

ESG Essentials: What You Need To Know Now

Episode 3 – Human Rights and Human Trafficking (Part 1)

Welcome to ESG Essentials: “What You Need To Know Now,” a podcast from your friends at Fox Rothschild. I'm your host, David Colvin, co-chair of the firm's Environmental, Social and Governance Practice Group.

Our series of short and content-rich podcasts cover core ESG concepts and explore important issues for businesses that are grappling with increased attention to corporate responsibility and increased scrutiny from regulators, investors and customers regarding their environmental and social impact.

For those who don't know, January is National Slavery and Human Trafficking Prevention Month, so for this episode, we'll be discussing the important topic of human rights and human trafficking.

This episode will be in two parts. In part one, we'll talk about what human trafficking and modern slavery are and why they matter. And in part two, we'll talk about what industries are at risk of human trafficking and the steps that companies can take to avoid that risk.

For part one, I'm really pleased to welcome my partner in Philadelphia, Kelley Hodge. Kelley is a partner in Fox's Labor and Employment Group, where she focuses on a wide variety of employment issues. She's also the former District Attorney of the City of Philadelphia and was the first African American female to lead the Philadelphia DA's office in its 167-year history. During her time as a prosecutor, Kelley routinely handled cases involving victims of modern slavery and human trafficking. She's also an inaugural member of the Board of Advisers to the Villanova Law School Institute to Address Commercial Sexual Exploitation, known as Villanova's CSE. That's an institute that educates and provides technical assistance to legislators and other stakeholders to address and improve legal responses to commercial sexual exploitation. So, with that intro, welcome to the podcast, Kelley.

Hodge: David, thanks so much for the welcome. It's a pleasure to be with you and to be speaking on this topic with you this afternoon.

Colvin: Can you explain what human trafficking and modern slavery are?

Hodge: Yes. The term human trafficking has also been used along with modern day slavery. The United States federal government uses the term “Trafficking in Persons,” or TIP. All three of those terms have been used interchangeably, and they are umbrella terms that refer to both sex and labor trafficking. So, modern slavery is a broad term that encompasses slavery, servitude, force and compulsory labor and the trafficking of persons. That trafficking piece — to kind of give you a little bit more info as to really what that means — it involves recruitment, transportation, transfer or harboring a receipt of a person, be it a man, a woman or a child, for the purposes of exploiting them. Basically, it's widespread abuse that is affecting not just within the United States itself, but also between countries. As countries are trying to facilitate trade and facilitate the marketing of goods and services, this subject matter has become front and center to a lot of conversation.

That's why I'm very glad we're having this one today because I think that there's still quite a bit that is unknown about it. There are many people who are victims of human trafficking. What needs to be highlighted and underscored throughout this conversation is that human trafficking is a heinous crime, and it is happening all around us. It can't be said enough that the victims of this are not just men and women, but children. At least 30% of the victims are children, and maybe more, considering that there are probably those who we just don't even know are being subject to the forced labor, sexual exploitation and other forms of abuse. So, what the United States government is looking to do, as well as internationally, what other countries around the globe are looking to do, is to really address the subject of human trafficking head on.

Colvin: Can you talk a little bit about how human trafficking impacts businesses? In particular, why do businesses need to care about this important issue? Why they can't just look at it as somebody else's problem and a problem, perhaps that they don't think actually impacts them?

Hodge: Yes, the businesses need to be keenly aware of this particular issue on a two-fold level. Primarily, I'll say, on the forefront, the humanistic side, just the need to assist people who are forced into this labor trafficking world, that obviously is slavery. They don't want and are not looking to be a part of it, and they are being abused and treated in a way that is criminal. So, that is the humanistic side of it.

On the other side of it, in addition to the humanistic side and just caring about individuals and wanting them to be safe and secure, it's the component that for businesses impacts finances and it impacts revenue. When you are receiving goods and services that may have been created or are a result of individuals who have been forced into doing the work as forced labor or slavery, that is something that now governments across the world are actually looking at and saying, "We're going to hold you accountable."

The government is looking at these components that all give indications that trafficking may be taking place. They're looking to make sure that they treat — meaning prosecute and address — those who are traffickers. And in addressing those who are trafficking, if they are a source of revenue for a business, then that source is obviously going to be extinguished, as it should. So, what businesses need to recognize and realize is that on the front end, it's something that, humanistically, we should be caring about because we should not want anyone to be trafficked in this country or in the world. But when that does happen, they need to understand that the government is looking to take steps to hold entities accountable for that.

I know that companies, when asked the question, "Do you know or are you aware of human trafficking taking place within your supply chain?" 71% of companies believe that there is a likelihood of modern slave slavery occurring at some stage in their supply chains. They also recognize that it's a complex, hidden and challenging issue, and it's hard to address why they feel that there's a high likelihood of modern slavery occurring at various stages of their supply chain, particularly in high-risk countries or sectors. The question is, what can they do, and what must they do, to address in order to make sure that they are not within their company, somehow supporting or receiving benefits from entities that have young people, children, adults, men and women engaged in forced servitude.

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Colvin: Okay, so apart from the fact that I think we all can agree that simply addressing the issue, acknowledging that it exists and taking steps to address it and caring about addressing the issue, eradicating the problem is the right thing to do. So, we start from that very simple concept. But companies really need to be thinking about the regulatory and legal risk associated with having human trafficking within their supply chain or within their company as a whole. So, that's one risk. I think businesses need to be thinking about it in ways that it does apply to them, because it does go on, typically behind closed doors, in the sense that they may not know what is going on and they need to do some diligence to understand if it is actually an issue that affects them. But then there's also the reputational harm that comes along with being a company that's been identified as associated with human trafficking and modern slavery. Could you discuss a little bit about how you see the reputational risks as well?

Hodge: Of course. That's definitely a very important point to underscore. Companies know, and this has been highlighted, that the reputational risk is the biggest driver for change for many. While other factors are significant, the risk to our reputation and how one's reputation can be tarnished — at minimum, if not almost dismantled at a maximum — is what companies need to keep in mind. Companies must recognize and acknowledge that the need to try to maintain a positive reputation in the marketplace, with the great level of competition that exists, it's incumbent upon them to make sure that they look to drive solutions internally as well as acknowledge those things that are in place, particularly in federal legislation, that are seen as a check on this type of behavior. Both should be serving as impetus to change, but the reputational risk is huge. When one does have a reputation that has been, in essence, dismantled by their company being associated with an entity that has engaged in forced labor trafficking or trafficking of another sort, that is something that may be difficult, if not impossible, to overcome.

Colvin: I think many folks, when they think about this issue, Kelley, they think about it as being an issue that exists predominantly outside of the borders of the United States. Your experience, both as a prosecutor and as a practicing lawyer, suggests clearly otherwise, right? It is very much an issue that is pervasive outside the United States, but it's an issue that exists within our own borders as well. So, for a U.S. company that is thinking about — or putting together, or refining, at whatever stage they may be — an ESG profile, what would you say to be more specific to these companies that want to make human trafficking and modern slavery a tenet of that ESG profile?

Hodge: I will say two things. One, they need to be aware of the federal legislation that governs this type of behavior and the crime that is associated with human trafficking. So, they need to be aware of, for example, the Trade Facilitation and Trade Enforcement Act of 2015, which allowed stiffer enforcement by U.S. Customs and Border Protection Agency of supply chains of goods made by child or forced labor. The National Defense Authorization Act of 2013 requires a written certification for all grants and contracts over \$500,000 that no party involved will engage in or support human trafficking. It allows governmental agencies the ability to terminate without penalty any contract or grant with any organization or individual that engages in human trafficking. The Protect Act, which is the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today, of 2003. RICO, which is another tool that has been and will continue to be used. The Custom in Facilitations and Trade Enforcement Act of 2009. And then the Trafficking Victims Protection Reauthorization Act, which has been reauthorized a

number of years but since 2003 through to date. Those are all examples of federal legislation and regulations that surround this particular subject matter.

I will also add, it has to start at the top with the leadership internally within the company. Unless the leadership educates themselves, and is willing to educate themselves, or is aware of what they do to be not only compliant, but also proactive and preventative, making conscious decisions when they're looking to engage in new business and engage with new partners and engage with subcontractors. Leadership needs to make the demands on others within the company that yes, this is happening in America. It's not an overseas thing. It's not limited to being outside of our borders and isn't happening here. It is happening here. It is happening overseas. What you need to be cognizant of as the leadership within the organization is that you're the one who's going to drive the reputation, the tone, the tenor and the compliance with what needs to be done in order to make sure that you as an entity are not supporting or benefiting from forced labor.

Colvin: Well, Kelley, let me thank you very much for what I think was a really helpful and useful and informative discussion on human trafficking and modern slavery. What it really is and why it really should matter to companies not just outside the U.S., but to those companies here within the United States. I appreciate you being with us today.

Hodge: It is my pleasure, David. Thank you for inviting me. I enjoyed speaking about this with you. I absolutely hope that it has benefited or will benefit those who hear us today in terms of what they can consider and think about with this very important subject matter. So, thank you again.

Colvin: Absolutely. Very much appreciated. And to all of our listeners out there, this is part one of a two-part podcast on this really important topic during the month of January. Please be on the lookout for the second part, where we'll talk about what industries are at risk of human trafficking and the steps that companies can and should take to avoid that risk. Thanks again for listening.