

Sarah A. Altschuller  
Counsel  
Corporate Social Responsibility Practice  
Foley Hoag LLP  
1717 K Street, NW  
Washington, DC 20006  
(202) 261-7387  
saltschuller@foleyhoag.com  
[www.csrandthelaw.com](http://www.csrandthelaw.com)

## **HUMAN TRAFFICKING: LEGAL RISKS AND COMPLIANCE CHALLENGES FOR IN-HOUSE COUNSEL AND THEIR ADVISORS**

As in-house counsel in the hospitality industry, you have responsibility for ensuring compliance with existing laws and regulations, for managing litigation-related risks, and for understanding trends in the law in order to prepare for future compliance challenges.

Each of these responsibilities requires you to assess the risks of human trafficking in connection with your company's business operations. Trafficking activity in connection with a hotel property could include both sex trafficking and labor trafficking.<sup>1</sup> Notably, from 2007 to 2015, 1,434 cases of trafficking were reported at hotels and motels in the United States, with 92% of these cases involving sex trafficking and 5% involving labor trafficking.<sup>2</sup>

These statistics may feel far removed from your day-to-day responsibilities, until you imagine being on the receiving end of two potential phone calls:

- Phone Call No. 1: A member of your company's Board of Directors is calling because she has seen a front-page news story regarding trafficking activity at several prominent hotel chains. She wants to know what your company is doing to manage human trafficking-related risks.
- Phone Call No. 2: The General Manager of one of your hotel properties is calling to inform you that local police are on the premises investigating allegations of trafficking activity. Members of the media are also on the premises.

---

<sup>1</sup> Trafficking involves the exercise of coercive control over persons for the purpose of exploitation. Hotels may be linked to trafficking activity in multiple ways. Individuals involved in sex trafficking may use hotel premises in conducting their activities. Labor trafficking may occur when employees are hired through labor recruiter over which the hotel exercises limited oversight or when hotel suppliers or subcontractors engage in unethical recruitment and hiring practices.

<sup>2</sup> Polaris, Human Trafficking and the Hotel Industry, available at <https://polarisproject.org/sites/default/files/human-trafficking-hotel-industry-recommendations.pdf>.

Are you prepared to respond to either, or both, of these phone calls? In considering your capacity to respond, you should consider the questions below:

- Does your company have a policy that clearly prohibits both sex and labor trafficking?
- Have your company conducted an assessment to determine which parts of the business may be at greater risk for trafficking activity?
- Which people within the company are engaged in activities relevant to the management of trafficking-related risks? Do you understand the potential role(s) of the following functions in addressing these risks: legal, human resources, security, corporate social responsibility, and vendor compliance?
- Do employees and managers at the company's hotel properties receive training on how to identify signs of trafficking activity?
- Are there clear reporting procedures for employees and managers to follow if they do see indications that trafficking activity may be occurring at one of the company's properties? What is the company's response plan if trafficking activity is suspected?

You should consider these questions carefully as you consider how best to address the legal, reputational, and operational risks posed to your company's operations by potential human trafficking activity.

### **New Requirements and Expectations**

In considering the importance of developing strong anti-trafficking policies and procedures, you should assess compliance requirements and legal risks with regard to human trafficking. Legislators and policymakers in the United States, and around the world, are increasingly enacting new anti-trafficking requirements applicable to business. Examples of recent legal developments include:

- In 2016, the State of Connecticut adopted legislation (Conn. Public Act No. 16-71) that requires hotels to provide training to all new employees with regard to the signs of human trafficking. The law also requires hotels to maintain records of their guests' receipts and transactions for six months in order to facilitate investigations into trafficking activities. Other states, including New York, are considering similar legislation.
- In 2014, the State of Pennsylvania adopted legislation (18 Pa. C.S. § 3051) strengthening its protections against sex trafficking, including by establishing a civil cause of action for

victims to seek compensatory and punitive damages from those who profit from trafficking activity.<sup>3</sup>

- In 2013, the State of New Jersey adopted legislation (N.J. P.L. 2013, Ch. 51) that requires hotels to provide employees with a training course on the handling of suspected human trafficking activities. Completion of the training course is a condition for the issuance of permits and licenses for hotels operating in the state.
- In 2015, the United Kingdom enacted the Modern Slavery Act. Pursuant to the legislation, companies that do business in the United Kingdom, and that have annual gross worldwide revenues of £36 million or more, are required to publish an annual statement with regard to their efforts to ensure that their business operations are free from slavery and human trafficking.<sup>4</sup>

These legal developments reflect the emerging expectation of legislators and policymakers that hotels should be accountable for their efforts to manage human rights-related risks in connection with their business operations.<sup>5</sup> These requirements exist above and beyond legal risks based in common law tort.

As companies seek to address stakeholder concerns about human trafficking, it is important to note that the U.S. Congress is paying attention to the role of the private sector in addressing the problem. In July 2010, Rep. Christopher Smith (R-NJ) declared that “[t]he airline and hotel industries should be on the front lines of the fight” against human trafficking and Congress regularly holds hearings looking at private sector efforts to address trafficking-related concerns.<sup>6</sup>

As in-house counsel, you will need to assess the extent to which current risk management and compliance programs are sufficient to respond to trafficking-related

---

<sup>3</sup> In March 2017, the first civil suit under this new legislation was filed against a hotel in Pennsylvania. The plaintiff alleges that that hotel management had constructive or direct knowledge that sex trafficking activity was occurring on the property.

<sup>4</sup> Examples of Modern Slavery Act disclosures filed by hospitality industry companies include: Marriott Corporation, <https://www.marriott.co.uk/Multimedia/PDF/Home%20page/2016%20UK%20Human%20Trafficking%20Statement.pdf>; and InterContinental Hotels Group, <https://www.ihgplc.com/responsible-business/our-people/modern-slavery>.

<sup>5</sup> This expectation is set forth in the U.N. Guiding Principles on Business and Human Rights (the “U.N. Guiding Principles”), which were published in June 2011. The U.N. Guiding Principles state that companies should operate with “respect for human rights.” Noting the release of the U.N. Guiding Principles, the Organization for Economic Co-operation and Development (“OECD”) has observed that “[r]espect for human rights is the global standard of expected conduct for enterprises.”

<sup>6</sup> See, e.g., “Lessons Learned from Super Bowl Preparations: Preventing International Human Trafficking at Major Sporting Events,” House Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations (January 27, 2014); “Ending Modern Slavery: Building on Success,” Senate Committee on Foreign Relations (February 15, 2017).

concerns. You will need to assess internal oversight mechanisms to ensure that the correct people, in the right functional areas, are held accountable for following corporate policies and procedures.

In addressing the legal, reputational, and operational risks to your company associated with human trafficking, you are also seeking to prevent harm to potential trafficking victims. This is moral act and consistent with your ethical responsibilities as an attorney. American Bar Association (“ABA”) Model Rule of Professional Conduct 2.1 states that “[i]n rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.” Understanding and seeking to mitigate the potential links between your company’s operations and significant human rights harms is consistent with the guidance provided by Rule 2.1.

Notably, in 2012, the ABA House of Delegates adopted a resolution urging the legal community to include the expectations for business set forth in the U.N. Guiding Principles on Business and Human Rights (the “U.N. Guiding Principles”) as one of the “considerations” referenced in Rule 2.1.<sup>7</sup> The U.N. Guiding Principles explicitly call on companies to assess the human rights impacts that may be connected with their business operations and to seek to prevent or mitigate adverse impacts. Taking proactive action to assess and address the risks of human trafficking associated with hotel properties is one way that you, as in-house counsel, can ensure that your company is operating consistently with this expectation.

### **Practical Steps**

In this context, here are some practical steps to consider in evaluating and improving your company’s capacity to manage human trafficking-related risks:

#### **Assemble a Team**

- Convene a cross-functional team to discuss and oversee the company’s approach to trafficking-related risks.

#### **Review Applicable Compliance Requirements**

- Consider what trafficking-specific compliance requirements are applicable to the company based on the jurisdictions in which it operates.

---

<sup>7</sup> The U.N. Guiding Principles, *supra* note 5, state, at Principle 17, that “[i]n order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.” The Comment to Principle 17 observes that “[h]uman rights due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.”

- Is the company currently in compliance with these requirements? If not, what is the company's plan to ensure future compliance?
- Are appropriate personnel aware of relevant compliance requirements?

#### Assess Existing Policies, Codes, and Contracts

- Assess existing policies and codes of conduct for the company, its sub-contractors, and suppliers.
  - Ensure that both sex and labor trafficking are clearly prohibited.
  - Ensure that the company's expectations for sub-contractors and suppliers are clearly reflected in relevant contracts.

#### Conduct a Risk Assessment

- Evaluate the company's operations and identify the areas of greatest risk with regard to human trafficking. Consider how best to dedicate resources to address the findings of this risk assessment. As part of the assessment, consider the following questions:
  - Do certain hotel properties use labor recruiters?
  - Are certain properties in areas in which trafficking is prevalent?
  - At properties that the company does not manage directly, including franchised properties, what points of leverage does the company have to mitigate trafficking-related risks?

#### Consider Response Plans

- Review corporate response plans in the event that suspected trafficking activity is identified.
  - Who will be notified within the company? What procedures will be triggered through such notifications?
  - Which external stakeholders, including law enforcement, will be notified? By whom?

#### Evaluate Training Programs

- Evaluate corporate-wide and property-level training programs to ensure that they clearly set forth the company's policies and procedures with regard to human trafficking.
  - Make sure that hotel staff have appropriate training to be able to identify signs of trafficking activity and to report any concerns to appropriate management personnel.

### Consider Beneficial Partnerships

- At the corporate level, identify and engaging with relevant industry initiatives and other potential partners that can provide critical support for company training and risk assessment efforts.
  - For example, ECPAT-USA provides training to hotel companies on how to manage the risks of sex trafficking and encourages companies to sign The Code, a hospitality industry code of conduct intended to facilitate efforts to combat the sexual exploitation of children.<sup>8</sup>

### Engage with Property-Level Management

- Encourage property managers to form relationships and build alliances with local police, anti-trafficking organizations, and child welfare agencies.
- Make sure that information is available to guests regarding hotline numbers to report trafficking, as well as relevant trafficking laws and the penalties for engaging in such trafficking activity.

---

<sup>8</sup> The Code, short for “The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism,” is available here: <http://www.thecode.org/about/>.