

Employment – 20:20 vision

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The Boohoo scandal: A reminder of Modern Slavery Act 2015 obligations



The recent undercover investigation by The Sunday Times into poor pay and working conditions at a supplier of the fast-fashion retail brand Boohoo is a timely reminder for all employers of the importance of modern slavery statements.

Background: What is the Boohoo scandal?

The undercover investigation by The Sunday Times revealed that a garment supplier within Boohoo's supply chain was paying its factory workers as little as £3.50 per hour, well below the UK minimum wage. Furthermore, workers had allegedly been required to work throughout the Covid-19 lockdown with little or no social distancing measures or protective equipment in place.

Boohoo immediately distanced itself from the supplier in question, ceasing all business with the company and clarifying that it was a sub-supplier rather than a direct supplier. It also instructed Alison Levitt QC to undertake an independent review into its supply chain and promised to "act decisively" on the findings.

Nevertheless, the effects of the allegations on Boohoo's business were abrupt and adverse, with a number of online platforms and retailers refusing to sell Boohoo's goods from their websites and its share price falling by a third.

At the time of writing, government agencies have visited a number of premises in Leicester to investigate alleged abuses, although they have confirmed that, at this stage, they are yet to identify any offences under the Modern Slavery Act 2015 ("**MSA**").

What do employers need to know about the MSA?

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 within their organisation or supply chain.

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 and services; and
- are above a certain size (£36 million annual global turnover).

The annual slavery and human trafficking statement must confirm either:

- the steps taken by the organisation to ensure that slavery and human trafficking are not taking place in any of its supply chains or its own businesses; or
- that no steps have been taken by the organisation to confirm this.

A link to the statement must be published in a prominent position on the business' website and signed by a director.

The statement should include:

- The organisation's structure, business and its supply chains.
- Its policies in relation to slavery and human trafficking.
- Its due diligence processes in relation to slavery and human trafficking in its business and supply chains.
- The parts of its business and supply chains where it has identified a risk of slavery and human trafficking taking place, and the steps it has taken to manage these risks.
- The performance indicators it relies on to measure the effectiveness of the steps taken to ensure that slavery and human trafficking is not taking place in its business or supply chains.
- The training about slavery and human trafficking available to its staff.

As a result of the ongoing Covid-19 pandemic, the government published [updated guidance](#) on 20 April 2020 allowing businesses to delay publishing their MSA statements by up to six months without penalty if necessary due to "coronavirus-related pressures". However, once published, a business will be required to state the reason for the delay.

The government has also provided recommended mitigation measures for areas of increased modern slavery risk. These include:

- The health and safety of workers
- Supporting suppliers
- Grievance procedures
- Recruitment

Why should all employers comply with the MSA – isn't it limited to certain sectors?

Aside from the obvious reasons for complying with the MSA and avoiding allegations of forced labour or human trafficking, the negative publicity that follows these allegations can be enough to hinder any business. Reputation is fragile and failure to adhere to ethical practices is a guaranteed way to tarnish a company's reputation.

Compliance may also be a requirement of a contract or tender process. For example, voluntary modern slavery statements or assurances may be required of smaller organisations (who are not obligated under the MSA) in their role as business partners of larger organisations. Similarly, compliance may be required of potential suppliers in public procurement tender processes.

Currently, only the Secretary of State has the power to enforce compliance by seeking an injunction in the English courts to compel an organisation to issue a modern slavery statement. However, an independent review of the MSA (commissioned by the Home Secretary and published in May 2019) recommended that the UK government should strengthen its approach against non-compliant organisations by, for example, giving an enforcement body the power to impose sanctions.

In March of this year, the UK government published its own modern slavery statement, which included a foreword written by the Prime Minister stressing the importance of taking active steps to drive out modern slavery from supply chains. This, together with the opening of a public consultation last year on proposed changes to the MSA to target non-compliance, highlights the government's focus on and commitment

to tackling the issue of modern slavery and human trafficking.

What do employers need to do?

Boohoo serves as a timely reminder to other employers to re-assess risks in their supply chains, review compliance measures and preserve the reputation of their business.

The current pandemic will inevitably alter how many businesses operate. We would therefore recommend that you carry out a thorough risk assessment to better understand your supply chains and reassess your monitoring procedures to protect your own staff and those in your supply chains against exploitation. Organisations will be expected to show how they monitored and responded to any new or increased risks identified. Any response should be proportionate to the risk identified and may, for example, involve consideration of the following:

- **Supply chain level**
 - **Do you know your supply chain?** How do your suppliers and their sub-contractors operate? What are their hiring processes? What standards do they adhere to?
 - **Do you have appropriate contractual provisions?** Do you have clauses in your agreements to compel compliance by suppliers to a Code of Conduct?
- **Staff level**
 - **What training do you provide to your staff?** Are employees able to spot red flags and raise any issues using the appropriate channels?
 - **Do you have any policies that address slavery and human trafficking?** When were they last updated? Are employees aware of such policies?
- **Senior level**
 - **Is there "tone from the top"?** How is a compliant culture disseminated through to employees? Do your staff understand that you have a zero tolerance culture? Is it visible?
 - **Has the Board been updated?** The Board (or equivalent management body) must approve the annual modern slavery statement. It should therefore be updated of any new or increased risks.

An organisation may want to consider instructing professional advisers who are better able to identify vulnerabilities or faults in its systems.

If you would like to discuss any of the issues covered in this e-alert or if you require advice in relation to how to respond to an investigation, please get in touch with any of the contacts listed below or your usual Stephenson Harwood contact.

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