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Attention: Retailers, Manufacturers and Importers of Wearing Apparel!

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Beginning January 1, 2012, the California Transparency in Supply Chains Act of 2010, or "S.B. 657," will require retail sellers and manufacturers "doing business" in California to post certain disclosures on their websites. The legislation seeks to improve human rights protections in global supply chains by increasing consumer awareness of human trafficking and slavery in the supply chains of products.

Disclosure Requirements

The new law requires each company subject to the requirements of S.B. 657 to have a "conspicuous and easily understood link" on its homepage to information as to what extent, if any, it:

1. Engages in third-party verification of product supply chains to identify the risks of human trafficking and slavery;
2. Conducts independent, unannounced audits of suppliers to evaluate their adherence to company standards on slavery and human trafficking;
3. Requires direct suppliers to certify that materials used to comply with the local laws on slavery and human trafficking;
4. Maintains internal accountability procedures for employees or contractors failing to meet company standards on slavery and human trafficking; and
5. Provides company employees and management with responsibility for supply chain management training on mitigating the risk of human trafficking and slavery.

Retail sellers or manufacturers that do not have a website must provide a copy of the disclosure statement within 30 days of receiving a written request for such information from a customer.

What Happens If a Company Fails to Comply With This Law

The exclusive remedy for violation of S.B. 657 is an action by the California attorney general for injunctive relief, although the law expressly states that nothing in the section shall limit the remedies available for a violation of any other state or federal law. Thus, the plaintiffs' bar may seek to base claims for unfair competition or false advertising under Business & Professions Code sections 17200 et seq. and 17500 et seq., or purported violations of the Consumer Legal Remedies Act, Cal. Civ. Code section 1770 et seq., on allegations that retailers or manufacturers have made misleading statements in the disclosures called for by S.B. 657. The Franchise Tax Board will

provide the Attorney General with a list of retailers and manufacturers who must comply.

Companies That Must Comply with S.B. 657

This law will affect every "retail seller and manufacturer" with annual worldwide gross receipts exceeding \$100 million dollars and "doing business in the state" of California. Whether a company is considered a "retail seller" or a manufacturer" depends on whether the company has "manufacturing" or "retail trade" as its principal business activity code on its California tax return.

Section 23101 of the California Revenue and Taxation Code defines "doing business" as "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." As of January 1, 2011, a company is doing business within the meaning of section 23101 if any of the following four conditions are satisfied:

- The company is domiciled or organized in California;
- Sales (including by agents and independent contractors) in California for applicable tax year of the company exceed the lesser of \$500,000 or 25% of the company's total sales;
- The value of the real and tangible personal property of the company exceeds the lesser of \$500,000 or 25% of the company's total real and tangible personal property; or
- The amount paid by the company in California for compensation (i.e. wages, salaries, commissions and any other form of remuneration paid to employees for personal services) exceeds the lesser of \$50,000 or 25% of the total compensation paid by the company.

Notably, no matter where a retailer seller or manufacturer is domiciled, it will be subject to S.B. 657 if it has annual global gross receipts over \$100 million and fulfills any of the four criteria above.

How Does This Law Impact Companies Which Are Not Subject To Requirements of S.B. 657

Even if your company's worldwide gross receipts do not exceed \$100 million, you could still be impacted by this law if you do not currently take internal measures to comply with the criteria set forth in S.B. 657. Here is how:

- Most retailers and manufacturers which are subject to S.B. 657 will require all of their partners and vendors to certify that they are taking internal measures to ensure that they

and their subcontractors are operating in compliance with all domestic and international laws, including child labor laws, among others.

- If you are considering putting your company up for sale whether now or in the future, you must keep in mind that a prospective buyer will always look at non-compliance of any statutory requirements or any contracts with retailers as a risk factor which will in turn affect the valuation of your business.
- Fair trade activists are likely to be aggressive in using the statute to shame companies that have deficient anti-human trafficking programs.
- Finally, you may not be making \$100 million in gross receipts now, but you will in the future. Taking steps to ensure compliance with S.B. 657 today may prove to be cost effective for your business.

You must ensure that the factories you are working with are not identified by the United States government and other government and non-profit agencies to be at risk for using child labor and human slavery. Whether your company is directly impacted or it supplies those who are, now is the time to get started on implementing the necessary steps.



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