

How Int'l Strategies Can Mitigate US Child Labor Risks

By **Tom Plotkin** (October 11, 2023)

Recently, there have been several prominent stories in the press detailing allegations of widespread child labor in the U.S.[1] These stories often involve migrant children who have entered the U.S. unlawfully, and who must work without formal legal protections in order to avoid detection by immigration authorities. This posture, the stories explain, frequently leads to exploitation of an already vulnerable population.



Tom Plotkin

These reports raise significant legal risks under a variety of state and federal child labor laws, as well as potential civil and criminal liability risks under statutes like the Trafficking Victims Protection Reauthorization Act. However, they also implicate international human rights principles that have been a focus for the business community in recent years.

The growing field of business and human rights provides companies with principles they can use to identify, mitigate and remediate human rights risks that may be associated with their operations and supply chains.

The majority of business and human rights work focuses on human rights risks abroad, but the principles underlying this field are equally applicable to human rights risks occurring domestically.

This article details some of those principles at a high level and explains how they can be implemented to address the specific issue of U.S. child labor exploitation risks.

Mapping Business Partner Relationships

Supply chain mapping has become a critical tool for managing risk associated with forced labor in supply chains. The U.S. government has ramped up enforcement of a statutory prohibition on the importation of goods made with forced labor abroad, and a first step in managing this risk is understanding who a company's direct and indirect suppliers are with as much detail as possible. This principle is equally important for managing U.S. child labor risks.

In addition to doing business with U.S. suppliers, many companies outsource functions at other points in the value chain, including production, packaging and shipping. Within those operations, direct business partners may further outsource and subcontract certain functions.

Child labor risk could exist at any step in these operations, and a first step in managing that risk is understanding who a company's business partners are and what function they are responsible for throughout the value chain. It may be possible to conduct mapping internally, but there are also new third-party vendors emerging that provide services to assist with this exercise.

Vetting Potential Business Partners

It can be helpful to evaluate risks associated with potential business partners before

entering into a commercial relationship. In the business and human rights context, many companies conduct threshold due diligence on a potential business partner's compliance and human rights practices, including through questionnaires and on-site visits.

This strategy could also be applied in the U.S. child labor risk management context. For example, a company can ask prospective business partners how they monitor child labor risks, who is responsible for monitoring, whether they have ever identified any issues and if so, what they have done about it.

Third-party intelligence and due diligence services may also be able to provide a more general perspective, scanning for prior government enforcement activity, litigation or news stories that connect the business partner to child labor allegations.

Defining the Standards and Expectations of the Relationship

At the outset of a relationship with a business partner, a company has an opportunity to define its expectations and gain certain assurances that the business partner will comply. Companies use a variety of tools to do this, including contractual clauses on compliance with legal standards, reservation of oversight rights and incorporation of specific business partner codes of conduct or human rights policies.

A company may also consider asking a business partner to sign a certification regarding its child labor compliance and oversight practices to gain additional assurances and manage risk.

In addition to these formal mechanisms, it can be helpful to request that a specific point of contact at the business partner be designated for taking calls, answering questions and undergoing trainings related to child labor compliance.

Monitoring and Corrective Action

Active monitoring and oversight are critical for identifying and mitigating child labor risks, both at the outset of the relationship or while operations are underway. At a basic level, companies can use desktop strategies like questionnaires to monitor compliance. However, on-site auditing has emerged as a key oversight tool in the business and human rights context, and it can be an equally valuable tool for managing U.S. child labor risks.

Business and human rights principles stress the importance of conducting both announced and unannounced audits, and using third-party auditors at least some of the time. The goal in this process is to develop an objective and credible understanding of operations at a particular worksite — usually higher-risk locations — and identify any actual instances or risks of prohibited or coercive child labor.

Whereas auditing in certain foreign locations can be difficult, many of those issues are less pronounced in the U.S. — language barriers, refusal to cooperate, interference by local authorities.

If potential or actual noncompliance is identified, business and human rights principles state that a company should try to work with its business partner to remedy the issue, rather than simply cutting ties.

In practice, it can be difficult to fully satisfy this principle when a clear violation of law has been identified. However, many companies have found that correcting an issue with a

noncompliant business partner is often more efficient than finding an entirely new company to work with.

Remediation itself can take many forms, though in the context of U.S. child labor involving undocumented migrants, this process can be particularly complex and require careful analysis to arrive at the right solution.

Working with Stakeholders

Companies often work with a variety of external stakeholders to bolster efforts for identifying and managing human rights risks in global operations and supply chains. These principles can also assist in managing risks related to U.S. child labor.

Civil society groups are active in monitoring migrant child welfare and often seek to partner with the business community to strengthen their efforts. Government stakeholders have also mobilized in response to these issues, including a new federal interagency task force to combat exploitative child labor.

Companies can bolster their own compliance and oversight efforts by working with external stakeholders where strategically beneficial.

Tom Plotkin is special counsel at Covington & Burling LLP.

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[1] See, e.g., Amanda Seitz, White House promises crackdown on migrant child labor, Associated Press (Feb. 27, 2023), <https://apnews.com/article/politics-child-endangerment-abuse-us-department-of-health-and-human-services-children-91ad24f4cfafd03434ad83f72732b64e>.