

Managing the Covid-19 impact on modern slavery prevention

Paul Reeves, Tony Woodcock, Leanne Raven and Fran Legg look at how businesses can tackle the heightened risk of modern slavery abuses resulting from the pandemic

Amid the turmoil of the coronavirus pandemic, employers have not necessarily been focusing on their responsibilities under the Modern Slavery Act 2015 (MSA). As the Boohoo scandal has shown, however, it is important not to overlook these duties. In this article we consider several areas of risk caused by the pandemic, ways that employers can help mitigate those risks and what changes to the MSA may be on the horizon given the government's response to the *Transparency in supply chains* consultation, which is hot off the press having been published on 22 September 2020.

What does the MSA require from businesses?

The MSA imposes an obligation on businesses to publish an annual statement disclosing the steps they have taken to ensure there is no slavery or human trafficking present in their organisation or supply chains. The obligation applies to corporates or partnerships (wherever they are incorporated or formed) which:

- carry on business or part of their business in the UK;
- supply goods or services; and
- have an annual global turnover of £36m.

The statement must confirm:

- the steps the organisation has taken to prevent slavery and human trafficking in its supply chains and its own businesses; or



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- that the organisation has taken no such steps (which is not recommended).

A director must sign the statement and the business must publish a link to it in a prominent position on its website.

This is an annual obligation but, due to the coronavirus pandemic, the government announced in April 2020 that it was allowing businesses to delay publishing their MSA statements by up to six months without penalty if necessary due to 'coronavirus-related pressures'. Once it has published its statement, the business must state the reason for the delay.

Employers should check their time frame for publishing their MSA statements and be ready to state how and why coronavirus-related pressures resulted in a delay. They should also be using their next MSA statement to demonstrate how they monitored risk during this period and adapted their activities and priorities in response.

Impact of Covid-19

The government has highlighted a number of areas in which workers may be more vulnerable to modern slavery risks due to the coronavirus:

Health and safety

The recent scandal involving online fashion retailer Boohoo brought to light the plight of factory workers who were alleged to be working without personal protective equipment (PPE) and in conditions that did not allow for social distancing. In relation to modern slavery and the pandemic, the government has published a recommendation that businesses should implement relevant local or national government policies throughout the supply chain, including social distancing measures and paying statutory sick pay (SSP).

In our view, the issue of SSP and the guidelines around self-isolating are particularly relevant in the context of modern slavery; victims of modern slavery may be forced to work by their traffickers even if they are unwell or should be self-isolating. Businesses should be alive to such risks and ensure UK-based suppliers' workplaces are Covid-secure. They should also ensure workers receive SSP or enhanced sick pay.

Recruitment

Some businesses have seen an increased demand for certain products or services, which in turn has required additional, and possibly temporary, workers (for example, to manufacture hand sanitiser or PPE or to deliver online orders). The need to hire personnel quickly may have led to shortcuts in the recruitment process, increasing the risk of modern slavery violations in those organisations and their supply chains.

The government advises that businesses should maintain rigorous checks on their supply chains to protect vulnerable workers. Accordingly, businesses in these situations should conduct thorough risk assessments to expose any possible weaknesses that may have arisen in recruitment in recent months. They should push for transparency in recruitment processes and look at the entire supply chain, not just the first tier.

Grievance procedures

Vulnerable workers may feel unable to speak up about any concerns they have about the pandemic and their working environments – especially given the difficult economic climate, job uncertainty and fear of redundancies. Ensuring that robust grievance procedures and whistleblowing policies are in place and are accessible, along with considering other options

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such as confidential reporting hotlines, can help to create a culture of openness and encourage staff to report concerns.

Supporting suppliers

The pandemic has disrupted numerous industries and businesses, resulting in insolvencies and shifts in production away from certain items and towards others. This could result in workers being unpaid for work they have completed. The government advises that to avoid workers missing out on pay, businesses should prioritise engagement with suppliers including, where possible, paying for orders already in production. Businesses are encouraged, as part of a wider push to support suppliers, to try to minimise any adverse impact on workers. For example, they may want to consider measures such as allowing flexible quotas and flexible delivery schedules, or providing order guarantees.

Measures to mitigate MSA risks

To mitigate these increased risks from the pandemic, as well as manage the usual modern slavery challenges, employers should try to understand their supply chains. They should also be able to show how they have monitored and responded to identified risks. These are some of the strategies that they can use:

Risk assessments

Employers should carry out thorough risk assessments to ensure that they understand their supply chains. They should also review the monitoring procedures they have in place to protect their own staff and those in their supply chains against exploitation. This can help identify any vulnerabilities so that appropriate steps can be taken. The government advises businesses to consider which parts of their workforce may be particularly vulnerable and keep their board of directors updated on emerging or heightened risks.

Supply chain due diligence

Businesses should regularly ask questions of their supply chain. How do their suppliers and their sub-contractors operate? What are their hiring processes? What standards do they

adhere to? Being involved in a complex supply chain with numerous different parties and sub-contractors does not provide businesses with an excuse to ignore their modern slavery obligations.

Government guidance on supply chain transparency suggests that modern slavery checks should form part of a wider due diligence process encompassing ethical trade, corporate social responsibility and human rights where possible.

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Contractual protection

Employers should ensure they have adequate contractual protections in their agreements with suppliers that require them to co-operate and provide information on request about their supply chains, personnel and recruitment practices.

Staff training

Businesses should train staff to spot signs that someone may be a victim of slavery. They should consider the effectiveness of this training and the level of awareness it generates among its employees. If staff are appropriately trained and understand the importance of identifying instances of modern slavery, they are more likely to report any unusual circumstances.

Culture and ethos

The board (or equivalent management body) must approve the annual modern slavery statement. If the board is invested in the issue, along with other senior management, this will create a top-down culture of placing importance on modern slavery issues.

Policies

Robust and well-drafted policies will provide staff with a clear path to follow to report concerns and give them confidence that the business will investigate these. Employers may want to produce such policies (and other anti-slavery information) in more than one language to ensure accessibility.

Statements

While there are currently no financial penalties for failure to provide a statement (see box below), it is still an important process for businesses to go through. In producing the statement, businesses will be analysing their supply chains and uncovering their modern slavery risk profile.

What happens if an employer doesn't issue a modern slavery statement?

There are currently no financial penalties for failing to issue a statement but the government is reconsidering this position. The Home Secretary does have the power to enforce compliance by seeking an injunction in the English courts to compel an organisation to issue a modern slavery statement. If an organisation fails to comply with the injunction, it will be in contempt of a court order and that would be punishable by an unlimited fine. However, this seems a remote risk to employers.

Of greater concern is the negative publicity if a business fails to protect vulnerable workers. For example, the allegation that one of Boohoo's suppliers was paying its factory workers less than the minimum wage led to the online retailer's share price falling by 23% in the immediate aftermath. Reputation is fragile and failure to adhere to ethical practices is a guaranteed way to tarnish a company's name.

It is also worth noting that compliance with the MSA may be a requirement of a contract or tender process. For example, smaller organisations (which are not caught under the MSA) may have to provide voluntary modern slavery statements or assurances before they can supply larger businesses or the public sector. This is further reason, if needed, for the MSA to be on employers' radars.

Changes on the horizon

On 22 September, the government published its response to a public consultation on transparency in supply chains.

Content of statements

Currently, the MSA's transparency requirements and guidance suggest that organisations report on six areas in their modern slavery statements:

- their business, structure and supply chains;
- their policies on slavery and human trafficking;
- their due diligence processes for avoiding slavery and human trafficking in their business and supply chains;
- the parts of their business and supply chains where they have identified a risk of slavery and human trafficking taking place, and the steps they have taken to manage these risks;
- the performance indicators they rely on to measure the effectiveness of their steps to prevent slavery and human trafficking; and
- the training on slavery and human trafficking available to their staff.

The government consulted on making the inclusion of specific topics compulsory to encourage comprehensive reporting and consistency across reports. Its response confirms that it will mandate the areas that the statements must cover. If organisations have taken no steps within an area, they must state this clearly and will be encouraged to provide a reason for this. The mandatory areas will encompass the existing voluntary areas, even if the structure changes. The government confirmed that later this year it will publish updated guidance for businesses and public sector organisations, including best practice approaches to reporting against the required areas.

Transparency, compliance and enforcement

The government has confirmed that:

- for those organisations within scope, it will be mandatory to publish MSA statements on a government-run reporting service;
- there will be a single reporting deadline of 30 September and, instead of the current requirement for organisations to report on activity undertaken during their financial year, there will be a shared reporting period of 1 April to 31 March;
- following a proposal in the consultation document to introduce stronger enforcement processes and tools, it will consider enforcement options in line with the development of the single enforcement body for employment rights and will issue a further update in due course; and
- it will amend legislation so that modern slavery statements will have to state the date the statement was approved and the names of the entities covered.

Public sector supply chains

The government has confirmed that it will extend the requirements on transparency in supply chains to public sector organisations with an annual budget exceeding £36m.

Key take-aways

Employers should be alive to increased risks resulting from the coronavirus pandemic as well as the usual modern slavery risks and should take steps to mitigate these.

Businesses should not overlook their modern slavery statements and their obligations under the MSA. If they have delayed publication as a result of the pandemic, they should include in their statement the reason for the delay, together with details of any increased risks caused by the pandemic and actions taken.

Employers should look out for changes to the MSA following the government's response to the public consultation.

What's next?

We expect further government guidance on certain areas and await the introduction of the legislative changes outlined in the response to the consultation. ■

Reference point

Transparency in supply chains consultation: government response: www.legalease.co.uk/transparency-response

Government guidance on *Modern slavery reporting during the coronavirus (COVID-19) pandemic:* www.legalease.co.uk/modern-slavery-reporting

Transparency in supply chains: a practical guide: www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide