

INSIGHT: There Is No Social Distance in Supply Chains Tainted by Forced Labor

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The coronavirus pandemic could trigger a new wave of human rights violations if companies are not careful to root out forced labor in supply chains. Perkins Coie's T. Markus Funk and the Hon. Virginia M. Kendall say companies must have effective compliance programs in place and bolster supply chain vigilance to ward off potentially business-ending scrutiny.

As the Covid-19 pandemic ravages communities across the globe, we are witnessing an unprecedented spike in demand for immediate supplies to quarantined citizens, medical workers, and governmental agencies struggling to flatten the curve.

Sadly, we have learned from history that national crises and natural disasters—and the supply chain disruptions that accompany them—offer the most fertile ground for those in the business of exploiting workers.

It, therefore, is critical that companies, during these challenging times redouble their supply chain vigilance and ward off the potentially business-ending scrutiny once normalcy returns.

So, on to unpacking our rationale ...

1. Forced Labor Has Long Been Illegal (Yet Prevalent) Around the Globe

Laws around the world have long criminalized using human trafficked, slave, indenture, bonded, child, and other forms of coerced labor (collectively, forced labor) in supply chains. Examples of such laws include the U.S. Trafficking Victims Protection Act and the Federal Acquisition Regulations on trafficking in government contracts (48 CFR § 52.222-50); the UK Modern Act of 2015; China's Article 244; Brazil's Section 140; Germany's Section 232; and India's Bonded Labour Abolition Act.

Though enforcement has regrettably lagged, it is fair to say that all modern jurisdictions outlaw forced labor.

2. Forced Labor in Supply Chains (and the Everyday Products They Help Create) Is a Tragic, Embarrassing Global Scourge

Forced labor has in virtually all industries, and for many decades, plagued supply chains and tainted the name-brand products they help create. Indeed, according to the U.N. International Labor Organization's 2020 estimates, some 24.9 million people around the world are trapped in forced labor.

Human trafficking, moreover, has been described as the third largest crime industry globally—closely following drug and arms trafficking.

3. Those Ruthlessly Exploiting Workers Are Unconcerned With Their Victims' Humanity and Health

Those organized groups involved in this corrosive and inhumane criminal trade have always placed their interest in illicit profits over the welfare of their victims. And traffickers smell opportunity in disaster. When the rest of the world is focused on flattening the curve by keeping people healthy, they see the profit in the resulting, immediate consumer needs.

4. A Robust Supply Chain Is the Beating Heart of Manufacturing Companies and Retailers

A typical Fortune 100 manufacturer has some 9,000 vendors making up its supply chain(s). And so, at the risk of stating the obvious, manufacturers and retailers cannot operate without supplies.

5. The Covid-19 Response Places a Historically Disruptive Stranglehold on Global Supply Chains

As of this writing, countries spanning the globe—including supply chain (and, it must be said, forced labor) powerhouses such as China (the “world’s factory”) and India—are tightening their laws and regulations concerning social distancing, curfews, stay-in-place requirements, and mandatory factory closures/shut-downs. (By way of illustration, consider that more than 200 of the Fortune Global 500 firms have a now-shuttered presence in the province of Wuhan, where the outbreak originated.)

6. Urgent Supply Chain Needs a Windfall for Those Already in the Business of Exploiting Labor

Companies with Tier 1 (direct) and Tier 2 (indirect) suppliers, and employing traditional supply chains in hard-hit countries like China, India, Cambodia, and Vietnam, are desperately trying to manage potentially business-ending supply chain disruptions in the face of unprecedented demand.

Those in the business of forced labor have little care for their workers health and well-being. They, moreover, have long histories of, as a business necessity, bribing immigration officials, factory inspectors, and other government agents (thus raising now-familiar FCPA concerns that are exacerbated by the pandemic).

People who are deeply steeped in making profits off of the backs of the most vulnerable and defenseless will certainly not change their ways now that their “workers” can command even greater premium prices. To them, protecting their workers/victims through “social distancing” and other forms of health-related prevention will be utterly unfamiliar.

And so it is of little concern to them if their forced laborers, working in tight and unhygienic quarters, become afflicted by Covid-19.

SO WHAT ARE COMPANIES TO DO?

For those running unlawful forced labor operations in the shadows, the global Covid-19 pandemic presents a golden opportunity to take advantage of the supply chain vacuum and ramp up illicit profits. While there is an undeniable sense of urgency to get products to market and save businesses, it is equally true that at some point the Covid-19-inspired regulatory dust will settle.

In the meantime, the dozens of consumer-led advocacy organizations and governmental agencies around the world focused on eradicating forced labor from supply chains continue to monitor the business community’s compliance with forced labor laws and regulations.

Some also effectively employ “name and shame” approaches to impose serious reputational and brand-damaging costs on those considered non-compliant. Businesses found to have cut corners or that otherwise put their compliance heads in the sand will pay a steep, and potentially brand-destroying, price for answering today’s call for supply chain expediency (regardless of its impact).

It, therefore, pays to ensure you have in place the components of an effective compliance program:

- Comprehensive and practical compliance risk assessments;
- Understanding of geographic, country, and industry risk;
- Evaluation of foreign representative risks;
- Agent due diligence, contract review, and red flag identification;
- Careful choice of business partners;
- Consideration of relevant U.S. and foreign labor and trafficking laws;
- Integration (and implementation) of a compliance programs and compliance policies;
- Rooting out of bad actors through thoughtful, rigorous, and proactive program monitoring;

- Defensible handling of instances of non-compliance and development of appropriate remediation mechanisms; and
- Appropriate executive/officer training, responsibility, and oversight.

BE PART OF THE SOLUTION

We are witnessing unprecedented times. It would be a further global tragedy if we allowed the Covid-19 pandemic to trigger a new wave of human rights violations with impacts far outliving the virus.

Buckling down on policing supply chains, scrutinizing links between suppliers and contractors and subcontractors is, put simply, a commercial imperative. Doing so is good for business, good for the brand, and good for the world.

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