

BEYOND SB 657:

How Businesses Can Meet and Exceed California's Requirements to Prevent Forced Labor in Supply Chains

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ATEST Alliance To End Slavery & Trafficking
A Project Of Humanity United



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The Alliance to End Slavery and Trafficking (ATEST) is an alliance of U.S.-based organizations, acting with a shared agenda to end forced labor and human trafficking around the world. Member organizations individually reflect a range of perspectives within the anti-human trafficking community both on labor and sexual exploitation, in the United States and around the world. It is this diversity in perspective and expertise that makes the alliance unique and allows members to put forth and advocate for comprehensive solutions that address the needs of the individuals affected by this crime.

ATEST is committed to ensuring that the pioneering California Transparency in Supply Chains Act (SB 657) lives up to its potential as a catalyst for real, sustained changes in how companies prevent trafficking in their supply chains. We are particularly interested in promoting awareness and concrete action among consumers, advocates, government officials, and corporate leaders worldwide on how to transform their approach to supply chain procurement to prevent trafficking. We aim to highlight ways in which companies can move away from the prevailing model that involves little or no accountability for business processes that facilitate trafficking. Rather, they should adopt one that safeguards workers' rights and holds all supply chain actors accountable for recruitment, payment, and other business practices that lead to debt bondage and other forms of forced labor.

Under SB 657, enacted in 2010, as of January 1, 2012, retail sellers and manufacturers doing business in California and having \$100 million or more in annual worldwide gross receipts must comply with requirements to inform their consumers about what the company is doing to end human trafficking and slavery within their supply chains. In November 2012 the California Attorney General's Office was expected to receive a list of companies required to comply with this Act.¹ We estimate that approximately 3200 businesses will likely be required to comply.²

This document outlines ATEST's perspective on the major elements of disclosure required by SB 657 and highlights those policies and practices that we—and hopefully other stakeholders—will be looking for as companies post disclosures. In the coming months, ATEST will also be releasing results of on-going research on hundreds of company disclosures in order to demonstrate how the law is—and is not—leading to changes in corporate practice around trafficking.

- 1 ATEST urges the California Attorney General to release to the public the list of companies required to make a disclosure so that the public knows from which companies to expect disclosure statements. See ATEST's letter to the Attorney General outlining our position. http://endslaveryandtrafficking.org/research_resources/atest-urges-ca-franchise-tax-board-release-confidential-information-important
- 2 A company may be subject to the Act if the company is organized or commercially domiciled in California; sales of the company in California exceed the lesser of \$500,000 or 25% of total sales; real property and tangible personal property of the company in California exceed the lesser of \$50,000 or 25% of the taxpayer's total real property and tangible property; or the amount paid by the company in California for compensation exceeds the lesser of \$50,000 or 25% of total compensation paid. (K&L Gates, California Transparency in Supply Chains Act – First 90 Days)

Going Beyond SB 657

Current business efforts often focus on setting high-level standards for their supply chain without real emphasis on performance and impact. We find it unacceptable for companies to state a policy or standard against forced labor without taking meaningful action to implement changes to the status quo, under which companies can be clearly linked to various forms of forced labor and human trafficking. Companies must move beyond pronouncements about how they are against trafficking and take immediate and effective steps to implement anti-trafficking policies (e.g. through audits, management and internal accountability processes, training, partner-

ships, stakeholder engagement, public policy advocacy, worker empowerment, etc.) Furthermore, those steps must be backed by information about how companies measure the impact of their performance and descriptions of how they feed results and lessons learned back into future policy revision and implementation. In the sections below, we outline each of the requirements of SB 657 and comment on measures we expect companies to take to demonstrate meaningful compliance with the letter and spirit of the law and to promote broad efforts to end slavery.

Steps Companies Can Take to Better Prevent Human Trafficking in Their Supply Chains

Companies must establish zero tolerance for forced labor in supply chains. SB 657 requires companies to disclose to what extent they engage in activities in the five areas listed below. ATEST believes that if a company only complies with these requirements, there is a risk that slavery will continue to exist in its supply chains. To make a genuine difference, companies need to take concrete steps in the five required areas with special attention to the ATEST's more comprehensive recommendations.

Under SB 657, a company is required to disclose the extent to which it:

- Engages in **verification** of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was conducted by a third party.
- Conducts **audits** of suppliers to evaluate supplier compliance with company standards for preventing human trafficking and slavery in supply chains. The disclosure shall specify if the verification was an independent, unannounced audit.
- Requires direct suppliers to **certify** that materials incorporated into the product comply with the laws regarding human trafficking and forced labor of the country or countries in which they are doing business.

- Maintains **internal accountability** standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
- Provides company employees and management, who have direct responsibility for supply chain management, **training** on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

VERIFICATION

Information on the following items is required by SB 657 in relation to verification:

- The company discloses information on the verification of product supply chains.
- The company discloses information on the use of a third party to verify product supply chains.

ATEST considers the following to be good practices that the company can put into place around verification:

- The company conducts due diligence to track chain of custody for all products from their point of origin at the raw materials level of supply chains through transfer and production to the end-product stage.

- If the company claims that suppliers are “verified,” a definition of verification should be provided that explains the standards against which the supplier was verified, by whom. The process for on-going assessment and re-verification should also be provided.
- The company discloses the extent of third party verification of product supply chains, the projected timeline for completing such verification, and the frequency and protocol of verification.
- The company publishes a public list of suppliers, including names and addresses, and discloses which suppliers are part of the verification system and which are not.

AUDITING

SB 657 requires the following concerning auditing:

- The company discloses information on its audits of suppliers.
- The company discloses information on whether audits of supplier compliance are independent and unannounced.

Although SB 657 does not clearly define the term “supply chain,” it is important to address all auditing practices and to ensure that social audits occur at all levels. This includes auditing the “input” and “raw material” stages of production, sub-contracted facilities, labor brokers and recruitment agencies that supply and/or employ on-site workers, and publicly disclosing audit results.

The following are items that ATEST considers good practices in auditing and related matters:

- The company discloses statistics on the number of suppliers and licensees that are audited annually, including as a proportion of the estimated size of the relevant supply chain tier, and outlines the timeline and frequency of supplier audits.
- The company discloses its methodology for choosing which suppliers are audited and indicates how it prioritizes assessments in locations of greatest risk for forced labor.
- The company discloses statistics on the number of unannounced visits and off-site worker interviews conducted annually, including as a proportion of the estimated size of the relevant supply chain.

- The company discloses information on the use of labor recruiters/brokers within its supply chain and whether and how those firms are audited as part of its due diligence program.
- The company shares the results of internal and third-party audits publically.
- The company engages credible, independent groups to define their assessment strategies and support their engagement in preventing forced labor in their supply chain, such as civil society organizations, researchers, and unions. The company discloses the names of the companies or organizations that conduct audits and the standards used to select auditors.
- The company engages with workplace unions or if there is no union in a workplace directly with workers to support their engagement.

CERTIFICATION

SB 657 requires the following information in relation to certification:

- The company discloses whether direct suppliers are required to certify that materials incorporated into company products comply with the laws of the country or countries in which they are doing business.

ATEST considers the following to be good practices that the company can put in place on certification and related matters:

- The company discloses information about its direct suppliers, including their names, addresses and the country locations of supply chain production.
- The company discloses information on its efforts to promote direct supplier accountability for legal compliance with anti-trafficking laws and the extent of third party certification for product materials, including raw materials.
- Workers must play an integral part in these efforts; any third party certification systems must ensure that workers’ voices are involved (directly and/or through their union).

- The company should disclose information about any multi-brand and/or third-party certification initiative in which it is involved, with specific information about how such initiatives incorporate voices from civil society and union organizations and offer mechanisms for input and grievances from workers directly.

INTERNAL ACCOUNTABILITY

SB 657 requires the following information concerning internal accountability:

- The company discloses information on internal accountability standards and procedures for employees or contractors.

ATEST considers the following to be good practices that the company can put in place for stronger internal accountability:

- The company has a Code of Conduct that addresses labor standards in specific terms and explicitly prohibits all forms of human trafficking and forced labor. Implementation of this policy is supported by an effective management system and due diligence process.
- The company integrates such policies and standards in supplier contracts and requires direct suppliers to maintain compliance standards with sub-contractors and business partners, thereby ensuring the reach of standards throughout the supply chain.
- The company has established tangible mechanisms for empowering workers to understand and protect their own interests, such as through collective bargaining and global framework agreements with labor unions.
- The company has a preferred supplier program that promotes and rewards suppliers that demonstrate good or improved labor conditions, including concrete programs on ethical labor recruitment.
- The company has a policy that prohibits workers paying fees at any point in the recruitment and hiring cycle.
- The company has a policy that all suppliers throughout the supply chain disclose the names of any recruitment firms hired to provide labor and the specific compliance measures in place to prevent fraudulent and/or unethical recruitment practices.

- The company has an effective and credible grievance mechanism to enable workers to register complaints and voice concerns about recruitment or employment conditions, including investigation and efforts to address grievances in a confidential and equitable manner. Strong protections are afforded to whistleblowers.
- The company reports on the results of corrective action plans created to address problems found during audits and investigations.
- Where a case of forced labor or human trafficking is discovered in the supply chain, the company:
 - » Ensures that the well-being and best interests of the affected worker(s) are considered first and foremost, including referral mechanisms that provide appropriate services and compensation to victims.
 - » Supports the rehabilitation of the affected worker(s) (including physical and mental health), their repatriation (if desired) and/or their reintegration into the labor market and community.
 - » Cooperates with public or non-governmental victim service providers with expertise in supporting victims of human trafficking and forced labor.
 - » Facilitates repayment of lost wages, payment of penalties and compensation for other costs to the individual victim and the family, as well as support for that person's reintegration into the labor market in a good, safe job.
 - » Terminates, for a fixed and predetermined period of time, its purchases from the company on whose premises the forced labor was employed, and
 - » Resumes purchases from the company following expiration of the predetermined fixed period of time only upon a demonstration by the company that the circumstances that allowed the forced labor to occur on the company's premises (including, if applicable, the use of particular labor brokers or other intermediaries) have been eliminated.

- When child labor, child trafficking, and/or child forced labor is discovered, the company finds a way to provide for the child’s education and replace the lost income to the family when the child is removed from the workplace. A victim-centered approach is recommended, with immediate removal from the workplace and placement of the child in competent care that provides for full social and health protection. This can include measures to support child(ren)’s education, cover costs associated with education, pay child(ren)’s wages while they attend school and/or hire the child(ren)’s parent or working age sibling.

TRAINING

SB 657 requires the following information in relation to training:

- The company discloses information on whether employees and management are trained on human trafficking and risk mitigation in supply chains.

ATEST considers the following to be good practices around disclosing information about training for the prevention and eradication of trafficking:

- The company indicates: (1) who is being trained (e.g. auditors, social compliance staff, sourcing decision makers, managers, suppliers, workers, etc.); (2) by whom they are being trained; (3) how they are trained (eLearning, in-person); (4) length and content of training; and (5) follow up on such program(s).
- The company discloses information on financial support towards training.
- The company discloses information on how training is provided (or required) for suppliers at various levels of their full supply chain.

- The company discloses training curricula and other information about the depth, scope, and length of training undertaken.
- The company discloses the protocols and trainings it establishes for collaboration with stakeholders, including joint venture partners, suppliers, agents, contractors, law enforcement agencies, social and human rights groups, unions, and others.

PUBLIC POSTING

SB 657 requires businesses to publicly post information on their websites in a separate “conspicuous and easily understood” document describing the extent of engagement towards eliminating human trafficking and slavery within supply chains. Where the company does not have a website available to post practices, the company must provide this information in written form to the person requesting it within 30 days.

ATEST recommends:

- Companies have separate and easily visible tabs on each of the company’s homepages and websites entitled “Preventing Forced Labor and Human Trafficking.”
- Companies should publicly post information on all their subsidiaries’ websites.
- Companies should provide this information in their annual reports.
- Companies should present their activities on preventing forced labor and human trafficking in their supply chains and emerging best practices in their field at annual meetings to shareholders.
- Companies should highlight their anti-slavery policies and practices in other communications forms, such as their social media platforms.

Recommendations for Service Sector Companies

Companies in the service sector are currently not covered under SB 657. ATEST strongly recommends that service sector companies voluntarily provide the same information and take the same steps recommended above, as relevant, because trafficking is common in the provision of services just as it is in manufacturing, farming, and other sectors.

Furthermore, retailers and manufacturers currently subject to SB 657 should consider services provided to their companies and suppliers (such as janitorial services, landscaping, security, recruitment, construction, travel services, etc.) to be part of their supply chain as much as they do commodities, components, and finished goods. For instance, corporate anti-trafficking efforts should include the construction of facilities (such as warehouses, offices, and stores) because trafficking is often associated with the construction sector.

A Focus on Prevention

Many people believe slavery was eradicated long ago. Unfortunately this is not the case. Sustainable eradication of slavery requires companies to make prevention efforts part of the way they do business. SB 657 requires disclosures that relate to preventive efforts, and ATEST believes strongly that a preventive mindset and specific prevention-focused policies and practices are the key to long-term eradication of human trafficking. The following are good practices that companies can put into place to prevent human trafficking:

- Identify the most vulnerable workers and places of greatest risk to target assessment, prevention and remediation efforts.
- Establish a zero tolerance policy on charging fees to workers by labor recruiters who are hired by your company or any company in your supply chain. No fees whatsoever should be charged or passed down to workers anywhere in a company's supply chain.
- Review supply chain practices to determine whether structural conditions (such as pricing structures) encourage forced labor, debt bondage or other forms of slavery.
- Engage workers directly or through their unions to identify risks and craft solutions and preventative measures.
- Integrate preventive mechanisms in the hiring of workers, sourcing of suppliers, and measuring business success.
- Develop holistic, long-term human rights due diligence processes based on an analysis of company activities and relationships, and how these affect people and their rights.
- Determine high-risk sectors and regions; this process should focus on the type of risk, level of impact, likelihood of occurrence and any mitigating factors.
- Consider the full extent of the company's supply chain in the creation and implementation of anti-trafficking policies, including at the commodity level, where much forced labor and trafficking takes place.

ATEST is committed to providing consumers with the best available information about what companies are doing to prevent forced labor and human trafficking in their supply chains. In coming months, ATEST will release results of its analysis of hundreds of SB 657 disclosures already posted by companies.

ATEST is comprised of the following organizations: the **Coalition to Abolish Slavery and Trafficking (CAST)**, **Coalition of Immokalee Workers (CIW)**, **ECPAT-USA**, **Free the Slaves**, **International Justice Mission**, **Not For Sale Campaign**, **Polaris Project**, **Safe Horizon**, **Solidarity Center**, **Verité**, **Vital Voices Global Partnership**, **World Vision**, and one individual member, Julia Ormond, former U.N. Goodwill Ambassador and president and founder of the **Alliance to Stop Slavery and End Trafficking (ASSET)**.