

# CANADA'S PENDING LAW TO COMBAT MODERN SLAVERY WILL CREATE REPORTING RULES FOR CANADIAN AND FOREIGN ENTITIES: 4 FAQs FOR EMPLOYERS

Insights  
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A Canadian bill aimed at preventing modern slavery is currently awaiting approval and could come into force as early as January 2023. If passed, this law will create reporting obligations for both public and private entities in order to increase transparency and expose the use of any forced labor or child labor in the supply chains of covered entities. Will this law apply to your business? If you have locations, operations, or employees in Canada, continue reading to find out if you're covered and what compliance obligations you may have if the bill is ultimately approved. Here are the answers to four key questions about the pending legislation.

## 1. What is the Act's Purpose?

The Fighting Against Forced Labour and Child Labour in Supply Chains Act, Bill S-211, was introduced by Senator Miville-Dechéne in 2021. The bill passed through the Senate and is currently awaiting approval in the House of Commons. If the bill receives Royal Assent, it will come into force, which could happen as early as January 1, 2023 — which means the qualifying government institutions and entities would only have until May 2023 to comply with reporting obligations.

The act's stated purpose is to "contribute to fighting modern slavery, including by imposing reporting obligations" on government institutions and entities. Canada is a party to several international conventions committed to preventing

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forced labor and child labor, but it has yet to enact legislation to combat the use of forced or child labor in Canadian business supply chains. Although Senator Miville-Dechêne and other legislators have previously introduced bills to combat modern slavery, none were enacted. The new act, if passed, will create similar but more comprehensive reporting obligations than those discussed in prior bills.

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### 2. What Entities Are Covered?

If passed, the act will apply to both government institutions and certain entities, as defined below.

A business falls under the act if it is an "**entity**," defined as:

1. any entity listed on a Canadian stock exchange;
2. any entity that has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years:
  1. it has at least \$20 million in assets;
  2. it has generated at least \$40 million in revenue; and
  3. it employs an average of at least 250 employees; or
3. any other entity that may be prescribed by regulation.

A qualifying entity will only have reporting obligations under the act if it participates in one of the following **activities**:

- producing, selling, or distributing goods in Canada or elsewhere;
- importing into Canada goods produced outside Canada; or
- controlling an entity engaged in any activity described above.

Notably, the definition of an entity could apply to foreign entities as well as Canadian entities if the entity does business in Canada.

### 3. What Are Your Reporting Obligations?

If passed, the act will require qualifying entities to file an annual report with the Minister of Public Safety and

Emergency Preparedness before May 31 of the following year. Related entities may file a joint report.

You should note that a qualifying entity must include several categories of specific information in the report about its operations and policies and procedures, including information about its structure, activities, and supply chains; any measures taken to remediate forced labor or child labor; and the training provided to employees on forced labor and child labor.

Qualifying entities must also outline their internal approval process. Specifically, before you file the report with the Minister, it must be approved by a “governing body,” which is defined as “the body or group of members of the entity with primary responsibility for the governance of the entity.” The government institution or entity may provide the Minister with a revised version of the report if they need to include additional information.

The act also includes publication requirements for the report. If the entity is covered under the Canada Business Corporations Act or any other act of Parliament, you must provide the report and annual financial statements to each of your shareholders. Additionally, you will have to publish the report in a prominent place so it is available to the public. The Minister is required to maintain an electronic registry containing a copy of every report or revised report, which is made available to the public.

#### **4. What Are the Potential Penalties for Noncompliance?**

In its current version, the pending legislation empowers the Minister to conduct inspections — without a warrant in some cases — to verify compliance with reporting requirements if the Minister has reasonable grounds to believe the reported information is incomplete or untruthful. The Minister may then issue an order requiring the entity to take any measures that the Minister considers necessary to ensure compliance.

Individuals and entities may be liable for offenses under the Act if they fail to comply with their obligations related to reporting or for conduct obstructing a search.

What are the consequences? Any person or entity that fails to comply or knowingly provides false or misleading information to the Minister will be found guilty of an offense punishable on summary conviction — akin to misdemeanor

offenses in the U.S. — and liable for a fine of up to \$250,000 CAD. These penalties also apply to any corporate “director, officer, or agent and mandatary of the person or entity who directed, authorized, assented to, acquiesced in, or participated in” these offenses.

Notably, the offenses and punishment section of the act does not apply to government institutions.

## **Conclusion**

This act could very well become law even if the final version is slightly different than the latest published draft. For this reason, we suggest that entities who do business in Canada begin reviewing their processes and preparing to comply with potential reporting requirements by May 2023. We suggest being proactive by carefully reviewing whether your entities are covered under the act in its current iteration and by gaining an understanding of the act’s reporting requirements.

If your organization does business in Canada, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [International Practice Group](#) to learn more about the implications of this pending law. We will monitor developments in this area and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips’ Insights](#) to get the most up-to-date information direct to your inbox.