

July 19, 2011

Dear Retail Clients and Friends,

Earlier this year, California enacted a new law called the “Transparency in Supply Chains Act.” The law requires certain retailers to disclose their efforts to eradicate slavery and human trafficking from their supply chains. This edition of ***Morgan Lewis Retail Did You Know?*** describes the law and its application.

Background

Over the past few decades, many retailers have faced considerable scrutiny with regard to human rights issues in their supply chains. The sourcing of materials and consumer products from developing countries frequently raises questions about the labor standards and worker protections applicable in those areas of the world. At times, these concerns have been expressed in the form of legislation. For instance, the Victims of Trafficking and Violence Protection Act, passed by Congress in 2000, established the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons, a cabinet-level task force to coordinate federal efforts to combat human trafficking. In February of this year, California enacted the “Transparency in Supply Chains Act.”

The Law

The “Transparency in Supply Chains Act” goes into effect on January 1, 2012. It applies to any company that is in the “retail trade” that has annual worldwide gross receipts in excess of \$100 million and annual California sales exceeding \$500,000.

It requires a **disclosure** of the company’s efforts, if any, to eradicate slavery and human trafficking from its supply chain. Specifically, the disclosure must indicate the extent to which the retailer does the following:

- Verifies supply chains, including whether verification is performed by a third party
- Conducts audits of suppliers, including disclosure as to whether the audits are announced or unannounced
- Requires certification by suppliers that materials comply with applicable laws
- Maintains internal accountability standards and procedures
- Provides training to those employees with direct responsibility for supply chain management

The law requires that the disclosure be posted on the company’s Internet homepage with a “conspicuous and easily understood link.” By its terms, the law is enforceable only through injunctive relief sought by the California Attorney General, although there may be misguided efforts to use it in private actions anyway. Each year the California Franchise Tax Board will give the Attorney General a list of companies required to make the disclosure.

Practical Advice

The law only requires disclosure. It does not mandate any efforts or particular certifications. It simply requires notice regarding the efforts that a retailer is currently undertaking. A retailer could, for example, disclose that it is not making any such efforts. Although that might have some reputational risk, it would be in compliance with the law. Because many of the retailers affected by the law are already addressing this issue, compliance will often involve identifying and summarizing the efforts a retailer is already taking.

How We Can Help

Morgan Lewis can assist with an analysis of a retailer's supply chain practices and development of disclosures that comply with this new California law. We can leverage our retail industry know-how as well as the experience of the attorneys in the firm's dedicated Global Outsourcing Practice and its many international offices in a way that provides our clients with cost-effective and cutting-edge counsel.

If we can be of assistance to you in these matters, please feel free to get in touch with your Morgan Lewis contact or any of our Retail Practice leaders:

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These individuals are part of our international Retail Practice. Attorneys from our 22 offices regularly represent national, regional, and local retailers in a broad array of subject matters including litigation, labor and employment, real estate, tax, transactional, and regulatory.

About *Morgan Lewis Retail Did You Know?* This message is part of our effort to educate our retail clients and friends about important legal developments. One thing we hear frequently from our retail clients is that it is hard to keep track of new and emerging laws and lawsuit trends that affect retailers. All too frequently, the first notice comes in the form of a lawsuit seeking millions of dollars. To help you be more proactive in managing legal compliance, we are providing these emails.

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