



# Do New Anti-Trafficking Requirements Apply To Your Company?

Insights

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As human trafficking and other forms of exploitation of labor continue to be a focus of public attention, requirements on some employers to prevent trafficking and related abuses have recently increased.

## **Federal Contractors: Existing Requirements**

Since 2006, federal contractors have been required to notify those employees working on such contracts of the federal government's anti-trafficking policies. These policies cover a wide spectrum of prohibited conduct, with an emphasis on human trafficking and use of forced labor in the performance of the contract. Employers may not recruit, harbor, transport, or obtain a person for labor through the use of force, fraud, or coercion for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.

Also prohibited by U.S. policy is sex trafficking, which bars recruiting, harboring, transporting, or obtaining a person for the purpose of a commercial sex act, where the sex act is induced by force, fraud or coercion, or involves a person under 18 years of age.

## **Federal Contractors: New Rules**

Federal contractors would be wise to pay attention to new requirements which are now in effect for any federal contracts awarded after March 2, 2015. Under the new rules, the list of prohibited activities now includes the following:

- Employers cannot destroy, conceal, confiscate or otherwise deny access by an employee to the employee's identity or immigration documents. This includes such documents as passports or drivers' licenses.
- Companies are prohibited from using misleading or fraudulent recruiting tactics, including making material misrepresentations regarding wages, benefits, location of the work, living conditions, housing and associated costs (if provided by the employer or its agents), any costs to be charged to the employee, and hazardous nature of the work.
- Businesses cannot use recruiters that do not comply with local labor laws of the country in which the recruiting occurs, or charge recruitment fees to the employees.
- Employers must provide return transportation or pay the cost of return transportation for any foreign employee who was brought into a different country to perform the work and also for any

foreign employee who was brought into a different country to perform the work, and also for any non-U.S. employee who is not a U.S. national and who was brought here to work on the contract or subcontract (but only where the payment of such costs is required under a temporary worker program or an agreement with the employee). Payment of return travel costs is not required where the employee is legally permitted to remain in the country of employment and chooses to do so following the completion of work.

- Companies must provide or arrange for housing that meets the host country's housing and safety standards.
- Where required by law, employers must provide an employment agreement to the employee that is in a language the employee understands and describes all pertinent details of the employment.

Contractors must provide written notice of this expanded list of prohibited acts to their employees and subcontractors, as well as notice of the consequences of engaging in such prohibited activity, such as termination of employment or cancellation of the subcontract. Contractors that become aware of any such violations by their employees or subcontractors must notify the contracting agency of the violations committed and the corrective actions taken.

### **Compliance Plans Required With Some Contracts**

For contracts valued in excess of \$500,000 for supplies, other than commercially available off-the-shelf items, or services provided outside the U.S., the contractor must maintain a compliance plan.

This plan must include an awareness program to inform employees of the prohibited activities, a procedure for employees to report violations without fear of retaliation, a "recruitment and wage plan" that requires recruitment companies to meet certain standards, a housing plan if housing is to be arranged or provided, to ensure the housing meets host-country housing and safety standards, and procedures to prevent human trafficking.

Covered federal contractors should therefore provide the new required notice to their affected employees and determine whether they are additionally required to implement a compliance plan.

### **California Employers, Beware**

But it's not just federal contractors who have to pay attention to anti-trafficking regulations. In addition, all retailers and manufacturers with a worldwide annual revenue of one hundred million dollars or greater that do business in California must provide a link on their website to a statement regarding company efforts to eliminate human trafficking and slavery in its supply chain.

This law has been in effect since 2012, but only recently has the state's attorney general begun to notify affected companies of their obligations. The law does not require companies to undertake any specific efforts against human trafficking, but rather just address a series of issues in a published statement.

Covered entities must describe their efforts to verify the lack of trafficking in their supply chain, their auditing mechanisms for ensuring compliance, whether they require suppliers to certify compliance efforts, their internal accountability procedures, and their internal training methods.

The reporting on these items need not be extensive, and there is no fine for not complying with this law. The only remedy is a lawsuit by the attorney general seeking an injunction ordering compliance. Because of the California Attorney General's recent notification letters to affected employers, one or more such lawsuits should be anticipated.

Given the attention that human trafficking has recently received, however, don't be surprised if additional jurisdictions adopt similar requirements in the future.

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