



Slave-Free Business Certification Act proposes audit requirements for labor abuses in major company supply chains

Corporate Governance Alert

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Forced labor and modern slavery remain widespread today, creeping into supply chains in virtually every industry. Increasing consumer awareness of the prevalence and persistence of severe human rights abuses, as well as growing investor focus on the broader stakeholder impacts of business, has prompted a wide range of regulatory responses in many countries.

The US may now join that group with a bill recently introduced by Senator Josh Hawley (R-MO), seeking to require large companies to report on and root out forced labor in their supply chains. Senator Hawley's bill, the Slave-Free Business Certification Act of 2020¹ (S. 4241), imposes requirements for a detailed independent annual audit of the company supply chain as well as published supply chain disclosures. The act broadly defines forced labor as "any labor practice or human trafficking activity in violation of national and international standards." The Act would also require CEOs to certify that their companies' supply chains do not rely on forced labor, and it creates substantial penalties for violations.

Who is affected?

The act applies to “covered business entities,” defined as any “issuer” of securities under section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) that has annual gross receipts exceeding \$500 million. A covered business entity’s investigation and audit obligations under the act extend to its direct and secondary suppliers, as well as to broadly defined “on-site service providers.”

Annual audits, reporting, and transparency requirements

If passed, the act would require companies to undergo an independent audit and to disclose company policies and procedures for eradicating forced labor, slavery, and human trafficking from their supply chains. The Act’s investigation and auditing processes include:

- interviews with a cross-section of workers and managers
- substantial document collection and review, including age verification and payroll records
- interviews with any relevant labor organization or worker-rights advocacy group and
- a closing meeting with management to discuss findings and remediation, if needed.

The resulting report, including the details of any violations or instances of forced labor, must be submitted to the Secretary of the Department of Labor and posted on the company’s website – with “a conspicuous and easily understood link on the homepage.”

The company must also submit a written certification, signed by the CEO, stating that the company’s supply chains are free from forced labor or that all instances of forced labor in their supply chain have been reported.

The Act also empowers the Secretary of Labor to assess civil damages up to \$100 million and punitive damages up to \$500 million for violations of the Act’s audit and reporting requirements.

But will it work?

While prospects for the passage of the Act remain unclear, we can expect further regulatory efforts to address slavery and other human rights abuses in supply chains in the US and around the world. But whether such efforts will continue to focus on auditing requirements is similarly unclear. There remain questions about the efficacy of auditing requirements to address human rights abuses. For instance, in 2019, the Thai Seafood Working Group, a coalition of labor, human rights, and environmental organizations, issued a statement questioning the efficacy of the Marine Stewardship Council’s new Chain of Custody Certification .[1]

What’s next?

Regardless of the Act’s ultimate fate, the world continues to awaken to the persistence of modern slavery in global supply chains, and legislation requiring private businesses to conduct adequate and transparent due diligence and to address human rights abuses are likely to continue to increase. Global enterprises that can meet these challenges ahead of regulatory requirements and proactively root out violations will establish a strong foundation for their long-term success.

Proactive companies and corporate management may want to consider the following steps to address the risks of forced labor in their supply chains:

- Review current policies regarding forced labor and other human-rights issues in the company’s supply chain for strength and clarity, and to align company processes with those policies.
- Retain a consultant to conduct an audit of the company’s human-rights risks or, for a more in-depth understanding of potential human-rights issues in the company’s operations, a human-rights risk assessment or a human-rights impact assessment.
- Implement metrics with benchmarks and time-limited goals related to human rights impacts in business operations.
- Ensure that relevant employees are trained in identifying potential human-rights risk and in how to respond according to the company’s policies, as well as to applicable law.
- If the company has no policy regarding forced labor and other human-rights impacts, seek advice from legal providers or other relevant consultants on crafting a policy that best fits the company’s needs.

If you have questions regarding any of these issues, please reach out to the authors.

[1]See, e.g., Public Statement from Human Rights and Environmental Organizations, *MSC's Revised Chain of Custody Certification Fails to Adequately Address Forced Labor and Child Labor in Seafood Supply Chains* (June 10, 2019), available at <https://www.hrw.org/news/2019/06/10/mscs-revised-chain-custody-certification-fails-adequately-address-forced-labor-and> (accessed August 13, 2020).

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