

Retailers and Manufacturers Doing Business in California Should Be on Notice—Compliance Deadline is Fast Approaching for California Supply Chain Disclosure Law

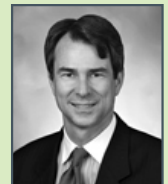
Cities around the world are preparing for New Year's Eve celebrations and the countdown to a new year. That means companies around the globe should also be preparing for the challenges and changes a new year brings—especially businesses that must comply with the new California Transparency in Supply Chains Act. The law will require many companies doing business in California to disclose what efforts, if any, they have taken to eliminate human trafficking and slavery from their supply chains. Thousands of companies are likely to be affected: The law applies to retail sellers and manufacturers with annual worldwide gross receipts exceeding US\$100 million that have even relatively small contacts with California, such as US\$500,000 in sales in that state, personal property in that state valued at US\$50,000, or payment of US\$50,000 in employee compensation in that state. The broad new disclosure requirements, which take effect on January 1, 2012, will affect sellers and manufacturers of everything from electronics to groceries to clothing and textiles.

Compliance with the new law requires some advance planning and numerous decisions on the part of companies that are required to report this supply chain information. Consumer groups and human rights organizations—many of which lobbied strongly for the bill—will likely focus on companies' responses to these new disclosure requirements. The upcoming disclosures and surrounding publicity could influence consumer decision-making and have significant public affairs consequences. Businesses, at a minimum, should better understand and evaluate human trafficking and slavery risks in their supply chains. Some will want to go further, for example, by auditing their suppliers or developing policies on human trafficking and slavery and communicating these to their suppliers on a regular basis.

This Advisory provides a brief background about the law and provides some recommended steps for immediate action so that you and your business can truly ring in the new year with good cheer.¹

¹ For additional background about the California law and possible similar initiatives in other jurisdictions, please see Arnold & Porter LLP, "Advisory: New California Law Requires Disclosure Regarding Human Trafficking/Slavery in Supply Chains," (January 2011) available at http://www.arnoldporter.com/public_document.cfm?id=17128&key=2110.

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What companies are subject to the law?

The law directly covers retailers and manufacturers doing business in California that have over US\$100 million in annual worldwide gross receipts and otherwise meet the low thresholds for contact with California noted above. Whether a company is a “manufacturer” or “retail seller” depends on whether the company has “manufacturing” or “retail trade” as its principal business activity code on its California tax return. Because the law’s threshold for “doing business in California” is very low, even companies with minimal contacts in California may come within its reach. Further, while companies that do not do business in California themselves are not directly affected, they may nonetheless be asked to investigate their supply chains if they furnish products to a company that is covered by the law and is thus required to report the efforts if any, it has taken to eliminate human trafficking and slavery from its supply chains.

What does the law require?

Many companies are surprised to learn that the California Transparency in Supply Chains Act, also known as SB 657, does not actually require companies to make a single change to their supply chains. The law mandates disclosure, not action. Nonetheless, the California Legislature is counting on the “immense economic power of the purchasing decisions of California consumers” to prompt companies to monitor and possibly adjust their product supply lines and suppliers to minimize the risk that their products are made or supplied by forced labor. A corporation subject to the mandated disclosure will have to state on its websites the steps it is (or is not) taking to eliminate slavery and human trafficking from its supply chains, and companies should expect that come January 1, 2011, consumers, nonprofit organizations, and public interest groups will be carefully scrutinizing these disclosures.

What exactly must be disclosed?

A company subject to the disclosure requirements of SB 657 must conspicuously disclose on its websites to what extent, if any, it does each of the following:

- Reviews its product supply chains to evaluate and address human trafficking and slavery risks. The company must disclose if this review is not performed by a third party.
- Conducts supplier audits to evaluate whether suppliers comply with company standards on human trafficking and slavery. The company must disclose if the audits are not independent, unannounced audits.
- Requires direct suppliers to certify that materials incorporated into the company’s products comply with the laws addressing human trafficking and slavery of the country or countries where the suppliers do business.
- Maintains accountability standards and procedures for company employees or contractors that do not meet company standards concerning human trafficking and slavery.
- Provides training on slavery and human trafficking, including training on mitigating related risks in supply chains, to employees and management with direct responsibility for supply chain management

What steps should your company immediately take?

Given these disclosure requirements, the law suggests that in addition to putting the required disclosures on their websites companies should consider undertaking at least some of the following measures immediately:

- Review or develop company standards on human trafficking and slavery.
- Communicate company standards on human trafficking and slavery to suppliers on a regular basis. Consider implementing a supplier code of conduct or updating purchase agreements to reflect company standards.
- Evaluate suppliers’ compliance with company standards on human trafficking and slavery with an internal or third-party audit.
- Map the company supply chain to develop a thorough understanding of where products are sourced; assess potential risks in each country. Develop an

understanding of the laws addressing human trafficking and slavery of the country or countries where the company's suppliers do business, so that the company can confirm whether suppliers comply with such laws.

- Review or develop accountability standards and procedures for company employees or contractors that do not meet company standards concerning human trafficking and slavery.
- Develop training programs on slavery and human trafficking.
- Evaluate and consider contracting with independent, third-party auditors/monitors to review supply chains and conduct supplier audits.

Arnold and Porter LLP can help companies navigate the requirements of this new law. We have developed materials to help your company smoothly implement a SB 657 compliance program by January 1, 2012. These include a set of company standards regarding slavery and human trafficking, a letter to your suppliers with a sample certification, language for a website disclosure statement, and a power point training program for employees with supply chain responsibilities. Arnold and Porter attorneys are also available for consultation or to help your company customize a compliance program that is fitted to your needs.

Contact your Arnold & Porter attorney, or any of the contacts listed below, and make an early resolution to have your company comply with SB 657 by the January 1 deadline to ensure that you are off to a good start in the new year.

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