



What's New in HR Law

A Practical Guide to Supply Chain Transparency

December 14, 2023 | By Rob Bayne

Bottom Line

On January 1, 2024, the Government of Canada will be imposing reporting obligations on certain companies as the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the “Act”) comes into force. The Act was introduced through Bill S-211 as part of the Government of Canada’s plan to hold certain companies accountable for forced labour and child labour in their supply chains.

The Act does not directly prohibit or penalize forced labour or child labour in the supply chain (though forced labour and child labour are prohibited across Canada by federal and provincial legislation). Instead, the Act imposes transparency and reporting requirements with respect to supply chain forced labour and child labour.

Who Has Supply Chain Forced Labour Transparency Obligations?

Only federal government institutions and businesses which produce, sell, distribute, or (for businesses), import goods into Canada, or companies that control businesses which engage in any of these activities must submit a report. This criteria is likely met even if the production, selling, distributing, or importing of goods is secondary to the company’s main business. Further, the Act does not define what is meant by “producing,” “distributing,” or even “goods.” Companies should consult with counsel to determine if their businesses would be captured by this criterion.

This article is for the purposes of only general information and does not constitute legal advice or opinion.

If a business produces, sells, distributes, or imports goods into Canada, or controls a business which engages in any of these activities, the business must submit a report if it meets any of the three following criteria:

1. A business must submit a report if it is listed on a stock exchange in Canada.
2. A business must also submit a report if it has a place of business in Canada, does business in Canada, or has assets in Canada, and also meets at least two of the three following criteria in at least one of its two most recent financial years:
 - having at least \$20 million in assets
 - generating at least \$40 million in revenue
 - employing an average of at least 250 employees

These asset, revenue, and employee criteria are likely to be assessed globally (*i.e.*, global revenue, not Canadian revenue, *etc.*). This criterion may even capture international businesses with Canadian subsidiaries such that the parent company would be obligated to report on its global supply chain.

3. The Government of Canada may also prescribe certain businesses or classes of businesses to have the same supply chain forced labour and child labour reporting requirements.

The Report

The *Act* requires the covered businesses and government entities to submit a report on forced labour and child labour risks in their supply chains to the Minister of Public Safety and Emergency (the “Minister”) by **May 31** of each year. The first report must therefore be submitted by **May 31, 2024**. If the business is incorporated under the *Canada Business Corporations Act*, it will also be required to provide the report to each of its shareholders. Every covered entity must also post the report on its website.

A report must be approved by a business’ governing body. There are no requirements as to the length or format of the report, but it must include the following information:

- the business’ structure, activities, and supply chains
- the business’ policies and due diligence processes regarding forced labour and child labour
- parts of the supply chain with a risk of forced labour or child labour
- the steps taken by the entity to assess and manage those risks
- any remedial actions taken to prevent forced labour or child labour, or to mitigate the loss of income to families who may be vulnerable to the elimination of forced labour or child labour
- what employee training is provided on forced labour or child labour
- how the business assesses its effectiveness in taking measures against forced labour and child labour

The above information is broad. Accordingly, a business should err on the side of over-inclusiveness in deciding what to include in the report to avoid any liability.

Liability and Enforcement

Entities who are not in compliance with the *Act* may be subject to various penalties.

As noted above, the *Act* does not directly penalize the existence of forced labour or child labour in the supply chain (although other federal and provincial laws prohibit and penalize the direct use of forced labour or child labour). The *Act* does not obligate a business to actively investigate or intervene in forced labour or child labour in their supply chains if it is found. Penalties do apply for failure to comply with the reporting requirements, including for making false or misleading statements in the report.

First, the Ministry may require the entity to take *any* measure the Minister deems necessary to ensure compliance. The Minister can also designate persons under the *Act* to take various steps to enforce compliance, including accessing company data, copying data, and taking pictures or videos of the workplace. The designated person may do this without a warrant, and the company must assist the designated person in performing their duties.

Failure to comply with the reporting provisions or with an order of the Minister, or obstruction or failure to assist the Minister's designated inspector is a summary offence punishable by a fine of up to \$250,000.

Most importantly, providing false or misleading information to the Minister or a designated inspector is also a summary offence punishable by a fine of up to \$250,000. Directors, officers, and agents of the company can also be charged with this offence. Because a report is provided to the Minister, companies and their officers can also be charged for providing false or misleading information in a report.

With that being said, a company may still face penalty from another regulatory body if it is discovered that they are directly or indirectly using forced labour or child labour in their supply chains. Persons designated under the *Act* have broad powers to access company documents and correspondence in order to ensure compliance. Further, because the report must be publicly posted online, even if a company complies with the reporting requirements, any forced labour or child labour in its supply chain will become public knowledge, as will the company's efforts to prevent that forced labour or child labour (or lack thereof).

A discovery of potential illicit labour practices in the supply chain may lead to a broader investigation into the company's practices and increased public inquiry. Intense public scrutiny can have major impacts on a company's business, including risks of boycott and divestment campaigns. Mere compliance with the reporting requirement will not necessarily prevent reputational damage.

It is therefore important for businesses to develop and implement a supply chain compliance and audit system, implementing due diligence measures to prevent forced labour and child labour in their supply chains.

International Compliance

Companies with operations in various international markets should be aware of similar legislation governing those jurisdictions. The following are jurisdictions with modern slavery legislation that impose reporting requirements similar to those in the *Act* or include substantive due diligence obligations with respect to supply chain forced labour or child labour.

- **Australia:** The [Modern Slavery Act 2018](#) requires entities based in, or operating in, Australia, which have an annual consolidated revenue of more than \$100 million to submit a yearly report on the risks of modern slavery in their supply chains. Reports are due within the six (6) months after the end of the reporting entity's year end.
 - **Enforcement:** The legislation does not list penalties for non-compliance, but a [recent Australian Government statutory review](#) suggested the addition of civil penalties for

companies who fail to report without reasonable excuse, as well as expansion of the law to require substantive due diligence obligations.

- **The European Union:** as of January 1, 2024, the [Corporate Sustainability Reporting Directive](#) (the “Directive”) will require European companies with over 250 employees who have a €40 million turnover to disclose in a public report information on the way they operate and manage social and environmental risks in their businesses, including in the supply chain, which explicitly includes risks of forced labour. Non-EU companies with over €150 million annual turnover in the EU market will also have to abide by the Directive’s rules.
 - **Enforcement:** Penalties for non-compliance with the Directive will depend on each EU member state’s implementation of the Directive.
- **EU - France:** The French [Loi de Vigilance](#) was the first legislation to adopt a due diligence approach to corporate accountability for the use of slavery in global supply chains. It obligates companies to take measures to identify *and* prevent human rights abuses in their supply chains. Companies captured by the legislation are those established in France who have at least 5,000 employees in the company and its French-based subsidiaries, or foreign-based companies operating in France which have at least 10,000 employees in the company and its subsidiaries.
 - **Enforcement:** While initially passed with fines for violation, the French Constitutional Council [found the fines unconstitutional](#). The law also creates a civil action which can be brought by an affected person for damages caused by breach of the duty to effectively implement a vigilance plan, which was found constitutional in the same decision.
- **EU - Germany:** As of January 1, 2023, the [Act on Corporate Due Diligence Obligations in Supply Chains](#) applies to companies with more than 3,000 employees in Germany (including, for German companies, employees posted outside of Germany). As of January 1, 2024, the threshold of employees will be reduced to 1000. Germany’s legislation has reporting obligations as well as due diligence mechanisms which require companies to take appropriate action to minimize human rights violations in their supply chains, including forced labour and child labour. Companies are also required to remediate human rights violations in their supply chains. The report must be submitted and published on the enterprise’s website no later than four (4) months after the end of the financial year (although the enforcing federal office has indicated it may show leniency for the first reports which are otherwise due at the end of April, 2024).
 - **Enforcement:** The law includes extremely heavy penalties for violations, depending on the nature and gravity of the violation, up to 2% of global revenue for the largest companies. Additionally, the law creates a civil action which trade unions and NGOs can bring on behalf of persons affected by violations of the law.
- **EU - Netherlands:** The [Child Labor Duty of Care Act](#) imposes a duty on all Dutch companies selling or delivering goods or services to Dutch end-users (including online sales) to submit a report and investigate suspicions of goods supplied by child labour. If there is reasonable suspicion of child labour, the law imposes a due diligence requirement.

The Netherlands recently introduced a broader draft *Act on Responsible and Sustainable International Business* which would, if passed, impose a duty of care on Dutch companies engaged in international trade and on foreign companies in the Dutch market to prevent adverse effects of human rights violations, including forced labour. It would also impose a specific due diligence requirement on larger Dutch companies engaged in foreign trade with respect to supply chain

human rights, including forced labour. Amendments continue to be made to the draft bill, including as recent as November, 2023.

- **Enforcement:** The Netherlands imposes fines of up to €870,000 in the event that a company fails to execute a plan of action to combat child labour in their supply chains. Where a company is non-compliant in submitting their report, they can be fined between €4,350 and €8,700. The proposed forced labour act would, if passed, also be enforced with fines.
- **Norway:** The [Norwegian Transparency Act](#) applies to large companies (meeting certain revenue, balance sheet, and employment thresholds) that reside in Norway and offer goods or services in or outside Norway and to large enterprises that are liable for taxes in Norway pursuant to internal Norwegian laws. The statute requires these companies to report and undertake human rights due diligence to address slavery in their supply chains. The annual deadline for filing a report is June 30 of each year.
 - **Enforcement:** Companies who are not in compliance with the statute will be subject to an individual decision by the Consumer Authority and the Market Council.
- **Switzerland:** The Swiss [Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour](#) imposes due diligence and reporting requirements with respect to child labour on Swiss companies that meet certain scale requirements (with respect to balance sheet totals, sales revenue, and employee numbers) and operate in countries with child labour risks. Further, Articles 964(a-c) of the Swiss [Code of Obligations](#) imposes broad supply chain human rights reporting requirements, including with respect to forced labour, on large Swiss companies of public interest (again, determined with respect to balance sheet total, sales revenue, and employee numbers).
 - **Enforcement:** Intentional failure to comply with the reporting requirements is punishable by a fine of up to 100,000 CHF. Negligent failure is punishable by a fine of up to 50,000 CHF.
- **The United States - California:** The California legislature enacted the [Transparency in Supply Chains Act](#) to hold businesses accountable for goods produced using forced labour. Retailers and manufacturers doing business in the State of California with an annual revenue in excess of US\$100 million must make a public report disclosing the extent of their efforts in combatting modern slavery. The report must be submitted by November 30 of each year.
 - **Enforcement:** The Attorney General of California may bring an injunction to force companies to comply with the legislation. This does not limit any other remedies available to the Attorney General if there is a violation of any other state or federal law, however there are no penalties specifically for non-compliance with the legislation.
- **United Kingdom:** The [Modern Slavery Act 2015](#) applies to every organization carrying on business in the UK with a total annual turnover of £36 million. Such organizations must produce a slavery and human trafficking report for each financial year.
 - **Enforcement:** A company who fails to produce a report may be compelled to do so by the Secretary of State through an injunction.
- **New Zealand:** The New Zealand's government [recently announced](#) its plans to introduce a new modern slavery legislation that would require organizations to report on worker exploitation in their supply chains. While the law has not yet been introduced, it will reportedly have a NZ\$20

million revenue threshold for reporting companies. The announcement follows a public consultation report which proposed implementing due diligence obligations on larger organizations.

- **Enforcement:** The Government of New Zealand announced that it would implement financial penalties for non-compliance.

Filion Wakely Thorup Angeletti is founding an international working group on supply chain forced labour issues with its partners at L&E Global, through which we will be able to provide information and assistance on international compliance.

Compliance Checklist

The following is a checklist of steps a business can take to ensure compliance with the reporting requirements of the *Act*, demonstrate due diligence, and mitigate the reputational damage by a report of forced labour or child labour in a supply chain:

Determine scope of audit. The *Act* does not specify the scope of investigations into supply chains for risks of forced labour and child labour, only that businesses accurately report how they did so. Businesses should weigh the costs of a more intensive risk assessment against the potential public relations risks of reporting that a more limited assessment was done. If the supply chain risk assessment is limited in scope, those limitations on scope should be clearly set out in the report.

Carefully assess the risk—by country. Businesses should assess risks of forced labour and child labour in their supply chain by looking to the country or geographical area from where they source their labour. Some countries carry greater risks of forced labour or child labour. Businesses should look to whether the relevant jurisdiction has adopted international human rights and labour conventions and standards and the enforcement mechanisms applied.

Carefully assess the risk—by business partner. It is also a good practice for entities to know with whom they are partnering. Confirming that a business partner has the proper structures in place to comply with domestic and international labour standards can go a long way in mitigating any indirect participation in forced labour or child labour. Similarly, businesses should ensure that their direct business partners inform them of any and all sub-contracting, and of any and all suppliers, so that the business can make the same risk assessment with respect to those sub-contractors and suppliers. Where operationally practical, suppliers ought to be contractually prohibited from sub-contracting.

Audit, audit, audit. Implementing routine audits of supply chain sources can help to identify risks as soon as possible. The sooner the risk is addressed, the easier it will be to mitigate any related liability.

Identify a reporting mechanism. Having a clear and efficient reporting mechanism can support employees in identifying possible risks throughout the supply chain. Businesses should also train employees on what the risks are and how to identify them.

Create policies. Incorporating comprehensive policies on ethical supply chain management can further assist employees in identifying forced labour or child labour risks down the line.

Create contractual obligations. Businesses can reduce the risk of forced labour and child labour in their supply chain by including contractual obligations with respect to forced labour and child labour. These contractual obligations can include the reporting mechanisms mentioned above, as well as an obligation for the business partner to have and enforce policies with respect to forced labour and child labour. Further, the contractual obligations could require the other party to include similar contractual obligations

in its own contracts with third parties, where the work in those contracts forms part of the supply chain. Finally, supply chain agreements should include the right to random periodic audits with a failure to fully cooperate constituting a fundamental breach of the agreement.

Cooperate with the Minister and designated persons. It is, of course, best practice to abide by the Minister's orders. Businesses should also be aware that they are obligated to assist a designated person who is exercising their broad powers to investigate a company's workplace for relevant documents and communications. Nobody is allowed to obstruct or hinder the designated person performing their duties under the *Act*.

Need More Information?

For more information or assistance with supply chain labour issues, contact Robert Bayne or your regular lawyer at the firm.

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