

Human Trafficking: Legal Risks and Compliance Challenges for In-House Counsel and their Advisors

2017 HOSPITALITY
LAW CONFERENCE

APRIL 24 - 26



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- Harvard Law School, J.D., 2002



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Corporate Social Responsibility Practice

- Founded in 2000, Foley Hoag's Corporate Social Responsibility ("CSR") practice provides counsel on legal and reputational risk management.
- We provide advice on compliance with current and emerging legal and regulatory requirements as well as voluntary standards.
- Clients include companies in the hospitality, apparel, food and agriculture, extractive, information technology, financial services, and media and entertainment industries.



“Human trafficking is modern-day slavery and involves the use of force, fraud, or coercion to obtain some type of labor or commercial sex act.

Every year, millions of men, women, and children are trafficked in countries around the world, including the United States. It is estimated that human trafficking generates many billions of dollars of profit per year, second only to drug trafficking as the most profitable form of transnational crime.”

- U.S. Department of Homeland Security
“What is Human Trafficking?”

- A 2004 study funded by the U.S. Department of State estimated that between **600,000 --800,000 people** are trafficked across international borders every year.
- A 2016 study funded by the U.S. Department of Justice estimated that between **9,000 – 10,000** children are involved in the sex trade in the United States.
 - A 2008 study of prostitution in New York found that 44% of sexually exploited youth reported using hotels in the city.
- In 2016, the National Human Trafficking Hotline received **7,572** communications about trafficking in the United States. Of the **5,551** calls about sex trafficking, **584** were explicitly linked to a hotel/motel property. In 2015, the Hotline received **27** calls about labor trafficking in the U.S. hospitality industry.

Preparing to Respond to Hard Questions

- A member of the Board of Directors calls and asks what the company is doing to manage trafficking-related risks.
- The General Manager of one of your hotels calls, reporting that police are on the premises, investigating allegations of trafficking activity.



[California Legislature](#)

MARCH 31, 2017, 11:57 A.M.

To fight against human trafficking, this state senator wants to train motel employees to spot signs of abuse

NEWS

MAR 21 2017, 12:53 PM ET

Human Trafficking in Hotels: New York Lawmaker Teams Up With Advocate

SEX CRIMES

US authorities target hotels and motels in fight against sex trafficking



By **Cristina Corbin** · Published March 15, 2017 · FoxNews.com



Connections to Human Trafficking

- Traffickers may use a company's premises and/or services for trafficking activities.
- Employees may be hired through labor recruiters over which a company exercises limited oversight.
- Suppliers and/or sub-contractors may engage in unethical/illegal hiring and recruitment practices.

“No country and few industries are untouched...Traffickers use airlines to move their victims, [and] hotels to exploit sex trafficking victims.”

- Rep. Chris Smith (R-NJ),
June 2011

Legal Requirements Related to Trafficking

- 2016 – Connecticut adopts legislation requiring hotels to provide anti-trafficking training to all new employees. The law also requires hotels to maintain records of their guests' transactions for six months.
- 2014 – Pennsylvania adopts legislation establishing a civil cause of action for victims to seek compensatory and punitive damages from those who profit from trafficking activity.
- 2013 – New Jersey adopted legislation requiring hotels to provide employees with a training course on the handling of suspected trafficking activities.



U.K. Modern Slavery Act

- Went into effect in October 2015.
- Comprehensive anti-human trafficking legislation.
- Transparency provisions applicable to companies that do any part of their business in the United Kingdom if they have annual gross worldwide revenues of £36 million or more each year.

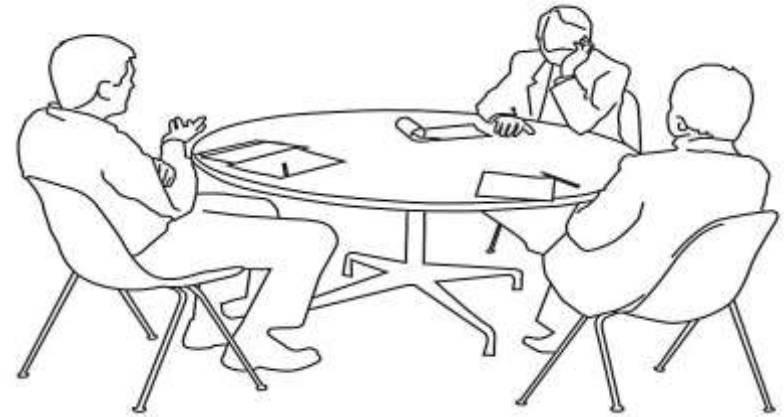


U.K. Modern Slavery Act – An Overview

- Companies subject to the Act are required to publish an annual “slavery and human trafficking statement.”
- The statement should reflect what efforts, if any, the company has made during the previous financial year to ensure that its business operations, and its supply chain, are free from slavery and human trafficking.
- Statement must be signed by a member of the Board of Directors or equivalent.



- Legal, reputational, and operational risks
- Potential links between a company's operations and human trafficking activities
- Obligation to prevent harm to trafficking victims, and to protect employees and other personnel from harm
- Capacity of the company to exercise leverage to mitigate the problem



Concerns Expressed by Companies

- Fear of legal liability
- Fear of associating brands with an uncomfortable topic
- Fear of upsetting customers
- Fear of engagement with advocates
- “This doesn’t happen in hotels like ours.”
- “This is only happening outside the United States.”



ABA Model Rule 2.1

- In 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.
- Comment 2 - It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

- **U.N. Guiding Principles on Business and Human Rights** (June 2011):
 - Companies have a duty to operate with respect for human rights.
 - The Guiding Principles are "not just another set of voluntary standards vying for attention in an increasingly crowded space" but rather represent "authoritative UN standards around which the articulated expectations of many public and private institutions have already converged."
- **OECD Guidelines for Multinational Enterprises** (revised 2011):
"Respect for human rights is the global standard of expected conduct for enterprises."

ABA's Endorsement of the Guiding Principles

- **ABA's Endorsement of the "Protect, Respect, Remedy" Framework on Business and Human Rights**, ABA House of Delegates Resolution 109, adopted 2012.
 - FURTHER RESOLVED, That the [ABA] urges governments, the private sector, and the legal community to integrate into their respective operations and practices the United Nations Framework and Guiding Principles and the OECD Guidelines.
- In the report supporting the proposed resolution, the ABA Human Rights Committee noted that the "considerations" referenced in ABA Model Rule 2.1 may include applicable international standards, making specific reference to the Guiding Principles where corporate clients are concerned.

■ 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.
 - Is the company currently in compliance with these requirements? If not, what is the company's plan to ensure future compliance?

■ 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.
- 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?



■ 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.

■ Engage with Property-Level Management

- Encourage property managers to form relationships and build alliances with local police, anti-trafficking organizations, and child welfare agencies.
- At the property level, 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.



Questions?

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