Requirements to Prevent and Reduce the Risk of Forced Labour or Child Labour: What Businesses Need to Know to Comply

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On May 11, 2023, the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, S.C. 2023, c. 9 (the "**Act**") was passed.

The purpose of this Act is to implement Canada's international commitment to contribute to the fight against forced labour and child labour, and to require certain entities to report on the measures they have taken to reduce the use of forced labour and child labour.

The Act came into force on January 1, 2024, and reporting entities and federal institutions were required to submit their first report under the Act by May 31, 2024.

In addition, Public Safety Canada (the "**Government**") released the Guidance for reporting entities.

Scope of the Act

The Act applies to government institutions and to any corporation, partnership, trust or other unincorporated organization that (i) is listed on a stock exchange in Canada or (ii) has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years:

(a) it has at least $20 million in assets

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(b) it has generated at least $40 million in revenue
(c) it employs an average of at least 250 employees (collectively, the "**entities**")
Or (iii) is prescribed by regulations.

The obligation to report applies to any **entity** (a) producing, selling or distributing goods in Canada or elsewhere; (b) importing into Canada goods produced outside Canada; or (c) controlling an entity engaged in any of these activities.

Entities are considered to be operating in Canada if they produce, sell or distribute goods in Canada. They may also be considered to be operating in Canada if they have employees, if they make deliveries, purchases or payments in Canada, or if they have bank accounts in Canada. It is important to note that doing business in Canada does not require having a place of business in Canada.

Forced Labour vs. Child Labour

For the purposes of this Act, **child labour** is defined as labour provided by minors that (i) is provided or offered to be provided in Canada under circumstances that are contrary to the laws applicable in Canada; (ii) is provided or offered to be provided under circumstances that are physically, socially or morally dangerous to them; (iii) interferes with their schooling; or (iv) constitutes the worst forms of child labour, as defined in article 3 of the *Worst Forms of Child Labour Convention.*[1]

Forced labour is labour provided by a person (i) in circumstances in which it would be reasonable to believe that their safety or that of a person known to them would be threatened if they failed to provide such labour; or (ii) in circumstances which constitute forced or compulsory labour, as defined in article 2 of the *Forced Labour Convention*.[2]

Entities With Reporting Obligations

Any entity required to report annually to the Government under the Act must include in its report the **steps** taken during its previous financial year to prevent and reduce the risk of forced labour and child labour.

In order to comply with the obligations imposed by the Act, the entity must also include in its report information on **its structure**, **its activities** relating to the production, sale, distribution or importation of goods, as well as the type of goods and place of operation, and the countries or regions involved in **its supply chains**.

Lastly, the report must include a brief explanation of the entity's **due diligence policies and processes** regarding forced labour and child labour, information on the **training** provided to employees, and the parts of its business that carry a **risk** of forced labour or child labour.

Given that the steps taken to prevent and reduce forced labour and child labour can result in a **loss of income for vulnerable families**, the Act requires entities to identify the measures taken to mitigate such impact on these families.

Publication of Reports

Entities must not only comply with the format, approval and attestation requirements for their report before submitting it to the Government but also make it available to the public by publishing it on a prominent place on their website. They can submit their report in one of the two official languages, although the Government recommends that reports be published in both English and French.

In addition, the Act requires entities incorporated under the *Canada Business Corporations Act* or any other federal law to provide a copy of the report to each shareholder at the same time as their

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annual financial statements.

Offences and Fines

Reporting entities that fail to submit their report or make it available to the public are liable to a fine of not more than $250,000 per offence.[3] The senior executives, directors and employees of an entity are also liable to fines and criminal prosecution should the entity contravene the Act.[4] Any offence committed by an entity may also entail reputational risk.

Our Advice

Introducing policies, procedures, audit tools and other rules—or improving existing ones—to prevent and reduce modern slavery is essential. Such policies and rules may include procedures for reporting and an investigation process to address concerns, as well as a whistleblower protection system (whistleblower policy or similar measures).

Businesses should think about how they select suppliers and whether they should adopt rules for monitoring the activities of their suppliers and partners. They should also consider updating their agreements with existing suppliers or partners to ensure compliance with the requirements of the Act, in particular by including provisions prohibiting the use of forced labour or child labour in suppliers' business activities.

Other measures may include raising awareness and training staff, directors and officers on how to implement company policies and procedures aimed at identifying and preventing forced labour and child labour.

Our team has developed tools to help reporting entities identify the parts of their business that carry a risk of forced labour or child labour.

We will be monitoring upcoming government publications in response to the first reports that reporting entities submit and, if need be, we will release another article to clarify reporting obligations.

For any questions or advice relating to your obligations under the Act, do not hesitate to contact our team.

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1. Section 1 of the Act; see also the *Worst Forms of Child Labour Convention*, adopted in Geneva on June 17, 1999, article 3: Link
2. Section 1 of the Act; see also the *Forced Labour Convention*, adopted in Geneva on June 28, 1930, article 2: Link
3. Section 19 of the Act.
4. Section 20 of the Act.

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