

A Silent Risk

Human Trafficking & Insurance Considerations

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Human trafficking is a worldwide problem impacting millions of men, women, and children over thousands of years. In the United States, California, Texas, and Florida have the most trafficking cases. India leads the world in human trafficking cases with approximately 14 million victims. Forbes has reported that trafficking is estimated to be a \$150 billion per year business. In an effort to combat trafficking, the National Human Trafficking Hotline (888.373.7888) was started in 2007. In 2020, the hotline received 51,667 substantive tips. These tips come in the form of texts, phone calls, online chats, and emails.

In the United States, January is designated to promote awareness of the worldwide problem of slavery and human trafficking. Traffickers come from all levels of society. Most traffickers are, perhaps surprisingly, women. In a high-profile case in January 2022, socialite Ghislaine Maxwell was convicted on five federal counts of sex trafficking to wealthy and influential people. Although human trafficking is a concern at the United States southern border, trafficking does not necessarily involve movement across international borders.

There are three common forms of human trafficking: debt bondage, forced labor (involuntary servitude), and sex trafficking. Of these, forced labor is believed to be the most prevalent worldwide, but sex trafficking garners the most attention.

Part of the problem with determining the actual number of victims is that statistics only reflect cases that are actually reported. Human smuggling is not the same as human trafficking. Smugglers are paid to transport people secretly. Traffickers use coercion, force, and deceit to ensnare their victims.

Although anyone can be a victim of human trafficking, some populations are especially vulnerable. According to the Human Trafficking Hotline, people may be vulnera-

ble to trafficking if they: have an unstable living situation, have previously experienced other forms of violence such as sexual abuse or domestic violence, have run away or are involved in the juvenile justice or child welfare system, are undocumented immigrants, are facing poverty or economic need, have a caregiver or family member who has a substance use issue, or are addicted to drugs or alcohol.

The COVID-19 pandemic presented an increased challenge in the battle against human trafficking. Additional time spent online and reductions in income left many people vulnerable. Two main contributors to increased vulnerability are homelessness and abuse. Methods traffickers use to control their victims include: intimidation, physical abuse, confiscation of identification documents, threats to the victim or their family, or economic abuse.

Victims of human trafficking may be hesitant to ask for help for a number of reasons including language barriers, fear of traffickers, or fear of law enforcement. Human trafficking convictions come with significant criminal penalties. Compulsory service or involuntary servitude (also known as peonage) convictions can result in fines and prison terms of up to 20 years. If there is a death involved, the sentence can be extended to life in prison. Sex trafficking of children, anyone under the age of 18 (whether through coercion, fraud, or force), can lead to a minimum ten-year prison sentence. Forfeiture of property to repay the victims is also possible.

Lawsuits are also pursued through civil law. The Trafficking Victims Protection Act (TVPA), first enacted in 2000, was designed to prevent human sex and labor trafficking



by means of prevention, prosecution, and protection. It provides victims of human trafficking with a means to sue traffickers or those who facilitated the trafficking.

Businesses charged with facilitating trafficking may look to their insurance policies for defense and coverage. General liability policies were not designed to cover human trafficking claims. However, civil TVPA lawsuits raise a number of coverage concerns. Considerations for insurers may pertain to claims that involve bodily injury/property damage (Coverage Part A) or personal/advertising injury (Coverage Part B). In addition, another potential coverage issue is whether a policy includes an abuse exclusion or an exclusion for assault and battery. Generally speaking, both exclusions should encompass human trafficking claims.

The TPVA also gives victims the right to sue for damages. In 2008, the act was expanded to allow suits to include anyone who knew or should have known about the trafficking activity, and anyone who benefited from the activity, whether or not they were directly involved. These civil causes of action typically have statutes of limitation that run 10 years. Prior to the 2008 revision, plaintiffs could sue for such things as assault and battery, false imprisonment, or negligence. The statute of limitations on these types of actions are only two years. A



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defendant who loses his or her case must also pay reasonable attorney fees of the plaintiff.

From a risk assessment perspective, according to Markel, certain industries are especially susceptible to trafficking claims, such as: hospitality providers, staffing agencies, residential care facilities, sports organizations, online platforms and social media, entities reliant on temporary or migrant labor, industries reliant on an international supply chain, and organizations working with minors or other vulnerable populations. As previously stated, the TVPA is used as a tool by plaintiffs in sex abuse cases that have not traditionally been viewed as trafficking cases. This means that if an entity is at risk for abuse claims, it is also at risk for TVPA claims.

Human trafficking cases that have gained the most attention in the insurance industry are cases against hotels and motels. In common cases, Markel also indicated that the plaintiff has alleged that the hotel should have been aware that it was profiting from human trafficking from examining factors like: the amount of luggage they are carrying, the amount of male guests visiting the guest's room, guests who do not speak or seem drugged, the number of used prophylactics left in the room, utilization of cash transactions, and guests that refuse housekeeping.

Many states, including New York, have taken steps to stem human trafficking. The New York State Interagency Task Force on Human Trafficking, established in 2007, is designed to coordinate activities of the various local, state, and federal agencies that are involved in the battle against human trafficking. Some of the services include counseling, housing, and career assistance.



As of January 2020, California requires all hotel and motel employees who may come in contact with human trafficking to receive training in human trafficking awareness. Several states have laws that can compel the dissolution of any business found to be involved in or harboring human trafficking operations. Penalties can include fines up to \$1 million and substantial prison terms.

Human trafficking is a pervasive problem all over the world. Awareness is the first step to prevention. Many victims are hiding in plain sight. According to the United States Department of State, indicators of human trafficking can include: living with employer, poor living conditions, multiple people in cramped space, inability to speak to individual alone, answers appear to be scripted and rehearsed, employer is holding identity documents, signs of physical abuse, submissive or fearful, unpaid or paid very little, and under 18 and in prostitution.

Human trafficking is specifically an issue insurers and insureds should be aware of given the potential lawsuits that could be filed. Insurance companies and their carriers should stay abreast of risk considerations and potential steps to mitigate those risks. There are training programs available to teach how traffickers may target

and recruit their victims, as well as signs that someone may be a victim. There are various tools and websites available that provide information on responsibly sourced food, clothing, and other products. Suspected cases of human trafficking should be reported to the hotline or local authorities. Education and action are key in reducing civil lawsuits. More importantly, these efforts will help to eradicate the human trafficking industry.

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