
Retailers, Manufacturers Must Disclose Efforts to Combat Slavery, Human Trafficking as of Jan. 1

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Beginning January 1, 2012, California Civil Code Section 1714.43 will require retail sellers and manufacturers doing business in California to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale. The new law will apply to retail sellers and manufacturers having \$100 million or more "in annual worldwide gross receipts." Former Governor Schwarzenegger signed Senate Bill 657, the "California Transparency in Supply Chains Act," on September 30, 2010.

Effective **January 1, 2012**, the California Transparency in Supply Chains Act of 2010 will require "[e]very retail seller and manufacturer doing business in this state and having annual worldwide gross receipts that exceed one hundred million dollars (\$100,000,000) [to] disclose... its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale." This is in contrast to the bill, which when introduced, contemplated that only those retail sellers and manufacturers doing business in California having less than \$2 million in annual sales would be exempt from the proposed law. The earlier version of the bill would have required covered business entities to "develop, maintain, and implement a policy setting forth its efforts to comply with federal and state law regarding the eradication of slavery and human trafficking from its supply chain." As enacted, the new law calls only for a disclosure about the covered business entity's efforts in lieu of requiring affirmative efforts to develop, maintain, and implement a policy to combat slavery and human trafficking.

Threshold questions are whether you are a "retail seller," defined in Section 1714.43(a)(2)(D) as "a business entity with retail trade as its principal business activity code, as reported on the entity's tax return filed under Part 10.2 (commencing with Section 18401) of Division 2 of the [California] Revenue and Taxation Code" or a "manufacturer," defined in Section 1714.43(a)(2)(C) as "a business entity with manufacturing as its principal business activity code, as reported on the entity's tax return filed under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code." In addition, are you "doing business in this state" with "gross receipts" that exceed \$100,000,000, both of which are defined with references to California's Revenue and Taxation Code. Your tax advisor should be able to help you to answer these questions. Unfortunately, other important terms are undefined in Section 1714.43, including what constitutes the "direct supply chain," "human trafficking and slavery," and "tangible goods offered for sale."

Pursuant to Section 1714.43(c), the required disclosure, at a minimum, is to state to what extent, if any, the retail seller or manufacturer does each of the following:

- Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery, specifying if the verification was not conducted by a third party.
- Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains, specifying if the verification was not an independent, unannounced audit.
- Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
- Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
- Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

The required disclosure is to be posted on the retail seller's or manufacturer's website with a "conspicuous and easily understood link to the required information placed on the business' homepage." In the event the retail seller or manufacturer does not have a website, consumers are to be provided the written disclosure within 30 days of receipt of a written request. California Revenue and Taxation Code Section 19547.5 will also require the Franchise Tax Board to make available to the Attorney General a list of retail sellers and manufacturers required to make the Section 1714.43 disclosures.

The exclusive remedy for a violation of Section 1714.43 is an action brought by the Attorney General for injunctive relief. This section, however, is not intended to limit remedies available for a violation of any other state or federal law. For example, California Penal Code Section 236.1 makes human trafficking a crime, and the federal Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. 7101, et seq. ("TVPA"), acknowledges the crime of human trafficking and delineates various federal actions to combat trafficking, punish perpetrators and provide services to victims of trafficking. The Trafficking Victims Protection Reauthorization Act of 2003, which amends the TVPA, at 18 U.S.C. Section 1595, allows a victim of human trafficking to bring a civil action for damages and reasonable attorneys fees.

[Click here to read the California Transparency in Supply Chains Act of 2010.](#)

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