



The 2010 California Transparency in Supply Chains Act

A GUIDE FOR FLA AFFILIATES

Introduction

On September 30, 2010, the Governor of California signed into law the California Transparency in Supply Chains Act of 2010 (SB 657). The Act, which will come into effect on January 1, 2012, is basically a disclosure law: it requires companies that meet certain threshold requirements disclose their efforts to eradicate slavery and human trafficking from their supply chains. The expressed aim of the Act is to provide consumers in California, through the power of information, with a tool for leveraging their purchasing power to eradicate slavery and trafficking from product supply chains. In other words, by compelling companies to publicly disclose information concerning their efforts to eradicate trafficking and slavery from their supply chains, consumers can decide from which company they wish to buy or do business.

This guide is intended to provide FLA affiliates with more information on the requirements of the Act, allow companies to determine if they are covered by the Act, and, if so, how affiliation with the FLA may help in developing the disclosure required under the Act. It also includes a basic step-by-step guide to develop a disclosure web page that FLA participating companies may wish to use as a tool when considering how to meet the disclosure requirements of the Act. It is important to note that nothing in this guide should be understood as constituting legal advice as to how to meet the requirements of the law. Since no guidelines concerning compliance with the Act have been issued by the State of California, there is no guarantee that a particular action will be considered as meeting its requirements. This guide therefore is intended only as a tool to help affiliates understand and consider relevant issues as they develop their own response to meeting the requirements of the law if it affects them.

Which companies are covered by the Act?

The Act applies to every retail seller and manufacturer doing business in California that has annual worldwide gross receipts that exceed \$100 million. The legislation clarifies that:

- **retail seller** means a business entity with retail trade as its principal business activity code, as reported on the entity's tax return filed under Part 10.2 of Division 2 of the California Revenue and Taxation Code,¹
- **manufacturer** means a business entity with manufacturing as its principal business activity code, as reported on the entity's tax return filed under Part 10.2 of Division 2 of the California Revenue and Taxation Code,²
- **doing business** in California has the same meaning as set forth in Section 23101 of the California Revenue and Taxation Code,³ and
- **gross receipts** has the same meaning as set forth

in Section 25120 of the California Revenue and Taxation Code.⁴

Therefore, the law does not cover a company that does not do business in California or does not have annual worldwide gross receipts that exceed \$100 million.

Requirements of the Act

Beginning January 1, 2012, the Act requires every retailer and manufacturer covered by the Act to:

1. **Disclose its efforts to eradicate slavery and human trafficking from its supply chain.**
2. **Include in the disclosure the extent, if any, to which the company:**
 - ▶ Uses third-party verification to evaluate and address human trafficking and slavery risks



- in product supply chains;
- ▶ Conducts independent, unannounced audits of suppliers to ensure compliance with company standards on trafficking slavery;
- ▶ Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business;
- ▶ Maintains internal accountability for employees and contractors failing to meet company standards on slavery and trafficking; and
- ▶ Provides company employees and management training on mitigating risks of slavery and trafficking in supply chains.

3. Post the disclosure on the company’s website and provide it to consumers in writing upon request.

A company covered by the Act that is not in compliance with the disclosure requirement as of January 1, 2012, may be subject to a remedial injunction from the Attorney General of California.

What do trafficking and slavery mean?

Trafficking and slavery are two distinct concepts, though they overlap. A person can live in slavery without necessarily being a victim of trafficking, and vice versa. Of course, someone could also be a victim of both at the same time.

- **Trafficking.** The internationally accepted definition of

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‘I was enslaved for 40 days’

In support of the California Transparency in Supply Chains Act, one modern-day slavery victim, Flor Molina, testified before California’s legislature about her experience of being enslaved.

In the winter of 2001, I became a victim of slavery in the garment industry in Los Angeles. I was an easy target for my trafficker: I was a desperate mother who had just lost my baby because I didn’t have the money to take her to the hospital when she got sick. I was told that when I got to the U.S. I will have a job so I could send money home, food and a place to stay. When I arrived in Los Angeles, I quickly realized it had all been a lie.

My trafficker told me that now I owe her almost \$3,000 for bringing me to the U.S. and that I had to work for her in order to pay her back. I was forced to work

18 hours a day making dresses that were being sold for \$200 at department stores. I was forced to sleep at the factory in a storage room and I had to share a single mattress with another victim. I was forbidden to talk to anyone or from putting one step outside of the factory. I worked hard and I was always hungry. I was given only one meal a day and I had 10 minutes to eat. My trafficker told me that if I ever go to the police, they wouldn’t believe me. She said that she knew where my children and my mother lived and that I wouldn’t want them to pay the consequences. This went on for 40 days, but I tell you it felt like 40 years. I thought I was going to die. I thought I would never see my children again. After weeks of begging my trafficker to let me go to church, she finally let me go. The moment I set foot outside the factory, I decided not to go back.

Even though my enslavement doesn’t define me as a person, it makes me who I am today. I am an advocate against slavery. We need to find a way to get to the root of the problem—the demand for all products tainted with slave labor. The companies who brought these garments could have stopped me and others from being slaves, if they had made an effort. If those big companies can show consumers they are doing things to make sure the company is not using slave labor in the making of their products, these companies can be the key to freedom for hundreds of thousands of enslaved people. If companies post what they do to stop slavery, people will understand that they can buy from these companies and that will help stop the demand for these products. All of us working together can end slavery forever. Let’s make it happen.

Source: Edited excerpts from <http://thecnnfreedomproject.blogs.cnn.com/2011/04/05/i-was-enslaved-for-40-days/>



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human trafficking is provided in the United Nations “Palermo Protocol” of 2000. According to the Protocol:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

This is obviously a complicated legal definition, but it can be broken down into three separate parts:

- **An act:** recruitment, transportation, transfer, harboring and/or receipt of a person.
- **The means:** threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability, or giving or receiving payments or benefits to achieve the consent of a person having control over another person.
- **A purpose:** exploitation, which can include forced labor, slavery or servitude.

It is important to understand that not all sub-standard working conditions constitute exploitation. For instance, the lack of viable economic alternatives (i.e. other jobs or possibilities of setting up their own small businesses that make people stay in an exploitative work relationship) may not in itself constitute forced labor, which requires the use of forms of coercion and deception to retain a worker. Also, the mere presence of sub-standard working

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Migrant Workers in Jordan’s Garment Sector

In May 2006, the National Labor Committee (NLC) published a report alleging sub-standard working conditions, including trafficking, in Jordan’s garment sector. Between 2000 and 2006, apparel exports from Jordan to the U.S. grew from US \$50 million to some US \$1.25 billion. Though exports dipped in the years following, they again peaked in 2010 at US \$ 1 billion. The rapid growth of the apparel sector put a strain on Jordan’s labor market, resulting in a large influx of guest workers, primarily from Asia.

The Government of Jordan commissioned an independent investigation to look into the allegations, which were largely confirmed, but which also spurred the Government into developing an Action Plan, which it has been implementing ever since. Implementation of the Plan has

resulted, inter alia, in the recruitment of additional labor inspectors; the provision of regular training to all inspectors; substantial improvements in inspection infrastructure (cars, computers, etc.); labour law amendments, including new provisions prohibiting forced labour and harassment; and the establishment of a hotline for worker complaints, including from migrant workers.

The Government’s efforts to combat trafficking thus far include: adoption of a new trafficking law and the establishment of a National Committee on trafficking, and a joint police/labour inspection unit.

In recognition of Jordan’s efforts to combat trafficking, the 2009 U.S. State Department Trafficking in Persons report ranked Jordan as a Tier 2 country, an improvement from the designation as a Tier 2

Watchlist country in the previous year. It also listed the establishment of a Worker Humanitarian and Legal Assistance Fund amongst “Commendable Initiatives around the World” to combat trafficking, noting that “the Fund is a creative way to register workers, punish employers for not renewing residence permits, and establish an assistance mechanism for trafficking victims and other workers in distress.”

Though many will claim that conditions for migrant workers in Jordan’s garment sector have improved markedly, others remain critical. Two-thirds of the workforce in Jordan’s garment sector is still made up of migrant workers from different parts of Asia, which means that there is more work to be done, and that the sector will remain susceptible to allegations of trafficking.

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conditions does not necessarily constitute exploitation.

It should also be underlined here that trafficking does not have to occur across international borders. It can and does occur within a single country.

● **Slavery.** The internationally accepted definition of slavery is contained in the 1926 Slavery Convention. Its Article 1.1 reads:

“Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

Slavery is therefore equal to owning a person. While many people may think that slavery is a thing of the past, unfortunately it continues to exist. Also, it is generally considered that issues such as bonded labor (debt bondage), forced labor, some of the worst forms of child labor, and trafficking are modern day forms of slavery.

Could there be trafficking and slavery in a company's supply chain?

Though for some it may be hard to believe that trafficking and slavery exist in this day and age, the three case studies in this guide illustrate that, unfortunately, they do.

Companies affiliated with the FLA have internal monitoring systems in place or—if they are recently affiliated—are in the process of developing or fine-tuning such systems. In principle, the companies are also working with the FLA to improve and verify working conditions throughout their supply chains and have put in place certain safeguards aimed at diminishing the risks of trafficking or slavery. However, no system can provide full guarantees against worker exploitation. Therefore, there is always a possibility that workers in a company's supply chain are at risk, especially when there are international or internal migrant workers employed within the supply chain.

How FLA affiliation may help companies meet legal requirements

Affiliation with the FLA may help a company to address the requirements of the California Transparency in Supply Chains Act. Please note that on its own, affiliation with the FLA is not sufficient to meet the requirements of the Act.

1. Requirement to disclose the company's efforts to eradicate slavery and human trafficking from its supply chain.

FLA affiliates agree to uphold the FLA Workplace

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The Sumangali Scheme in Tamil Nadu

The garment industry in Tamil Nadu, located in the south of India, has witnessed major growth during the past decade. At the heart of the thousands of small- and medium-sized factories that comprise the industry, stand large, vertically integrated businesses. They encompass all processes—from spinning to packing—in one business, and are direct suppliers for major U.S. and European clothing retailers. Over the past few years reports have surfaced questioning the use of a recruitment practice—called the Sumangali Scheme—in businesses in Tamil Nadu's garment sector.

Under the Sumangali Scheme,

young women—often from rural areas—are recruited with the promise of a reasonable wage, good working conditions, suitable accommodation and an attractive sum of money upon completion of their three-year contract. This sum is built up through wage deductions over time and meant to constitute a dowry. Although legally prohibited, dowry payment is still generally practiced in rural India and is often an insurmountable hurdle for poor families. It is this sum of money that makes employment in the garment sector in Tamil Nadu so attractive for poor, young migrant women.

In reality, however, working

conditions for the migrant Sumangali workers is different than described and often include long and forced overtime hours; low and unpaid wages; sub-standard working conditions; restrictions on freedom of movement in the factories and the dormitories; and, in the end, non-payment or incomplete payment of the end-of-contract lump sum.

It is clear from reports and research that the Sumangali Scheme has led to the exploitation of workers, including forced labor. Since in some instances this impacts workers who have migrated from rural areas, it may also indicate internal trafficking.



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Code of Conduct throughout their supply chains. The Code is a set of standards based on International Labor Organization (ILO) conventions and principles outlining fair working conditions in factories around the world. The Code and its associated compliance benchmarks address forced labor, wages and benefits, working hours, harassment or abuse, and health and safety. These issues can play a role in determining whether workers in a company's supply chain are susceptible to trafficking or slavery.

The FLA holds companies accountable by requiring that they develop and implement an internal monitoring system that meets its standards. Over time, the FLA tests progress and verifies the implementation of the internal monitoring system. In addition, the FLA will accredit affiliated companies' labor compliance programs if they are in substantial compliance with FLA requirements. Through affiliation with the FLA, companies demonstrate that internal monitoring systems are in place and that their social compliance programs align with FLA standards. This will strongly support companies' disclosure efforts under the Act.

2. Requirement to include in the disclosure the extent to which the company:

- ▶ Uses third-party verification to evaluate and address human trafficking and slavery risks in product supply chains;
- ▶ Conducts independent, unannounced audits of suppliers to ensure compliance with company standards on trafficking slavery;
- ▶ Requires direct suppliers to certify that that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business;
- ▶ Maintains internal accountability for employees and contractors failing to meet company standards on slavery and trafficking; and
- ▶ Provides training for those directly responsible for managing supply chains (company employees/management) on mitigating risks of slavery and trafficking.

A second way in which the FLA holds companies accountable is by verifying that affiliated companies and

the factories they use abide by the FLA Workplace Code of Conduct. For this purpose, the FLA has instituted a rigorous monitoring, remediation and verification system through which the FLA accredits monitors and uses internal assessors to conduct unannounced assessments in factories supplying affiliated companies worldwide. Since 2002, FLA has conducted approximately 1,300 unannounced assessments. This process is highly transparent. Reports of all assessments, including the affiliates' corrective action plans, are posted on the FLA's website. In its disclosure, a company may refer to this system of verification, any information publicly available in this respect on the FLA web site, and any special activities the company may have undertaken together with the FLA.

Consumers in California may consider that the process of FLA oversight of company internal monitoring programs and accreditation, coupled with unannounced monitoring and followed by remediation may demonstrate (part of) *the company's efforts to eradicate slavery and human trafficking from its supply chain*, as well as that the company *uses third-party verification, conducts independent, unannounced audits of suppliers, maintains internal accountability, and may include relevant training of staff.*

3. Requirement to post the disclosure on the company's website and provide it to consumers in writing upon request.

The full requirement of the Act in this respect is that the disclosure:

Shall be posted on the retail seller's or manufacturer's Internet Web site with a conspicuous and easily understood link to the required information placed on the business' homepage. In the event the retail seller or manufacturer does not have an Internet Web site, consumers shall be provided the written disclosure within 30 days of receiving a written request for the disclosure from a consumer.

In order to assist affiliates when considering how best to meet this requirement, the FLA has developed a basic step-by-step guidance document (Appendix A) that affiliates may use as a tool when considering how to develop their own disclosure web page.

Footnotes

- ¹ <http://linklaw.org/cgi-bin/code.cgi/CA/rtc/18001-19000/>
- ² <http://linklaw.org/cgi-bin/code.cgi/CA/rtc/18001-19000/>
- ³ <http://law.onecle.com/california/taxation/23101.html>
- ⁴ <http://law.onecle.com/california/taxation/25120.html>

Appendix A: Meeting Disclosure Requirements of the California Transparency in Supply Chains Act

Step-by-step guidelines to help company affiliates create a disclosure web page and communicate their commitment to ending trafficking and slavery

1. Company policy of commitment to eradicating slavery and trafficking from its supply chain.

Having a company policy is generally considered the first step towards demonstrating to your stakeholders, including consumers, that your company is conscious of and committed to its responsibilities to eradicate trafficking and slavery from its supply chain. This policy should therefore have a prominent place on your disclosure web page.

Step 1: Verify whether or not you have a company policy expressing your commitment to eradicate trafficking and slavery. This does not necessarily have to be a specific statement addressing trafficking and slavery but could be your company's human rights policy or code of conduct, provided its contents can reasonably be construed to cover trafficking and slavery.

Step 2: If your company does not have such a policy or prefers to have a specific policy in addition to any other relevant documents, you may wish to consider adopting one. The text of such a policy could be modelled on the following example:

[Company name] is committed to conducting business in a socially responsible manner. This includes the recognition that we have a responsibility towards ensuring that slavery and trafficking do not occur in our supply chain. We seek to operate in compliance with all applicable national laws wherever we do business, and to respect and support international principles aimed at preventing and eradicating trafficking and slavery, as described in the 2000 United Nations "Palermo Protocol" and the 1926 Slavery Convention.

Step 3: Incorporate your policy statement in your company's disclosure web page.

Note: Simply adopting a policy without doing so through a genuine internal process of discussion and

putting in place all the required measures to ensure implementation, will only expose your company to potential increased risk. Your stakeholders will know when a policy is just a piece of paper or is a genuine expression of your company's commitment, supported by safeguard and implementation systems.

2. Description of company's efforts to eradicate slavery and trafficking from its supply chain, including how it:

- ▶ Uses third-party verification to evaluate and address human trafficking and slavery risks in product supply chains;
- ▶ Conducts independent, unannounced audits of suppliers to ensure compliance with company standards on trafficking and slavery;
- ▶ Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business;
- ▶ Maintains internal accountability for employees and contractors failing to meet company standards on slavery and trafficking; and
- ▶ Provides training for those directly responsible for managing supply chains (company employees/ management) on mitigating risks of slavery and trafficking.

Step 1: Describe, for each of the five points mentioned above your company's efforts to eradicate slavery and trafficking from your supply chain.

Step 2: Include what role your company's affiliation with the FLA plays with respect to your company's efforts to eradicate slavery and trafficking from its supply chain. Depending on how you structure your disclosure web page, these references to your affiliation with the FLA could be based on the following examples:



a. In [year], our company joined the Fair Labor Association (FLA). The FLA is non-profit organization committed to protecting workers' rights and improving working conditions worldwide. It is a collaborative effort of colleges and universities, socially responsible companies and civil society organisations. The FLA holds affiliates accountable to its Workplace Code of Conduct—a global set of principles based on standards of the International Labor Organization outlining fair working conditions in factories around the world. The Code of Conduct outlines workplace standards and includes benchmarks on forced labor, hours of work, wages and benefits, health and safety, freedom of association, harassment or abuse, and others. To verify that affiliated companies and the factories they source from abide by this Code, the FLA has instituted a rigorous monitoring, remediation and verification system. The FLA accredits monitors to conduct unannounced assessments in factories supplying affiliated companies worldwide. Since 2002, the FLA has conducted approximately 1,300 unannounced assessments. One of the reasons why our company decided to join the FLA is the transparency it provides. Reports of all assessments on our company, including the corrective action plans developed and implemented, are posted at www.fairlabor.org.

b. When our company joined the FLA, we committed to developing a comprehensive system to verify working conditions throughout our supply chain. We set ourselves a target of developing this system within 3 years. We are currently in year two and have, so far, achieved the following targets: ...

c. In [year], the FLA accredited [Company name]'s compliance program, including its internal monitoring system. This means that the FLA considers our system to be in substantial compliance with FLA requirements, including ...

d. In addition to the factory visits that we undertake or commission ourselves, a certain percentage of the factories we source from are subject to external, independent monitoring visits by the FLA. These visits are unannounced and the results of the audits are published on the FLA website. Connected with each

monitoring event is the development of a remediation plan, which the FLA subsequently tracks to ensure implementation.

Step 3: Incorporate the descriptions developed into your company's disclosure web page.

3. Describe how your company has undertaken special activities (e.g., participation in projects or special programs) that are directly or indirectly related to eradicating trafficking and slavery.

Step 1: Verify whether any of the special activities your company has undertaken relate to trafficking and/or slavery (projects in countries from which you source, volunteer work undertaken by your staff within the company's volunteer program).

Step 2: Verify whether your company has participated in any relevant special activity organised by the FLA. This could be training, a pilot project, etc.

Step 3: Develop a description of the special activity.

Step 4: Incorporate the descriptions of the special activities into your company's disclosure web page.

4. Provide information as to how consumers and other stakeholders can contact your company to obtain more information about your efforts to eradicate slavery and trafficking from your supply chain.

Step 1: Determine where stakeholders can best obtain information from your company concerning its efforts to eradicate slavery and trafficking from its supply chain.

Step 2: Develop a clear chain of responsibility as to how and who in your company will respond to any queries regarding its efforts to eradicate slavery and trafficking from its supply chain. Ensure all staff are aware of this chain of responsibility and their role in it.

Step 3: Incorporate relevant contact information in your company's disclosure web page.