

## ESG Essentials: What You Need To Know Now

### Episode 3 – Human Rights and Human Trafficking (Part 2)

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

Our series of short, bite-sized podcasts covers core ESG concepts and explores important issues for businesses that are concerned with corporate responsibility, responding to increased scrutiny from regulators, investors and customers over their environmental and social impact and minimizing the potential legal and business risks associated with ESG.

For those who don't know, January is National Slavery and Human Trafficking Prevention Month. This episode is part two of our podcast on human rights and human trafficking, the first part being the what and the why in terms of what it is and why it matters. Today, we're going to be talking a little bit about human trafficking and human rights in terms of who's at risk and what steps companies should take to avoid the risk of human trafficking. And for that, we're pleased and proud to welcome my partner, Karen Davis, who's a member of our Environmental Practice Group. Karen advises clients on a variety of compliance issues, working to identify practical and creative solutions to complex challenges. As part of her work, Karen works with clients on designing and implementing ESG programs, which includes conducting diligence in acquisitions related to human rights policies and programs of target companies. Karen, we're pleased to have you with us today.

**Davis:** I'm pleased to be here, David.

**Colvin:** So, in picking up where we were in the last episode, we talked with Kelley Hodge about the what and the why of human rights and human trafficking; what it is and why it matters. Why don't you talk to us a little bit about which industries are most at risk for human trafficking?

**Davis:** Well, David, human trafficking is an issue for all industries, particularly those that have a complex and international supply chain. Despite its name, human trafficking does not require the relocation of people. Rather, human trafficking includes forced labor, child labor, as well as any kind of coercion, abduction, fraud or exploitation connected with labor. So really, it encompasses a wide range of activities that affect a large number of industries.

Just in terms of terminology, sometimes human trafficking is referred to as modern slavery, so I may use the term modern slavery as well in this podcast.

Sometimes, when people hear human trafficking or modern slavery, they think that it doesn't apply to them, that it doesn't apply to their company, or that it doesn't apply to their location. That it's just something else, somebody else's problem. But really, the statistics are pretty shocking. The U.S. State Department estimates that nearly 25 million people are the victims of human trafficking. And it exists throughout the United States. It exists globally. Human trafficking cases have been reported in all 50 states. So, it really is everywhere, and the Department of Labor has identified 155 different goods from

77 different countries that have been produced by child or forced labor. So again, this is a very wide-ranging problem.

A number of companies realize it's an issue in their supply chain. There was a study that was done by the Ethical Trading Initiative, and they found that 71% of the companies surveyed believe that there is a likelihood of modern slavery at some point in their supply chain. So, a lot of companies recognize that it's an issue, they're just not sure what to do about it. In terms of specific industries, the U.S. Customs and Border Protection has the authority to issue orders to stop the importation of goods if they have a reasonable basis to believe those goods were produced through forced labor. In 2020, they issued 13 of those orders across multiple industries, including agriculture, apparel, consumer goods, electronics and pharmaceuticals. So, it's a broad range of industries that need to be concerned about the potential for human trafficking. The good news is that studies have shown that many consumers are willing to pay a premium for ethically sourced goods.

**Colvin:** So, Karen, it sounds to me just based on the statistics that just about any industry with a supply chain that extends beyond the borders of the United States, and even to some extent within those borders, should be concerned and focused on the issue of human trafficking. As you said, 71%, I think was the statistic you gave, 71% of companies recognize this issue as being potentially relevant to their business, but they don't know what to do or they don't know how to address it.

So, Karen, what can you share — based on the work that you've done and what you've learned — about the steps that companies should take to avoid the risk that human trafficking is involved in the development and production of goods that they rely on in their business?

**Davis:** Well, David, I think the first thing companies want to do is they want to determine if there are any laws or regulations that apply to them and comply with those laws and regulations. So, for example, in California they have the Transparency in Supply Chains Act, and that requires covered companies to disclose on the company website the efforts the company has undertaken to identify and combat human trafficking in their supply chains. There's also the UK Modern Slavery Act, and various other jurisdictions have similar laws. For companies that do work for the federal government, there's also the Federal Acquisition Regulations, known as FAR, that impose certain requirements related to the prevention of human trafficking. So, I think the first step is to evaluate the existing laws and regulations, determine if they apply to your company, and if so, put in place whatever is necessary to comply.

But then beyond compliance, as we've discussed in other podcasts, an effective ESG program is important to investors, to customers, to employees and to other stakeholders. Promoting human rights and preventing human trafficking is an important component of an effective ESG program. So, even if a company is not subject to one of the laws that are in place today, I think companies do want to establish an effective human rights program. And that would start with a policy statement from senior management. It's important that the message comes from the top, that there is clear senior management support for the program. The next thing to do is to conduct an assessment, and that can be done in-house. Or, there are various third-party analysts that are available that a company can hire to help a company identify areas in the company's supply chain and areas in the company's operations that pose a human trafficking risk. Once those areas have been identified, then you want to focus scrutiny

and resources in those areas. Like any other ESG program, you want to develop specific goals and key performance indicators, and then monitor and audit performance against those goals.

It's very important to communicate the company's requirements related to human rights and prevention of human trafficking to a wide range of stakeholders. So, you want to communicate what the company's expectations are to its employees, to its suppliers, to its business partners and other stakeholders. In the process of a company selecting its suppliers, the supplier's performance with respect to prevention of human trafficking should be one of the criteria against which it is judged. You could consider asking your suppliers to certify that they meet the company's requirements with respect to prevention of human trafficking. Something else that we generally recommend is that companies include those requirements in their contracts with their suppliers and business partners. So, that's one of the best ways to ensure that your partners and your suppliers are meeting your expectations with respect to prevention of human trafficking: Include that in the contract and make it enforceable.

Companies will also want to examine their own recruitment practices. Any kind of recruitment where recruitment fees are required to be paid by the employee, we generally want to prohibit those. What can happen there is the recruiters can charge the employee exorbitant fees and then they are just working to pay back those fees over time. So, you want to take a close look at recruitment practices of both your company and the recruitment practices of your suppliers. It's important to have a dialogue, a dialogue with a wide range of stakeholders, because that's how you're going to get information on how things are working and where the company has vulnerabilities. One aspect of that dialogue is, it's important to have grievance mechanisms, including a mechanism where individuals can report concerns anonymously. If there are issues out there, either in the company or its supply chain, those issues can be identified and reported and brought to the attention of company management so that they can be properly addressed, and measures can be put in place to prevent further issues. So, that's a lot to cover in a short period of time, but that's basically an overview of what companies should do to try to get their arms around human rights and prevention of human trafficking.

**Colvin:** Well, Karen, let me thank you very much for what I think was a really helpful and valuable and most importantly, timely, discussion regarding the industries that are at risk of human trafficking and the steps that companies can — and really should — take to avoid the risk of human trafficking in their supply chain and then also to develop a solid internal human rights program. So, thank you for sharing that with us today. We're very, very much appreciative.

**Davis:** And I'll add, David, that I think going forward, we're probably going to see more of this, more demands from stakeholders and greater regulation. So, I think companies that work now to either develop a program or enhance their existing program will be well-positioned in the future to meet those greater demands.

**Colvin:** Could not agree more. Could not agree more. So, thank you again, Karen. We appreciate you being here. And to all of our listeners, thank you for checking back in. Please do check back regularly for the next episode of "ESG Essentials: What You Need to Know Now." As always, please feel free to reach out to me directly with any questions.