

The California Transparency in Supply Chains Act (SB 657): Questions and Answers

Q. What is the California Transparency in Supply Chains Act and who does it impact?

In January 2012, California enacted the “Transparency in Supply Chains Act”, or SB 657¹. The law requires that companies which have annual worldwide gross receipts in excess of \$100 million and annual California sales exceeding \$500,000 publicly disclose their efforts to eradicate slavery and human trafficking from their supply chains.

Specifically, retailers and manufacturers must state the extent, if any, of five specific activities they are taking to help them identify and mitigate the risk of human trafficking and forced labor in their supply chains. The five activities are:

1. Third-party verification of risk
2. Independent and unannounced supply chain auditing
3. Certification of compliance from direct suppliers
4. Internal accountability mechanisms
5. Training

Manufacturers and retailers covered by the Act are required to disclose the assurances they have received of compliance with applicable human trafficking laws, and efforts made to confirm such assurances.

¹ <http://www.natlawreview.com/article/california-s-transparency-supply-chains-act>

Q. Does the Act apply only to companies based in California?

No. By its terms, the Act requires disclosure by every manufacturer and retailer that does business in California, so long as that manufacturer or retailer has more than \$100,000,000 in sales *worldwide*. And, because it requires those manufacturers and retailers to review their supply chains, it affects smaller entities as well. Doing business in California is defined as “actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.”²

Considering California has one of the largest economies in the world³, this legislation has far reaching impacts for thousands of U.S. and international manufacturers and retailers, regardless of where they are located. It is recommended companies work with their legal counsel to determine whether the Act applies to their operations.

Q. Why was the California Transparency in Supply Chains Act enacted?

The Act is intended to bring visibility to an important issue that impacts supply chains in various industries around the world. Forced labor, child labor, human trafficking, and slavery are typically hidden from view, both internationally and in the U.S. By starting the conversation surrounding these important issues, positive change can be made.

Also, by requiring this information from certain companies, legislators give power to consumers to distinguish between companies which are taking action and disclosing their efforts, and those which are not.

² https://www.ftb.ca.gov/professionals/taxnews/2011/March/Article_14.shtml

³ <http://www.ccsce.com/PDF/Numbers-July-2013-CA-Economy-Rankings-2012.pdf>

Q. How big of a problem is forced labor and human trafficking?

While it is difficult to collect data on these clandestine activities, experts estimate there are as many as 20.9 million people in 161 countries⁴ around the world who are victims of human trafficking. Victims are trafficked both within and across international borders with migrants and internally displaced persons (IDPs) being particularly vulnerable. While exploitation can take many forms, the most common types are forms of sexual exploitation, forced labor and organ trafficking. In its 2013 report, the U.S. Department of Labor identified **134 goods produced with forced labor, child labor, or both, in 73 countries**⁵.

Key Facts⁶

- Almost **21 million people are victims of forced labor** – 11.4 million women and girls and 9.5 million men and boys
- Almost **19 million victims are exploited by private individuals or enterprises** and over 2 million by state or rebel groups
- Of those exploited by individuals or enterprises, **4.5 million are victims of forced sexual exploitation**
- It is estimated there are **hundreds of thousands** of people exploited in the **United States**, with most reported cases in **California, Texas, Florida, New York and Illinois**⁷
- Those who exact forced labor generate vast illegal profits
- **Domestic work, agriculture, construction, manufacturing and entertainment** are among the sectors most concerned
- **Migrant workers and indigenous people are particularly vulnerable** to forced labor

⁴ <https://www.unodc.org/unodc/data-and-analysis/glotip.html>

⁵ <http://www.dol.gov/ilab/reports/child-labor/list-of-goods/>

⁶ ILO Website, Forced Labor Facts and Figures: <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

⁷ <http://www.polarisproject.org/media-center/news-and-press/press-releases/915-report-spotlights-human-trafficking-trends-in-the-us>

Trafficking is not limited to any particular immigration status or business sector. Trafficking victims can be found working on farms and plantations, factories and even private residences.

***Q. How does a company identify human trafficking and forced labor in the supply chain?
What are the best practices for doing this?***

The disclosure elements of the Act itself provide a good outline for appropriate efforts to identify slavery and human trafficking.

The first step may be to review and map your company's supply chain to identify potential exposure and to assess the level of risk. There are a number of independent auditors, inspectors, and consultants available to assist in identifying the overall risks of human trafficking and forced labor in your company's supply chain.

These actions could include:

- Mapping your actual supply chain by understanding which countries you source from and what products or services you buy
- Requesting additional information and/or certification from your suppliers to ensure that you are addressing any potential risks that may exist
- Auditing your supply chain and recruitment sources against your own or internationally recognized standards

While labor exploitation may sometimes be found at the employment site, it is not always evident at that site. In order to determine whether human trafficking or forced labor is present, companies may have to audit recruitment sources as well - such as labor brokers or employment agencies - which may be located in other countries.

Another important element of supply-chain management is to contractually obligate your direct suppliers to comply with laws on human trafficking and forced labor within their respective supply chains. This addresses the risk of workers who are involved in producing your product, but who are further down in your supply chain (e.g. at the farm level), who may be affected by human trafficking and forced labor. Governmental and non-governmental information on human trafficking laws and instances of offenses in the countries where work is performed will be helpful in this effort. However, this is not always a reliable way to assess risk. A more complete risk analysis will include not only the country of origins' laws and instances of forced labor, but the product or ingredient itself, company policies on forced labor, auditing, and various sources of information about the production, procurement and processing of such products.

The fourth disclosure element of the Act is internal accountability standards and procedures. It is critical that a company hold its employees accountable for instances of non-compliance with the company's standards on slavery and human trafficking.

Lastly, it is important that the company train its own employees, especially those in supply chain, to understand what human trafficking and forced labor is, how to recognize it, and how to mitigate risk.

Q. What do companies have to do to be compliant with the Act?

The California Transparency in Supply Chains Act does not require any of the above actions, but it does require that qualifying companies disclose the extent, if any, to which they engage in these activities. Retailers and manufacturers that have a public website are required to post a conspicuous link to the required information on their homepage. Those that do not have a public website are required to mail a written disclosure within 30 days after each consumer request, if any.

Q. What are the penalties for non-compliance?

The exclusive remedy for a violation is the Attorney General pursuing an injunction; monetary damages are not available under the terms of the Act. It remains to be seen, however, whether the plaintiff's bar will find ways to use non-compliance to pursue actions for damages.

Q. Do you expect other states, or the federal government, to pass similar disclosure laws around human trafficking and forced labor?

There are several state bills addressing human trafficking and forced labor that are currently in place or being considered⁸. However, to our knowledge, no bill similar to the CA Transparency in Supply Chains Act (SB657) is being considered by any other state. Congresswoman Maloney from New York has publicly announced her intent to file a *federal* bill similar to the CA Transparency in Supply Chains Act, and the federal Trafficking Victims Protection Act (2013) may introduce more regulations.⁹

Q. There seem to be more laws being passed that relate to transparency in the supply chain – what other issues are you working on right now?

The federal Conflict Minerals Law, part of the Dodd-Frank Wall Street Reform Act, requires companies that use tin, tantalum, tungsten or gold in their products, also known as '3TG', disclose the origin of those minerals in their annual reports. Similar to SB657, this law requires supply chain review, and will result in the disclosure of steps taken to identify materials origin.

Safeway is always looking for and working towards ways to improve transparency and collaboration and to build trusting relationships with our suppliers. Safeway is currently working diligently with our suppliers and other stakeholders to improve and systematically address the process for sourcing minerals that are "conflict-free." All suppliers are expected to

⁸ <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws-in-the-states-updated-nov.aspx>

⁹ <http://www.state.gov/j/tip/laws/>

provide accurate information regarding the inclusion of any conflict minerals in their products before business is awarded.

Q. What are the consequences of not certifying that our supply chain is free from human trafficking and forced labor?

Safeway is committed to eradicating human trafficking and forced labor from our supply chain. We 'certify' our suppliers via our SB 657 survey, found on the Safeway Supplier website¹⁰. If you cannot certify that your supply chain is free from human trafficking and/or forced labor:

1. You will be asked to supply a time-bound action plan that will allow you to certify that your supply chain is free from human trafficking and forced labor.
2. If you fail to provide that information or certification, Safeway will be compelled to review options with vendors who are capable of such certification.

In 2014 we will be releasing a detailed mitigation plan for suppliers who are unable to comply with these requirements. This mitigation plan will be part of a larger guidebook on human trafficking risk and action that Safeway is taking to address that risk. All suppliers will receive this guidebook when it is published.

Q. What are the consequences of not completing Safeway's SB657 survey?

This is not an option. As a condition of doing business with Safeway, you have signed a CCG and have agreed to abide by Safeway's Vendor Code of Conduct.¹¹ As part of that process, you have committed to provide us such accurate information as we reasonably require for purposes of compliance with regulations.

¹⁰ <http://suppliers.safeway.com/>

¹¹ http://suppliers.safeway.com/usa/pdf/Vendor_Code_of_Conduct.pdf

Q. In what way will the SB657 survey information be used?

The survey information will be used to determine what risks exist in our supply chain. We assess these risks both in-house as surveys are answered, and with third-party consultants who review the information provided.

Based on those analyses, we may request additional information, time-bound mitigation plans, or audits.

Q. How much of an impact will the addition of human trafficking and forced labor analyses have on my overall value as a supplier?

This effort is to drive meaningful change for victims of human trafficking and forced labor, and eradicate such issues and associated risks in our supply chain.

If you are able to complete the survey (certify) and your assessed risk is low, human trafficking and forced labor assessments will not affect you adversely. The more information you provide us, the better we are able to properly assess your risk.

If you fail to certify in a reasonable time, or if your risk is assessed as 'high', you will be asked to provide a time-bound mitigation plan. Ignoring information requests, not providing a mitigation plan, or not completely addressing issues that are identified may negatively impact your value as a supplier. Not completing the survey at all or providing partial information may also flag your company as 'high risk'.