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3HR Legal Weekly

Employment

The Modern Slavery Act 2015

The legislation at a glance

The Modern Slavery Act 2015 (the Act) which has been described as an "historic milestone" is intended to specifically address slavery and human trafficking in the 21st century by consolidating and simplifying existing modern slavery offences into one Act. The Act includes a provision for transparency in supply chains that will require all businesses with an annual turnover of £36 million or more to disclose an annual slavery and human trafficking statement on their website of the steps they have taken during the financial year to ensure their business and supply chains are slavery free. This threshold will apply to global turnover, not just UK turnover and is expected to include subsidiaries.

What is Modern Slavery?

Under the Act, there are 4 offences, slavery, servitude, forced or compulsory labour and human trafficking. Annex A of the Home Office guidance defines the offences. According to the Home Office guidance *slavery* is where ownership is exercised over a person; *servitude* is where there is an obligation to provide services that is imposed by the use of coercion; *forced or compulsory labour* is service which is exacted from a person under the threat of a penalty or where the person has not offered themselves voluntarily and *human trafficking* concerns arranging or facilitating the travel of another person with a view to exploiting them.

The Statement

Section 54 of the Act requires a large organisation to set out what steps it has taken during the financial year to ensure slavery and human trafficking is not taking place in any of its supply chains and in any parts of its own business. The Statements must be produced annually and must be approved and signed by a director, member or partner of the organisation. There is also a requirement for the statement to be published on an organisation's website with a link in a prominent place on the homepage.

The Home Office guidance sets out the kinds of information that might be included in a disclosure, but it will only be guidance. The purpose of the legislation is for businesses to take the issue of modern slavery seriously and at the highest levels and for businesses to be able to determine, demonstrate and explain their policies and practices relevant and specific to their own circumstances. It is fully expected that the statement will differ from business to business.

The slavery and human trafficking statements should cover 5 general areas of activity as set out below:

A brief description of an organisation's business model and supply chain relationships;

The business policies relating to modern slavery, including due diligence and auditing processes implemented (both in the UK and overseas);

Training available and provided to those in supply chain management and the rest of the organisation;

The principal risks related to slavery and human trafficking including, how the organisation evaluates and manages those risks in their organisation and their supply chain; and

Relevant key performance indicators that will assist the reader of a slavery and human trafficking statement to assess the effectiveness of the activities described in the statement.

It is possible however, for a business to comply with the provision in the Act by simply stating that they have taken no steps during the financial year to ensure that their business and supply chains are modern slavery free. However, this requirement will make it absolutely transparent what action a business is or is not taking and will allow investors, consumers and the general public to decide who they should and should not do business with.

Which businesses will be affected?

The Modern Slavery Act 2015 covers any commercial organisation (body corporate or partnership) in any sector, which supplies goods or services, and carries on a business or part of a business in the UK, and has an annual turnover of £36 million or more. The total turnover is calculated as the turnover of that organisation, the turnover of any of its subsidiary undertakings including those operating wholly outside the UK.

Failure to comply

If a business fails to produce a slavery and human trafficking statement for a particular financial year the Secretary of State may seek an injunction through the High Court or, in Scotland civil proceedings for specific performance of a statutory duty, requiring the organisation to comply. If the organisation fails to comply with the injunction, they will be in contempt of a court order, which is punishable by an unlimited fine.

Failure to comply with the provision, or a statement that an organisation has taken no steps, may not only damage the reputation of the business, it may also open the organisation to pressures from both consumers and non governmental bodies.

Advisory note

Although there are a number of steps to be taken, we advise our clients to avoid making any hasty decisions. The requirement for organisations to publish a statement was formally announced on 29 October 2015; however, the timetable stipulates that the first statements will be required for financial years ending on or after 31 March 2016. According to the guidance, organisations are required to report within six months of each financial year end, which means that the government expects the first statements to be published by the end of September 2016.

We understand that many of our clients will be affected by the Act and our legal team are taking steps to ensure that our clients are well served in this area. We will be providing additional guidance in the very near future.

For further information, please contact your usual 3HR consultant.

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