the existing FAR, specifically 48 C.F.R. § 22.17, which is already designed to combat the trafficking of persons. The previous regulations, however, have much less detail than the newly implemented set of regulations.

For example, 48 C.F.R. § 22.17 prohibits 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, is not defined anywhere other than to say it is "any sex act on account of which anything of value is given to or received by any person,"[16] thus leaving open the question as to what exactly a commercial sex act will be considered to be. Is a lap dance at a strip club a commercial sex act? Is purchasing access to an internet pornography site a commercial sex act?

The government has clarified, however, that an employee of a government contractor is likely violating this clause if they procure commercial sex acts *even during their own personal, non-work time*. The government posits this is because violations are much more likely to occur during "personal" time than during work hours, which may be true. Does this mean, however, that an employee of a government contractor who hires a stripper for a best friend's bachelor party held on a Saturday night has violated the FAR's prohibition against human trafficking? Many commentators have argued this is overly broad and difficult—if not impossible—to enforce.

Under the previously existing regulations, other questions were also left open, for example, the definition of "employee." The only guidance given is that an employee is someone who is "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."[17] What does "other than a minimal impact" mean? Which employees will be deemed to be "directly engaged" in the performance of a contract and which will not?

Why Were the FAR and DFARS Amended to Address Human Trafficking?

On September 25, 2012, President Obama issued Executive Order 13627, focused on human trafficking related to federal contracts.[18] The Order calls for a "zero-tolerance" approach toward all forms of human trafficking and

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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 US response to human trafficking in the wake of a series of scandals related to US 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—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 is alleged to be a group of more than 20,000 Fijian workers who were similarly defrauded and trafficked.[19] The article also profiles 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 2011, the ACLU filed a Freedom of Information Act request seeking information on the under-reporting of human trafficking on US 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 subcontracting relationships using coercion, abuse, and debt bondage among their "methods" of recruitment.

In April 2012, 11 government employees, including Secret Service employees, members of America's elite 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 the use of prostitutes while in Cartagena, Colombia, as part of a support team sent to Colombia in advance of a visit by President Obama.[20] These allegations were eventually substantiated, and it was also subsequently discovered that Drug Enforcement Administration agents had "sex parties" with prostitutes hired by local drug cartels in Colombia over a period of several years.

These high-profile incidences served as the impetus for the issuance of an Executive Order by President Obama to strengthen the existing rules, since they were not comprehensive enough to prevent these incidences and many others like them.

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