



Limiting Labor and Human-Trafficking Civil Liability for Businesses

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Human trafficking is a continuous and developing criminal enterprise. Every year, hundreds of thousands of men, women, and children are trafficked worldwide. This population is transported both transnationally and intranationally. Trafficking can take many forms, including sex trafficking, labor trafficking—involving both adults and children—and it ensnares those who are forced to engage in involuntary sex acts as well as those who are forced to work under threats of violence or by other means, such as accumulated debt, passport retention, or threats of being reported to immigration authorities.

Attempts at imposing third-party civil liability as a result of trafficking events that happen on premises has become increasingly more prevalent, with claims cropping up against software developers, web providers, hoteliers, and a variety of manufacturers and producers. There is no doubt that this is partially due to the various forms that trafficking can take. An increase in demand for consumer goods and food products, both imported into the United States and produced domestically, necessitate cheaper labor and faster production of goods. Many of the third-party claims sound in premises liability and nuisance, as well as negligent hiring, training, and retention by hoteliers and employers, while others sound in civil actions, arising from violations of local, state, and federal laws associated with human-trafficking violations.

With this area of the law continuing to develop and change, now more than ever, lawyers, managers, executives, and industry and company representatives must keep abreast of the evolving laws and responsibilities that they may owe to these vulnerable populations. This article will provide an overview of current trafficking laws for all levels of government, discuss real-world cases and events involving trafficking liability claims, and offer insight into how

businesses and industries can prevent and navigate these claims. While this article does not provide an exhaustive list of all laws pertaining to human trafficking, it outlines the general trajectory of the trend to address human-trafficking events.

Framework for Combating Civil Liability: E-A-R: Educate, Activate, Report

With civil and criminal liability claims arising from trafficking acts increasing against hoteliers, web providers, software developers, and manufacturers, it is important, now more than ever, for businesses to implement strategies to combat these claims. We have boiled down training on human trafficking to three key aspects: (1) *E*-ducate, (2) *A*-ctivate, and (3) *R*-eport. Altogether, the “EAR” method will provide hoteliers and other businesses with a roadmap for not only defending against third-party liability claims, but hopefully, it will assist in preventing them.

Education is vital to combating human trafficking and claims of liability arising from trafficking events. First, it is important to be aware of what the term *trafficking* means and how various advocacy groups, states, and individuals define it. Human and labor trafficking can take a variety of forms and be preceded by several signs and indicators. Being aware of what trafficking looks like could prevent many of these crimes from occurring at all. Second, businesses must educate themselves on the local laws that address human trafficking. Most states, and even many local and city governments, have passed laws and ordinances that require businesses to conduct trafficking awareness trainings, post trafficking awareness signs, and report instances of trafficking that occur on their premises to local authorities. Understanding the

intricacies of these laws will help businesses avoid violations of the laws and the civil suits arising out of those violations.

Activating and executing protocols that are required or merely recommended by state and local laws will further minimize instances of trafficking and the number of trafficking claims that could be brought against a business. These procedures can come from formal laws and statutes, as discussed below, but businesses can also adopt internal policies based on recommendations by nonprofits that serve human-trafficking victims. For example, the nonprofit organization Freedom Light (www.freedomlight.org) serves as a guiding light for companies by developing anti-trafficking strategies and equips companies with evidence-based interventions. Regardless of where they come from, these laws, guidelines, and recommendations can and will help businesses minimize their exposure to statutory penalties and civil liability suits.

Reporting information to local law enforcement and other agencies about potential trafficking demonstrates that a business is not only following all relevant laws and protocols, but also that it is willing to cooperate with law enforcement in these matters. The more monitored and vigilant a business is, the less likely the premises will be targeted as a viable location for human trafficking. Reporting can take many forms, all of which are beneficial. This can look like simply providing employees and customers with proper contact information for appropriate anti-trafficking agencies, or contacting law enforcement directly when a business believes it is being used as a trafficking ground. Just as airports and airlines stress, if you see something, say something, but be aware that unwarranted reports can cause more damage than harm. Under some criminal and civil statutes, needless reporting can result in businesses receiving a

reputation as a disorderly house and create the potential for nuisance claims. *See, e.g.*, Md. Code Crim. Law § 10-202. Accurate and well-informed reporting, on the other hand, is necessary to a business's vitality.

How Trafficking Is Defined

Labor trafficking is a form of modern-day slavery in which individuals are required to perform labor or services through the use of force, fraud, or coercion. The Victims of Trafficking and Violence Protection Act of 2000 defines labor trafficking as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. *See* 22 U.S.C. § 7102. While this act is comprehensive, it does not provide a mechanism for a civil, private right of action against third parties. The Trafficking Victims Protection Reauthorization Act of 2003, however, does provide a civil, private right of action, and it is discussed in further detail below. *See* 18 U.S.C. § 1595. Human trafficking primarily exists in the labor arena and also includes forced prostitution. Not surprisingly, labor trafficking surfaces in manual labor-intense industries, particularly those that rely on third parties to provide inexpensive labor. Construction, domestic service, agriculture, mining, forestry, fishing, and manufacturing are vulnerable to such claims, whereas sex-trafficking claims arise against hotels, strip clubs, hotel franchisors, website host providers, website software providers, dating sites, massage parlors, and nail salons.

Under the broad umbrella of human trafficking, but distinct in terms of the demographics among victims, clients, and third parties, is *sex trafficking*. Sex trafficking occurs when someone recruits, harbors, transports, obtains, patronizes, or solicits a commercial sex act from another person. *See* 22 U.S.C. § 7102(12). Commercial sex acts mean “any sex act on account of which anything of value is given to or received by any person.” 22 U.S.C. § 7102(4). Sex trafficking is also distinct from other forms of labor trafficking in that it creates unique liability issues for hotels and their employees, from not only traditional civil tort claims, but also from statutory obligations imposed by city and state legislation. The anti-trafficking advocacy organization Polaris Project has recorded more than 3,300 cases of sex trafficking in hotels over the past ten years.

Labor trafficking in all its forms affects not only adults, but it also severely affects children, especially in areas that have lax or nonexistent child labor laws. Forced child labor is likely to be hazardous to the health and physical, mental, spiritual, moral, or social development of children, and oftentimes, it can interfere with the development of their education, as well. The International Labor Organization estimates that 152 million children between the ages of five and seventeen were involved in some form of child labor or trafficking in 2017 alone. This type of labor trafficking can take many forms, such as debt bondage and forced recruitment for armed conflict, prostitution, pornography, the illegal drug trade, the illegal arms trade, or other illicit activities.

Human trafficking can happen in any community, and its victims can be any age, race, gender, or nationality. Traffickers can be men and women. They use violence, manipulation, or

false promises of well-paying jobs or romantic relationships to lure victims into trafficking. Consumers of labor and sex services come from all walks of life. Labor trafficking is well hidden, especially in larger industries, such as agriculture, construction, domestic service, factory work, fisheries, hospitality, and food service, where companies do not directly engage in labor trafficking but may do business with and economically support other companies that do engage in improper labor practices.

Federal Trafficking Laws

The pinnacle federal law addressing human trafficking is known as the Victims of Trafficking and Violence Protection Act (TVPA) of 2000 (codified at 22 U.S.C. § 7101 *et seq.*). The purpose of the TVPA is “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.” 22 U.S.C. § 7101(a). Accordingly, the TVPA establishes several methods for prosecuting criminal traffickers, preventing human trafficking, and protecting trafficking victims and survivors. In 2003, the Trafficking Victims Protection Reauthorization Act (TVPRA) was also passed, which provides a civil remedy for victims of human trafficking, in conjunction with the other provisions of the TVPA. *See* 18 U.S.C. § 1595.

Additionally, the United States Congress passed the Stop Enabling Sex Traffickers Act (SESTA) and the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), frequently referred to as “the SESTA-FOSTA package,” in 2017. The SESTA-FOSTA package amends the federal criminal code to specify that whoever knowingly “benefits, financially or by

receiving anything of value, from participation in a venture which has engaged in an act [of recruiting, enticing, harboring, or transporting by any means a person is] in violation” of the act. 18 U.S.C. § 1591(a). Under FOSTA specifically, this can include classified online websites such as Craigslist or Reddit, which have the potential to provide a platform for discussions about and assisting in effectuating human trafficking. *See* 18 U.S.C. § 2421A. Accordingly, SESTA and FOSTA have the potential of holding members of the hotel, motel, and lodging industries, as well as players in the social media and tech industries, criminally responsible for fostering and benefitting from human trafficking that occurs within the physical or digital confines of their domains.

Trafficking victims have increasingly begun filing civil suits against third-party establishments, and civil litigation has become a powerful tool to address human and labor trafficking. This is especially so because criminal restitution amounts are not set in stone and may not produce a significant compensation amount. For example, Congress has directed federal courts to “order restitution for any offense” committed under the anti-trafficking statutes, but it has limited the amount to “the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act.” 18 U.S.C. § 1593(a). *See also e.g.*, Md. Code Crim. Proc. § 11-603(a)(2) (limiting compensation to monetary damages that are easily proved, such as medical expenses and loss of income, but not pain and suffering or punitive damages). Standing for trafficking victims to bring civil suits against businesses and individuals for trafficking claims significantly increases the monetary liability a business may

face. Businesses and lodging facilities do not just need to concern themselves with fines; they need to be cognizant of potential civil suits that could result in hundreds of thousands of dollars of liability, which may or may not be covered by insurance.

State and Local Trafficking Laws

Understanding the ins and outs of state and local laws imposing various requirements on businesses and lodging facilities is crucial to becoming educated about and preventing third-party civil liability. States and local governments have begun to follow a similar trend to that of the federal government, passing a number of laws and ordinances aimed at combating human and labor trafficking. These pieces of legislation address various aspects of human and labor trafficking; however, most of them address two primary areas of regulation: (1) signage and (2) training. At least twenty-three states have laws that either require or encourage certain businesses and entities to post signs with information related to the National Human Trafficking Hotline and calling attention to the human trafficking problem. *Human Trafficking Laws*, Nat'l Conf. State Legs., <http://www.ncsl.org>. Additionally, fifteen states have enacted laws requiring certain public agencies and private businesses to train staff to recognize, report, and respond to instances of human trafficking. *Id.* Many states have passed such laws in an effort to achieve higher ratings by Shared Hope International and the Protected Innocence Challenge, an effort that grades states based on their protections against human trafficking..

Although this is not an exhaustive iteration of state and local laws addressing human trafficking, having general education is the first step toward combating third-party liability

trafficking claims. These laws also offer instruction and guidance on activating and implementing policies for combating human trafficking and protecting against civil liability claims.

Trafficking Awareness Signage Laws

The requirement in legislation to post signs alerting the public to the prevalence of human trafficking takes a variety of forms. A survey published by ECPAT-USA, a nonprofit and leading policy organization in the United States that seeks to end exploitation of minors, offers a summary of the laws of the fifty states related to raising awareness of and combating human trafficking. ECPAT-USA, *Unpacking Human Trafficking: A Survey of State Laws Targeting Human Trafficking in the Hospitality Industry* (May 2019) (the ECPAT survey).

According to the ECPAT survey, there are thirteen states that require lodging facilities to post signs calling awareness to human trafficking: California, Connecticut, Georgia, Louisiana, Maine, Minnesota, New Jersey, New Mexico, New York, North Carolina, South Carolina, Texas, and West Virginia. These laws generally require lodging facilities to post conspicuous signs in plain view that notify and provide information regarding services for human-trafficking victims. *See, e.g.*, Conn. Gen. Stat. §§ 54-222, 54-234a. The content and form of these signs vary by state. Some states, such as California and Louisiana, require the signs to be in a specific font size and in a variety of languages, while other states, such as South Carolina and Missouri, require lodging facilities to obtain signs from certain agencies that have been tasked with designing and providing signs according to specific guidelines.

There are an additional twelve states that simply recommend that lodging facilities post signs warning of human trafficking: Kansas, Massachusetts, Michigan, Montana, Nebraska, New Jersey, New York, Ohio, Tennessee, Vermont, Washington, and Wisconsin. New Jersey and New York create a unique relationship between mandatory and voluntary signage laws. New Jersey requires “back-of-house” signs to be posted in employee-only areas, while signs in public areas are voluntary. *See* N.J. Rev. Stat. § 2C:13-11. New York, on the other hand, requires information cards to be made accessible to employees and the public, but only recommends offering warnings through posters and other signage formats. *See* N.Y. Laws Gen. Bus. § 12-206(f). In states that only recommend signs, it is particularly important that businesses take the additional steps to activate and implement guidelines and procedures warning against human trafficking.

While some states may have voluntary or less restrictive signage laws, local governments are free to pass more restrictive and burdensome ordinances for lodging facilities and other businesses. For example, Maryland is one of seven states that only requires businesses to post human-trafficking awareness notices if there is a conviction for prostitution, solicitation, or human trafficking that took place on the property. *See* Md. Code Bus. Reg. § 15-207. These notices are only required for up to a year following the conviction. On January 28, 2019, however, Baltimore City Ordinance 18-0296 was signed, imposing more stringent signage and notice requirements on certain businesses. This Baltimore ordinance requires hotels, adult entertainment businesses, and food service facilities to post signs that have the National Human Trafficking Resource Center hotline information. The ordinance also mandates certain reporting

requirements and establishes a variety of penalties for failing to comply. Members of the Maryland Hotel Lodging Association have expressed continuous concern over the hundreds of thousands of dollars that have had to be spent on the required signage to achieve compliance and avoid penalty. Kevin Rector, *Baltimore Required Hotels to Put Up Human Trafficking Signs. The Text Hotline Number on Them Was Wrong*, Baltimore Sun, Oct. 23, 2019. Importantly, the key to defending liability claims is not only to activate guidelines and procedures that follow the requirements of local ordinances, but in doing so, to activate completely and accurately.

Trafficking Awareness Training Laws

Some states have passed laws that address the need for businesses to conduct trainings on identifying the signs of trafficking and the best methods for reporting these signs. Indicators of trafficking can often appear harmless or mundane, making legitimate instances of trafficking easy to miss, while also increasing the likelihood of misidentification by law enforcement and courts, due to false alarms. Of note, in instances where courts and law enforcement convict trafficking victims for criminal offenses they were forced to engage in, such as prostitution or solicitation, twenty-eight states offer relief through vacatur laws, which allow these victims to have their convictions vacated. *See, e.g.*, Cal. Penal Code § 236.14. Training can combat both of these phenomena, and hopefully, it will increase the likelihood of legitimate identification and decrease false reporting and the frequency with which vacatur laws are used. The ECPAT survey mentioned above reports that only fifteen states have laws addressing human-trafficking awareness training for lodging facility employees. Of these fifteen states, only four require such

training: California, Connecticut, Minnesota, and New Jersey. The other eleven states merely recommend training: Colorado, Iowa, Kansas, Louisiana, Michigan, Missouri, Oregon, Pennsylvania, Rhode Island, Texas, and Vermont.

California has one of the most comprehensive and strictest training laws, requiring every hotel and motel to provide a minimum of twenty minutes of human-trafficking awareness training to every employee. *See* Cal. Gov. Code § 12950.3. The law goes on to state that this training must be completed within six months of the commencement of a worker's employment, and it must be provided every two years afterward. The training must define human trafficking, explain the differences between sex and labor trafficking, offer guidance on how to identify trafficking, make clear the role of hospitality employees in reporting and responding to it, and provide the contact information for appropriate trafficking awareness agencies. Minnesota, on the other hand, provides a specific education program that was created and approved by the Commissioner of Health and the state hotel and lodging association. *See* Minn. Stat. § 157.177.

States that only recommend trafficking awareness trainings, such as Virginia and Louisiana, rely on various nonprofit entities and state agencies to create general plans and training materials that are made available to businesses if they wish to use them. *See* 13 Va. Stat. § 2661. *See also* La. Stat. § 46:2161(A)(4). Other states, such as Texas and Missouri, do not even have laws addressing training, voluntary or otherwise, but they do provide information on their government websites about training plans and materials. If businesses are either required to conduct these types of trainings or are interested in voluntarily providing them to their

employees, state government websites and local nonprofits will likely be able to provide valuable materials and guides for adequate training and compliance with the applicable local laws.

Similarly, various websites offer courses and trainings to individuals and businesses that address human-trafficking issues. These trainings and websites will commonly be designed to meet any relevant and applicable requirements for the mandated trainings. For Example, DAC Beachcroft, an international firm that serves commercial and corporate businesses, has published numerous statements regarding various trafficking laws, including compliance with the Modern Slavery Act of 2015, which requires businesses to publish statements detailing the steps they have taken to combat slavery within their workforce and in the supply chain. Sarah George, *Modern Slavery Act 2015: The Who, What, Why, Where and When*, DAC Beachcroft (Nov. 1, 2015), <https://www.dacbeachcroft.com>.

Addressing Trafficking Through Nuisance Abatement

According to the ECPAT survey, mentioned earlier, seven states only mandate lodging facilities to display human-trafficking awareness signs when that facility has been cited as a public nuisance: Alabama, Arkansas, Maryland, Michigan, Missouri, Pennsylvania, and Rhode Island. Michigan is the only state that also recommends posting signs, in addition to requiring it when a facility is cited as a public nuisance. *See Mich. Comp. Laws §§ 752.1031–752.1040 (2018)*.

While these states in general will only mandate that a facility must display signs warning of human trafficking if and when that facility is cited as a nuisance due to trafficking that occurs on the premises, each state's laws can vary in scope and punishment. For example, California Penal

Code section 236.3 provides that real property that is used to facilitate the commission of a human-trafficking offence under section 236.1 may be deemed a public nuisance and seized by the state.

Cities are also using state laws that are not specifically directed toward addressing human trafficking to do just that. For example, the City of Columbus, Ohio, used the state's nuisance abatement code to shut down a human-trafficking operation that was conducted from a massage parlor. Ohio Code section 3767.03 does not include any reference to human trafficking, but it authorizes a civil action for the purposes of abating a nuisance and "perpetually enjoin[ing] the person maintaining the nuisance from further maintaining it." Columbus city attorneys obtained evidence that sexual conduct in exchange for money was occurring on the premises. Using section 3767.03 of the Ohio Code, the city attorneys were then able to secure a court order shutting down the offending business. Press Release, Columbus City Att'y, In Landmark Case, City of Columbus Uses Nuisance Abatement Code to Shut Down Alleged Human Trafficking Operation (Apr. 27, 2018).

Civil Liability, Class Actions, and Related Litigation for Trafficking Events

Often, the expense of implementing the requirements outlined above appears to outweigh any potential fine or punishment. Penalties for failing to follow human-trafficking awareness signage laws in some states can range from a warning to a \$5,000 fine, and in other states, they can affect the business's license or permit. *See* Ala. Code § 13A-6-170(f). *See also* Ga. Code § 16-5-47(d)(1); N.J. Code § 2C:13-12(b)(1). These statutorily imposed penalties, however, do not

represent the full extent of liability that a business may face. For example, a court in Maryland recently held that hotels can be held civilly liable where employees and owners knew or should have known that trafficking was taking place on the premises. Associated Press, *Human-Trafficking Victims Sue Salisbury Hotel*, Baltimore Sun, Feb. 27, 2017. Education on the range of potential areas of liability, and policy and procedure activation in accordance with applicable state and local laws, will help corporations gauge the scope of efforts needed to prevent third-party civil liability claims.

The Super Bowl and Human Trafficking

The rate of trafficking can greatly affect the potential for the third-party liability claims a that business may face. Significant national and international events bear on trafficking rates. For example, the Super Bowl is sometimes referred to America's largest sex-trafficking event. *Sex Trafficking and the Super Bowl*, Morning Ed., NPR (Feb. 2, 2018), <https://www.npr.org>. A report prepared for the Minnesota Super Bowl Host Committee after the 2018 Super Bowl estimated net spending of over \$370 million in and around the Minneapolis, Minnesota, region over the ten-day Super Bowl period. Kenneth McGill & Jon Gray, *The Bold North Delivers: The Economic Impact of Super Bowl LII on Minneapolis and Minnesota*, (Rockport Analytics, May 2018). Over this period, nearly 125,000 non-local visitors went to the Minneapolis area, and more than 266,000 hotel room nights were booked. *Id.* This massive influx of visitors brought with it an increase in demand for services derived from labor and sex trafficking. Many advocates report that trafficking increases during these events, particularly with regard to the

transportation of victims to and from the host cities. Aaron C. Hanbury, *The Facts Behind the Super Bowl Sex Trafficking Epidemic*, RELEVANT (Feb. 4, 2016), <https://relevantmagazine.com>.

This increase in demand, and the subsequent increase in supply, also corresponds to a rise in potential liability for hotels, restaurants, and other industries that may owe a duty to trafficking victims pursuant to state and local law. The influx in visitors not only increases trafficking events, it also potentially increases illegitimate liability accusations against businesses that have become unwittingly implicated by traffickers.

Corporate Liability for Labor Trafficking

As economies around the world integrate, it becomes easier and quicker for goods produced with forced labor to enter the global market. In the United States, labor traffickers exploit and enslave both foreign nationals and United States citizens. The increase in demand and ease of access can cause companies to become unwittingly involved in others' trafficking efforts. At the heart of this issue is California's Transparency in Supply Chain Act. *See* Cal. Civ. Code § 1714.43. The act requires all retail sellers and manufacturers that have an annual, worldwide gross revenue exceeding \$100 million to disclose their "efforts to eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale." Cal. Civ. Code § 1714.43(a)(1). The California Supply Chain Act's scope and the mandated disclosures, however, have been the subject of recent and ongoing litigation.

Several candy companies are currently in the midst of defending against accusations by consumers that they engaged in unfair and deceptive practices by deceiving consumers about their supply chain, in violation of the California act. These companies source the cocoa that they use from West Africa, which provides approximately two-thirds of the world's supplies. According to the US Department of Labor, more than two million children worked in dangerous labor conditions in the cocoa-growing regions of West Africa in 2015 alone. Peter Whoriskey & Rachel Siegel, *Cocoa's Child Laborers*, Wash. Post (June 5, 2019), <https://www.washingtonpost.com>. Importantly, these candy company giants are unable to trace the source of a substantial percentage of the cocoa used to produce their chocolates.

In three class action law suits brought by candy product consumers, class representative Danell Tomasella claims that the three companies have violated numerous consumer protection statutes by failing to disclose on their chocolate candy wrappers that the cocoa beans used to produce their candies come from farms that use child labor. Dorothy Atkins, *Hershey, Mars and Nestle Fight Child Labor Suits at 1st Circ.*, Law360 (Sept. 30, 2019), <https://www.law360.com>. A United States district judge dismissed the suits in January 2019, explaining that such an omission by the companies is not likely to mislead or deceive consumers. Tomasella appealed these dismissals, which are currently pending before the US Court of Appeals for the First Circuit. In the appeals, Tomasella asserts that this information is material to consumers' purchasing decisions. *Id.*

This litigation potentially introduces an entirely new facet of liability for companies and industries. If the plaintiffs' class action theory is accepted by this court or others, companies

could be required to include information regarding the source of their products on all wrappers and labeling. Inextricably linked to this requirement will be the additional responsibility of comprehensively tracking and recording the source of not only cocoa beans, but of all other products and ingredients that could potentially be supplied from farms and companies that rely on child labor. Accordingly, not only could companies face the risk of loss through these new civil litigation claims, but they will likely have to expend significant resources tracking the ingredients and reporting their sources. Companies also face a serious potential social backlash from consumers if it is proved that they have participated in fostering and indirectly supporting child labor. What is more, states may take the discretion to determine the viability of these claims away from the judicial system by passing clearer and more comprehensive notification laws.

Kurian David, et al. v. Signal International, LLC, et al.

Beginning in 2008, and continuing through 2015, the American Civil Liberties Union and several law firms that offer pro bono services brought mass civil suits on behalf of almost 500 guest workers from India. *David, et al. v. Signal International, LLC, et al.*, ACLU (May 29, 2013), <https://www.aclu.org>. According to the lawsuits, the workers were trafficked into the United States through the federal government's H-2B guest worker program with dishonest assurances that they could become lawful, permanent US residents, and they were subjected to inhumane work and living conditions by a marine construction firm that specializes in offshore drilling rigs and equipment. The workers alleged that this treatment violated the Trafficking

Victims Protection Reauthorization Act of 2003 (TVPRA) and the Racketeer Influenced and Corrupt Organizations Act (RICO). *See* 18 U.S.C. § 1595. *See also* 18 U.S.C. § 1964(c). As this article has explained, the TVPRA is one of the primary federal laws that addresses methods for prosecuting human-trafficking crimes and orders restitution to victims by those convicted under the act. Given the relationship between human trafficking and various forms of organized crime, the TVPRA added human trafficking to the list of crimes that can be charged under RICO in 2003.

In 2015, a Louisiana jury returned a verdict in favor of the workers and awarded \$14 million to five of the plaintiff workers. *See David, et al. v. World Marine, LLC, et al.*, 647 Fed. Appx. 461, 466 (5th Cir. 2016). The United States Court of Appeals for the Fifth Circuit upheld the jury verdict. Significant in the Fifth Circuit's opinion was its consideration of the defendant corporation's cross-claims against three co-defendants. The defendant corporation claimed that its co-defendants breached their fiduciary duties by concealing the false promises and misrepresentations made to the foreign workers. The lower court dismissed these cross-claims, and the Fifth Circuit affirmed, on the basis that there lacked sufficient evidence of these allegations. *Id.* at 467.

This landmark case provides a warning to corporations regarding their potential liability for involvement in unlawful labor practices in two regards. First, the jury verdict indicates that corporations can and will be held liable for their role in labor trafficking. The jury verdict in this case is the largest to be awarded thus far in any labor-trafficking case. Second, the Fifth Circuit makes clear that even if a company does not have direct involvement in the acquisition of its

international labor and workforce, the company can still be held liable for the unlawful actions of its representatives and partners.

Conclusion

The justice system is becoming an increasingly more viable avenue for victims of human and labor trafficking to achieve relief for their traumatic experiences. Not only is litigation becoming a more common route for these claims, but juries are returning higher and higher awards against defendant businesses. Therefore, it is important now, more than ever, for companies to take proactive and affirmative steps to *educate*, *activate*, and *report*, to limit potential claims of liability.

The first step is to become educated about the issues of human and labor trafficking. This includes understanding how trafficking is defined, knowing applicable federal, state, and local laws that impose responsibilities on businesses to combat trafficking, and being aware of the manner in which civil trafficking claims have been brought against third-party businesses. Once a business knows what it has to do, that business must then activate protocols and procedures for addressing the various human-trafficking issues. This can range from ensuring that any mandatory signs and training aimed at raising awareness of trafficking conform to the relevant requirements, to working actively with local agencies and nonprofits to combat human-trafficking occurrences. Finally, businesses should promptly report accurate and legitimate trafficking instances to authorities. While not every hunch or indication will warrant a report to law enforcement, failure to report can result in legal violations and even a breach in duties owed

to customers and the public. In all of these situations, the key is to be cognizant of the laws regarding human trafficking and the responsibilities and obligations of businesses to implement them.