A Timely Analysis of Legal Developments

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California Supply Chain Law Affects Large Retailers and Manufacturers Doing Business in California

By John Kloosterman

Responding to a stated concern over human trafficking and goods that are produced by forced or child labor, the California Legislature passed the California Transparency in Supply Chains Act of 2010 with the goal of "ensur[ing] large retailers and manufacturers provide consumers with information regarding their efforts to eradicate slavery and human trafficking from their supply chains."[1] This is the first state or federal law of its kind. Beginning January 1, 2012, every retailer and manufacturer doing business in California with annual worldwide gross receipts exceeding $100 million must conspicuously disclose on its website the extent to which it does the following:

1. Engages in third-party verification of its supply chains to evaluate and address the risk of trafficking and forced labor;
2. Conducts independent, unannounced audits of its suppliers to evaluate their compliance with company standards for trafficking and forced labor in its supply chains;
3. Requires suppliers to certify that materials incorporated into the product comply with local laws on trafficking and forced labor;
4. Maintains internal accountability standards and procedures for employees and contractors failing to meet company standards regarding trafficking and forced labor;
5. Provides training on trafficking and forced labor issues to employees with direct responsibility for supply chain management.[2]

If the entity subject to the law does not have a website, it must provide a written disclosure within 30 days of receiving a disclosure request.

Covered entities are: (1) retailers or manufacturers; (2) doing business in California; (3) with annual worldwide gross receipts exceeding $100,000,000, and are defined by the entity's filings with the California Franchise Tax Board ("FTB"). Covered retailers and manufacturers are those entities reporting their primary business activity on their FTB returns as retail trade or manufacturing. This excludes, for example, wholesalers. Entities doing business in California are essentially those entities required to file tax returns with the FTB. Whether an entity has global gross annual receipts in excess of $100 million is determined by the amount disclosed on its tax return.

The law provides that it can only be enforced by the Attorney General through injunctive relief, but also expressly does not limit remedies available under other state and federal laws.[3] Accordingly,

it is possible that private parties could sue for violations of this law under California's unfair competition law, which provides that a violation of any other statute can be the basis of an unfair business practice claim.[4] The law requires the FTB to provide the Attorney General with an annual list of companies the law applies to by November 30 of the year following the tax year at issue.[5] In other words, it is possible that entities deemed covered by the law in 2011 will not be disclosed to the Attorney General until November 2012.

The law came about in part because of the efforts of actress Julia Ormond, who sponsored the bill following a campaign by a group called Chain Store Reaction. Chain Store Reaction sent questionnaires to various companies asking for tangible things the company does to combat slavery and human trafficking (*e.g.*, Does the company require local suppliers to follow local laws on slavery? Does the company participate in a pilot program on responsibly sourced products? Does the company donate to anti-slavery charities?). According to Chain Store Reaction, over 90% of the companies contacted never responded to the questionnaire; most that did respond sent a form letter. This alleged lack of responsiveness led to the efforts to enact the California law.

The background and details of the law are telling – the law only requires disclosure of the extent to which entities perform the listed items; it does not require that entities take affirmative action and actually take such action. For example, entities have to disclose whether or not they engage in third-party verification of supply chains but do not actually have to engage in that verification. An entity could indicate that it does none of these things and be in full compliance with the law, although the entity may have subsequent public relations concerns to address.

The law requires that the disclosures be accessible through a "conspicuous and an easily understood link" on the entity's homepage, but does not explain what is meant by this. This requirement has caused confusion – is it acceptable to post the disclosures in a larger corporate social responsibility section of the website? Does the homepage link have to expressly reference the California law? Business groups have asked the California Attorney General's Office for clarification on this issue, but have not received a response to date.

California businesses with questions about this new law and its requirements should consult experienced employment counsel.

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[1] S.B. 657 (Cal. 2010) (enacted).

[2] California Civil Code § 1714.43.

[3] California Civil Code § 1714.43(d).

[4] California Business & Professions Code §§ 17200 *et seq.*

[5] California Revenue & Taxation Code § 19547.5(a)(2).