

Podcast

ESG: Human Rights and Modern Slavery

By Amy L. Peck

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Meet the Authors



Amy L. Peck

Principal

402-391-1991

Amy.Peck@jacksonlewis.com

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Details

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In the face of evolving challenges in labor and employment law, Jackson Lewis attorneys identify issues dominating the modern workplace and answer the question on every employer's mind – how will my business be impacted? Stream episodes of our podcast program on the platform of your choosing.

Jackson Lewis P.C. · ESG: Human Rights and Modern Slavery



Transcript

Alitia Faccione:

Welcome to Jackson Lewis's podcast, We get work™. Focused solely on workplace issues, it is our job to help employers develop proactive strategies, strong policies, and business oriented solutions to cultivate an engaged, stable and inclusive workforce. Our podcast identifies issues that influence and impact the workplace and its continuing evolution, and helps answer the question on every employer's mind, how will my business be impacted?

The intersection of human trafficking and smuggling and ESG presents significant legal risks to organizations. Companies are responsible for ensuring their workforces are legally authorized to work, and must also ensure that there are no coerced, trafficked, or underage employees or contractors at their work sites.

On this episode of We get work™, we discuss the ongoing concern of human trafficking and smuggling, and how organizations can protect the workers at their work site.

Our hosts today are Amy Peck, principal in Jackson Lewis's Omaha office, a member of the ESG group, and co-leader of the firm's Immigration Practice Group. Amy loves to dive into complex immigration and compliance issues in the workplace, especially those that intersect employment and immigration law.

Our co-host Jillian Mueller, an associate in St. Louis and a member of the ESG group,

specializes in investigations and providing counsel regarding disputes before litigation is filed.

Jillian and Amy, the question on everyone's mind today is, how do I ensure my employees are not forced into labor, and how does that impact my organization?

Jillian Mueller:

Amy, I am so excited to talk to you today about the intersection between human trafficking and human smuggling and ESG. One of the areas that's getting a lot of focus under the S, our social component of ESG, is how to ensure that our workforces are legally authorized to work so that we're avoiding anyone who's been coerced or trafficked or who is underage when we are putting together and maintaining our workforces. And this is one of those issues that has come to the forefront in a lot of news stories recently, but is also just an ongoing concern for companies managing especially a large workforce, and especially companies that are dealing with an international workforce. And so I'm so lucky to have you here with me to talk about these issues.

Amy Peck:

Thanks, Jillian. How about we start off talking about the difference between human trafficking and human smuggling.

Human trafficking and human smuggling are distinct criminal activities and the terms are not interchangeable. Human trafficking centers on exploitation, so that exploitation involves one of two things. First, it might involve sex trafficking, in which a commercial sex act is induced by force, fraud or coercion.

So human trafficking's exploitation could also be the second thing, which is the recruitment, harboring, transportation or obtaining of a person for labor or services through the use of force or the use of fraud or coercion for the purpose of subjection to something like involuntary servitude, debt bondage or slavery.

Jillian Mueller:

Got it. So this would be somebody who is working for a company against their will, doing really any kind of work.

Amy Peck:

That's right. That's exactly it, Jillian.

So human smuggling is entirely different. Human smuggling centers on transportation. So remember, human trafficking centers on exploitation. Human smuggling centers on transportation. And it's generally known and defined as the importation of people into the United States involving a deliberate evasion of the immigration laws. So basically this involves bringing illegal non-citizens into the country as well as the unlawful transportation and harboring of these non-citizens who are maybe already in the United States.

Jillian Mueller:

Got it. And so can you explain to me a little bit what the regulatory framework for

employers looks like around these issues?

Amy Peck:

Absolutely. So back in 1986, there was a law that was passed that created what we now know as Form I-9 Employment Eligibility Verification. So Form I-9 Employment Eligibility Verification is the process by which a new employee proves their identity and work eligibility. So this is sometimes the first point of access to that employee after the interview and hiring an event.

So basically when somebody comes in their first day of work, sometimes before, they will come to the employer and they will say, "Hey, here's my documentation that shows who I am and that I am able to work for you." So that's Form I-9, it is one of the most fundamental and important parts of the new employee process.

In addition to that, some employers have even more restrictive requirements as to who can be employed at a specific job in a company. And think of I-9 as something that every single employee needs, but some employers have to take that even farther. A good example is ITAR and EAR.

ITAR, I-T-A-R, is the International Traffic and Arms, and it regulates the sale, distribution and manufacturing of defense related items. EAR, E-A-R, is Export Administration Regulations. It regulates the dual use items not covered by ITAR, but still applies to some defense related items.

So both of these laws have restrictions on who within a workplace can access technology or an item that is being manufactured or used at the work site. So for example, if you are an ITAR employer, and you would become an ITAR employer typically through a federal contract or a defense contract, so you might be required to only employ US persons for certain of your positions with access to that ITAR item or that ITAR technology.

So what is a US person you say? It is a US citizen or national, a lawful permanent resident, or an asylee or refugee. Note that a US person policy is not a US citizen only policy. These are different. US persons, again, includes US citizens, US nationals, but also includes lawful permanent residents and asylees or refugees. US citizen only policies are not very common, despite what people think. And in fact, when clients come to me and say, "We have a US citizen only policy", boy I really want to dig into that, because many times it's wrong.

So the main point that I'm trying to make here is that although there are many regulations around who can be on site at the workplace, there are still stories and instances of child labor despite I-9s, despite a separate ITAR screening, and there could still be child labor and human trafficking on the work site.

Jillian Mueller:

Amy, that's so great. And one of the things that I think it's really important to be mindful of is that it may not even be your own employees who are the trafficked persons. So a lot of our employers who are really focused on these ESG initiatives, they have already taken steps to make sure that their own workforces are compliant. However, a lot of times you're working with contractors, a lot of times you're working with staffing agencies, and for our ESG focused employers, it might be something that

you really want to crack down on and dig into is making sure that not only are your employees working lawfully, not children, not trafficked, all of those kind of things, but also making sure that these agencies that you're contracting with have those same kind of robust policies in place and are taking it as seriously as you are.

Something also to point out is that nothing stops you as an employer from reporting instances that you believe are human trafficking, even if it's not your own employee. So there are certainly some industries that are more vulnerable, and I'm thinking particularly of our clients who are in hospitality, of witnessing human trafficking, even if it's not their own employee or it's not somebody that they themselves have control over. So nobody's stopping you from taking action in those instances just because it's not your own employee.

And in fact, we're going to get into policies a little bit and the kind of policies that you can put in place, but we are advising all of our clients who are interested in these ESG initiatives to put an anti-trafficking policy in place, because until you identify it, until you define it and call it out, you're not letting your workforce know what to look for, right Amy?

Amy Peck:

That's right, it's so important. And to your earlier point, a lot of the recent media is centered around staffing agency employees with child labor. And so I think it's such an important point, you should take care of your own house, but you can also be mindful that there may be others on your work site and you need to protect yourself there too.

Jillian Mueller:

Exactly. And I think it's important to note that you're not immune from either the legal or the PR ramifications of employing trafficked employees just because you're using a staffing agency, right?

Amy Peck:

Fair point.

Jillian Mueller:

There can still be significant consequences, both in the media as well as legally, if you're allowing trafficked persons onto your site, even if you're not the one signing their paychecks.

Amy Peck:

Exactly.

Jillian Mueller:

So let's talk a little bit about I-9 compliance. Now I remember filling out that form myself at starting employment, but why don't you tell us a little bit more about that.

Amy Peck:

Absolutely. So it is very important for every employer to ensure that they have airtight I-9 compliance. And that looks different for every organization in terms of how you set up and how you implement an I-9 policy and airtight I-9 compliance.

But basically, you really need to make sure you have an I-9 for every single employee. You need to ensure that those I-9s are being monitored and work authorizations that are expiring are being reviewed/reverified.

And there are a number of things that you can do here. An additional thing that you can look at implementing is E-Verify. E-Verify is mandatory for some employers in some states, and certainly for federal contractors, it is mandatory if you have any E-Verify mandatory clause in the contract.

But I-9 and E-Verify compliance and good policies on I-9 compliance are fundamental to compliance in trafficking and the topics that we're talking about today.

Jillian Mueller:

That's sort of the bedrock, right?

Amy Peck:

That's right.

Jillian Mueller:

Making sure that your I-9 and E-Verify policies are in place and are being enforced is sort of the first step towards a robust anti-human trafficking and anti-smuggling and initiative as a company.

Amy Peck:

Exactly.

Jillian Mueller:

In addition to those policies, again, getting your own house in order, we've seen a lot of our clients seeking to implement supply chain policies, and that would look like requiring that any company that does business with you has these policies in place. And what that can kind of do is begin to inoculate your supply chain from concerns of trafficking. So if for example you do hire a staffing agency to put employees on the floor of your plant, you can have in your agreement with that staffing agency that they themselves are undertaking these policies and this compliance. And again, that can just help you make sure you have that additional layer of oversight so that nothing is getting slid in because they're not, again, technically your employees.

An additional step that we are recommending is that clients implement age verification. Again, there's been a lot of coverage recently about child labor and companies saying, "Oh, we didn't realize that such and such individual was under the legal age to work." And every state is different in terms of what underaged employees are permitted to engage in terms of industry, in terms of job duties, so that's definitely something to consider on a state by state basis, but those robust age verifications being in place can prevent the kind of situations that we've seen in the media.

And then, Amy, do you want to talk a little bit about what kind of training, certainly that we offer to our clients, and we recommend that all employers offer to their employees regarding these issues?

Amy Peck:

Absolutely. I believe that training is essential to the implementation of these policies. Employees may read a policy, but they don't really understand what it means for them. And training, especially in those positions where people may have contact with a trafficked person or perhaps a child laborer, the training can be essential to providing the link between that observation of a trafficked person and the reporting to the appropriate person. And a lot of times people think, wow, wow, I see this terrible thing, but I don't know what to do. Well, training provides the link between seeing it and doing something about it.

Jillian Mueller:

And one of the trainings that we propound and that many nonprofits also do a really good job of explaining in their publicly available materials is how to identify victims of trafficking or victims of smuggling. Because for example, you might have an employee who sees something that strikes them as a little bit off, but without the proper training, they may not know how to identify that the person that they're seeing is actually a victim of trafficking. And so again, as Amy you said, providing that link between the employee who witnesses something, and them reporting it in the appropriate place.

One other thing that I wanted to recommend is that employers put in a particular mechanism for reporting allegations of trafficking. A lot of times there's concern about retaliation, there's concern about consequences for making this kind of report, and so propounding either a hotline or some other service, whether through a third party or internally, so that people feel comfortable making these kind of reports, that they know that it's safe to do so, and that they know that their employer's going to take it really seriously, because this is a real measurable step that companies can take towards combating human trafficking, both internally to their own workforces, and again, as part of their supply chain.

So thank you so much for being with me, Amy, and for offering your depth of expertise on these issues, and we think it's going to be of great value to our clients who are seeking to ensure that their workforces are compliant, not only with the law, but also with their ESG goals.

Amy Peck:

Thanks, Jillian.

Alitia Faccone:

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