

Federal Government Adopts Sweeping New Modern Slavery Law



Employers must crack down on forced and child labour and submit annual reports by May 31.

Companies found to use child or slave labour in their supply chains face a firestorm of negative publicity and moral criticism. And now Canada has raised the stakes. Under newly passed federal legislation, what used to be just a PR nightmare may now also have potentially devastating legal consequences. Here are 8 FAQs providing a quick briefing on the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the “Act”) and its potential impact on Canadian companies.

Q1. Why Did Canada Pass the Act?

A: “Modern slavery.” The term sounds like an oxymoron. After all, didn’t the world rid itself of slavery centuries ago? The answer, sadly, is no. Roughly 50 million people around the world are trapped in some form of slavery. While it doesn’t look exactly the same as the Transatlantic slave trade of the 19th century, modern slavery still involves trafficking of human beings, including those born into slavery. Forced labour can be the product of coercion, deceit, blackmail, marriage or debt.

Of course, all of these practices are illegal in Canada. The problem is that Canadian companies that conduct business abroad may be dependent on local suppliers that engage in modern slavery. In 2020, the Canadian Supreme Court ruled that exploited miners in the African nation of Eritrea could sue the Canadian mining company that was the upstream beneficiary of their forced labour [[Nevsun Resources Ltd. v. Araya et al.](#), 2020 SCC 5 (CanLII), [2020] 1 SCR 166]. The Act, which took 4 years to enact, is a legislative extension of the policy to hold Canadian companies legally accountable for modern slavery in their supply chains.

Q2. Who Does the Act Cover?

A: The Act applies to an “entity,” defined as a corporation as well as a trust, partnership or other unincorporated organization that:

- Is listed on a stock exchange in Canada;
- 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 2 of the following conditions for at least 1 of its 2 most recent financial years: i. It has at least \$20 million in assets; ii. It has generated at least

- \$40 million in revenue; and iii. It employs an average of at least 250 employees; or
- Is listed as being covered by the Regulations (which haven't yet been issued).

The reporting obligations of the Act apply to "entities" that are:

- Producing, selling or distributing goods in Canada or elsewhere;
- Importing goods into Canada that were produced outside of Canada; or
- Controlling an entity engaged in these activities.

The latter entities required to report include government institutions producing, purchasing or distributing goods in Canada or elsewhere.

Q3. What Does the Act Require?

A: The Act requires entities to establish diligence processes to prevent and minimize the risk of forced or child labour being used at any stage in their production processes, including with regard to production of goods that are imported into Canada. They must also prominently post on their company website and submit an annual report to the Minister of Public Safety and Emergency Preparedness on or before May 31 of each year describing the diligence steps they took during the year. Reports must be approved by the entity's governing body; joint reports submitted by multiple entities must be approved by the governing body of each entity included in the report. Entities incorporated under the Canada Business Corporations Act must also provide the annual report to shareholders along with the company's required annual financial statements.

Q4. What Must the Annual Report Include?

A: The annual report must list for each reporting entity:

- The entity's structure, activities and supply chains;
- The entity's policies and due diligence processes for preventing forced labour and child labour;
- The parts of its business and supply chains that carry a risk of the use of forced labour or child labour and the steps taken to assess and manage that risk;
- Any measures taken to remediate any forced labour or child labour;
- Any measures taken to remediate the loss of income to the most vulnerable families that results from any measures taken to eliminate the use of forced labour or child labour in its activities and supply chains;
- The training on forced labour and child labour provided to employees; and
- How the entity assesses its effectiveness in ensuring that forced labour and child labour aren't being used in its business and supply chains.

Q5. When Does the Act Take Effect?

A: The Act officially takes effect on January 1, 2024. **Practical Impact:** Companies will have to publish and submit their first annual report by May 31, 2024.

Q6. What Happens If You Don't Comply?

A: Companies that fail to comply with their reporting obligations under the Act or who knowingly make false or misleading information in their reports face fines of up to \$250,000. Significantly, those penalties can also be imposed on individual directors, officers and agents of entities who direct, authorize, assent to, acquiesce in or participate in the offence.

Q7. What Are the Other Practical Ramifications of the Act?

A: One significant aspect of the Act is that the government will have broad authority to enforce it. As with current OHS laws, officials will be able to inspect worksites and conduct interviews, take photographs, access computer systems and collect other evidence of whether the company is complying with the Act.

Q8. What Should You Do Now to Comply with the Act?

A: You won't be able to implement a complete compliance program until the government issues regulations implementing the Act. For now, the best strategy is to:

- Determine whether they're an "entity" that's required to submit annual reports;
- If so, start the process of performing due diligence within your organization and supply chain to assess the risk of forced labour and child labour;
- Ensure that your internal supply policies are transparent and meet current best practices;
- Add forced and child labour issues to employee training programs and modules; and
- Recognize that the first annual report will be due on May 31, 2024, and start planning a reporting mechanism to ensure you're prepared for that first deadline.