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# **MANAGING RISK: INTERNATIONAL LABOR AND HUMAN RIGHTS**

Five Reasons Leading Companies Are Taking These Issues Seriously





## INTRODUCTION

A corporate leader's nightmare scenario: waking to the news of the collapse of a factory manufacturing the company's products, reading headlines about the company's involvement in child labor abuses, or learning of work stoppages at supplier plants over human rights issues.

As companies worldwide face rising pressure to comply with international labor and human rights standards, these scenarios cause great concern among corporate leaders for good reason. In addition to potential harm to workers, failing to manage labor and human rights risks can have a significant, long-lasting impact on their business strategies, legal risk profile and brand reputations.

Companies are also realizing the benefits of addressing these issues and making a conscious effort to promote basic rights among their workforces, including:

- RIGHT TO NON-DISCRIMINATION
- PROHIBITION OF SLAVERY, FORCED LABOR, AND HUMAN TRAFFICKING
- ELIMINATION OF UNDER-AGED CHILD LABOR
- FREEDOM OF ASSOCIATION



More than 8,000 companies have signed the UN Global Compact and committed to aligning their operations with universal principles on human rights, labor, environment and anti-corruption. Other core international labor and human rights instruments include:





## **FIVE WAYS YOU BENEFIT FROM ADDRESSING LABOR AND HUMAN RIGHTS ISSUES**

As labor and human rights continue to grow in importance, here are five ways you can benefit from addressing these issues in your operations, followed by practical tips for identifying and remedying abuses and how we can help ensure your business policies and practices do not infringe the rights of others.

# MANAGE STAKEHOLDER ENGAGEMENT

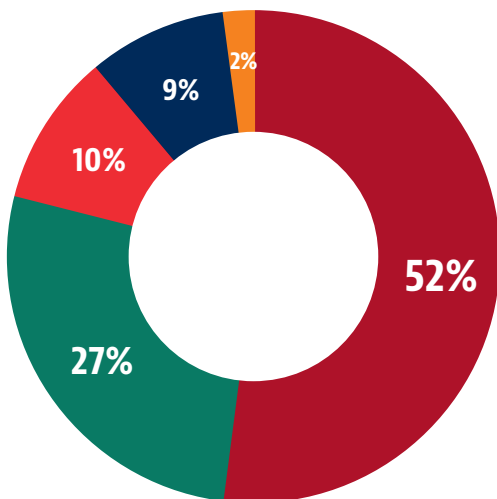
#1

Stakeholders are becoming increasingly vocal in seeking to advance labor and human rights protections within corporations. For example:

- More than half of US shareholder proposal submissions in 2015 involved concerns about diversity, equal employment opportunity, labor and human rights, and sustainability.
- Trade unions remain a driving force globally by extending their influence and continuing to partner with NGOs and other activist groups to build coalitions on issues such as worker health and safety, wages and hours, child labor, freedom of association, and collective bargaining.
- Global union federations are pressuring multinationals to sign international framework agreements that commit signatory companies to uphold a set of labor standards everywhere they operate, regardless of national laws.
- Activist groups regularly survey and grade brands on their efforts to address labor and human rights impacts.

Rather than ignoring these developments until they become a crisis, companies that identify and engage with key stakeholders can gain valuable commercial intelligence, build goodwill, and respond to their labor and human rights challenges to create shared value.

## 2015 SHAREHOLDER PROPOSAL CATEGORIES TO DATE (BASED ON PROPOSAL SUBMISSIONS<sup>1</sup>)



- Environmental/social
- Board-focused
- Compensation
- Anti-takeover/strategic
- Routine

**52%** OF SHAREHOLDER PROPOSALS ARE RELATED TO ENVIRONMENTAL/SOCIAL SUB-CATEGORIES

- Top four environmental/social sub-categories:
- Political spending/lobbying
  - Climate change/sustainability
  - EEO/corporate diversity
  - Labor/human rights

# PROTECT YOUR REPUTATION AND BRAND IMAGE

#2

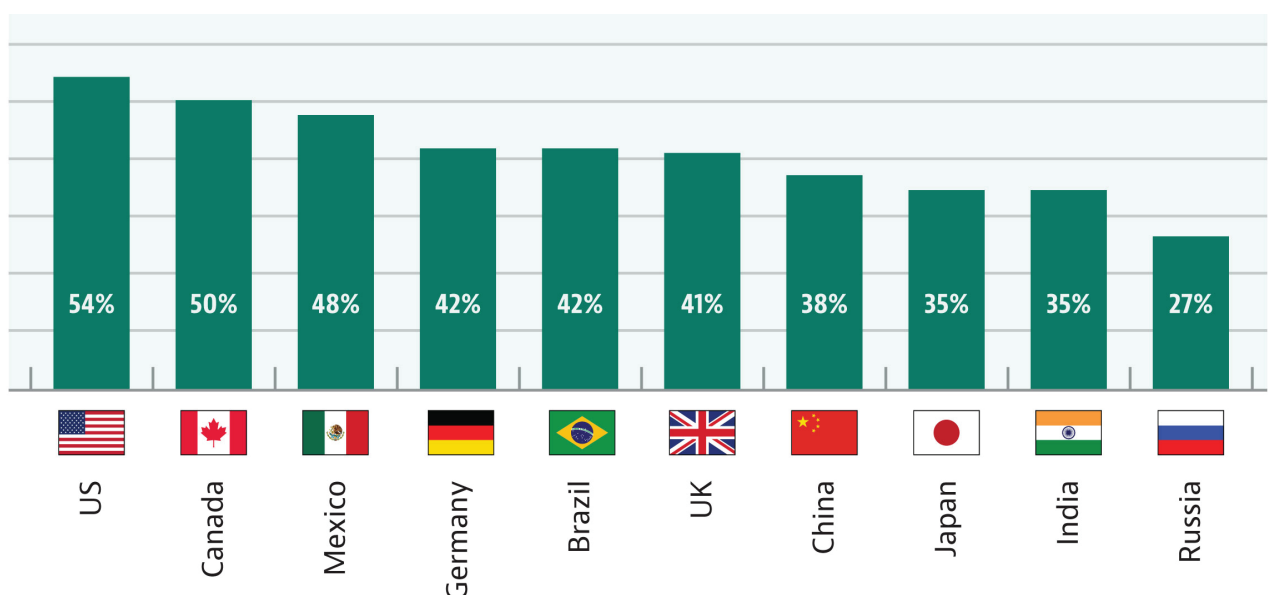
Allegations of labor and human rights abuses and workplace disasters can lead to negative publicity and threaten customer, employee, and investor loyalty.

Widespread use of the Internet and social media amplifies the risk as news of these allegations spread quickly. Some large brand companies have learned about their own suppliers through a crisis — an NGO posted a YouTube video showing the abuse of migrant workers and accusing the company of complicity; labor activists launched a global corporate campaign alleging slave wages and forced overtime; anti-logos and satirical ads protesting alleged abuses of workers went viral.

“Customers increasingly choose companies they want to do business with based on corporate behavior.”

Recent surveys underscore the new reality that these messages can have a major impact. Research shows that the next generation wants to work for companies that share their values, and investors are taking note of companies' nonfinancial performance, including labor and human rights impacts and disclosures.<sup>2</sup> Companies that pay attention to these trends and implement labor and human rights policies and processes can reinforce their reputations as good corporate citizens while minimizing the time and resources they spend on crises.

## PERCENTAGE OF PEOPLE WHO DECIDED NOT TO DO BUSINESS WITH A COMPANY BECAUSE OF SOMETHING THEY LEARNED ABOUT HOW THE COMPANY CONDUCTS ITSELF<sup>3</sup>



# MINIMIZE LEGAL LIABILITY

#3

While protecting labor and human rights has historically been voluntary, a body of law is emerging that requires companies to take action.

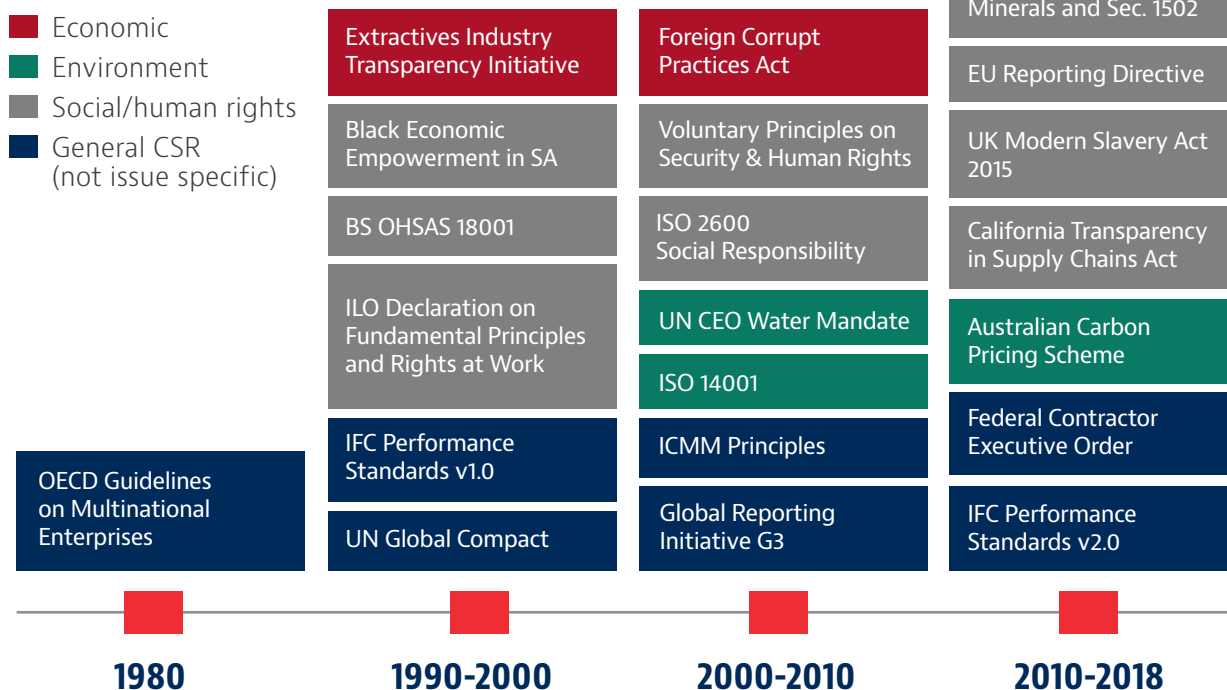
The US Dodd-Frank Act, California Transparency in Supply Chains Act of 2010, UK Modern Slavery Act of 2015, and EU Directive on Non-Financial Reporting are just a few examples of a growing global trend — national and local legislators are increasingly making CSR-type reporting and disclosure mandatory and holding companies accountable.<sup>4</sup>

Companies can also face civil and criminal legal liability for labor and human rights abuses. In recent years, for example, US courts and government agencies have ordered companies to pay millions to foreign workers in human trafficking cases. Claimants also continue to pursue cases, including class actions, against multinational companies on the basis of tort, consumer protection and unfair competition laws, and to file claims with a growing number of non-judicial bodies.

To manage increasing legal risk related to labor and human rights abuses, companies must track and devise strategies to respond to evolving international, federal and state laws and regulations on these issues.

## PROLIFERATING LABOR AND HUMAN RIGHTS STANDARDS

An increasing number of statutes and international standards are putting the spotlight on responsible supply chain practices.



# IMPROVE EMPLOYEE RELATIONS AND PRODUCTIVITY

**#4** In recent years, many countries have experienced high levels of labor unrest, including work disruptions, street confrontations with police and property damage.

Labor unions are also becoming more active, organizing across borders and employing tactics like corporate campaigns to advance their objective of expanding their influence.

By integrating labor and human rights compliance into their business practices, companies can minimize business disruptions sparked by conflicts over issues such as wages, child labor, health and safety, and poor working conditions. Research also shows companies that employ strategies to eliminate discrimination, prevent harassment, protect health and safety, pay decent wages and allow grievance reporting can improve employee engagement, boost productivity, and reduce costs associated with staff recruitment, leave benefits and litigation.

## 5 LABOR AND HUMAN RIGHTS QUESTIONS

EVERY BOARD SHOULD ASK

Is responsibility for labor and human rights performance integrated into the highest levels of the company?

Does our supply chain touch a conflict-affected or high-risk jurisdiction?

Have we conducted labor and human rights due diligence?

What are various internal stakeholders (such as government affairs, sustainability, community relations, legal) saying about our company's commitment to respecting human rights?

What assurances do we have that our labor and human rights statements are coordinated and credible?



# CREATE GREATER BUSINESS VALUE

#5

Companies that expand their risk assessments to include labor and human rights impacts often create new value.

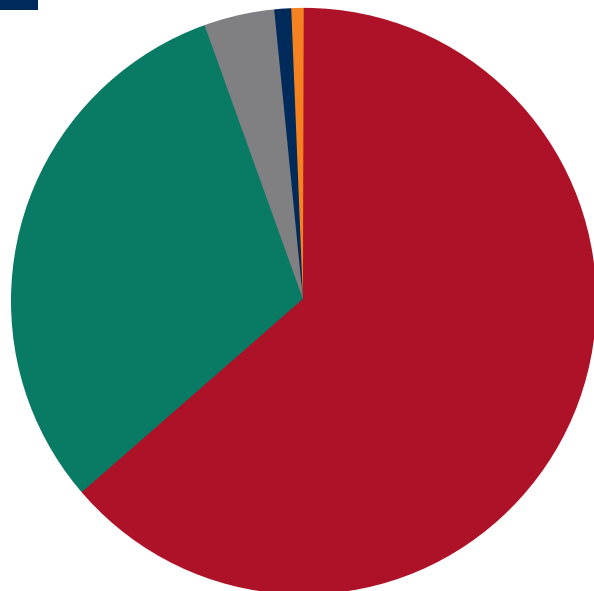
Numerous studies confirm that companies with high ratings for environment, social, and governance (ESG) factors have a lower cost of debt and equity and outperform the market in the medium and long term.<sup>5</sup> At the same time, an increasing number of investors are equating corporate accountability with long-term sustainability and profitability and putting their money into companies that respect labor and human rights. For many investors, labor and human rights performance is a proxy for risk — companies that identify and address the root causes of conflict can reduce their overall risk profile.<sup>6</sup>

In addition, companies and funds increasingly are being rated on ESG factors (such as the Corporate Human Rights Benchmark, Morningstar Sustainability Ratings). Similarly, development banks, financial institutions, and governments are considering companies' human rights commitments and compliance when evaluating projects and partners.

## PROPORTION OF GLOBAL SUSTAINABLE INVESTMENT BY REGION<sup>7</sup>

Global investment in assets under management considering ESG factors tops USD 21 trillion

- Europe 63.7%
- United States 30.8%
- Canada 4.4%
- Australia/NZ 0.8%
- Asia 0.2%



# WHAT COMPANIES SHOULD DO

Although labor and human rights issues are typically somewhere on the corporate agenda, even the most committed companies have problems with execution. The key to overcoming these challenges is embracing labor and human rights due diligence procedures and implementing remedial action plans. The UN Framework and Guiding Principles provide the following guidance:

**1**

## LEADERSHIP

Adopt a global labor and human rights policy stating your expectations of employees, suppliers, business partners, and other relevant parties. Make the statement publicly available to internal and external stakeholders.

## RISK ASSESSMENT

**2**

Implement a comprehensive due diligence process to identify and assess your actual and potential adverse labor and human rights impacts and levels of risk based on geographic scope, rights identification, social responsibility risk, and the legal framework.

**3**

## STANDARDS AND CONTROLS

Ensure the risk assessment is integrated into an enterprise-wide strategy. Assign responsibility for addressing labor and human rights impacts to the appropriate level and function within your company. Make sure operational policies, standards and controls enable your company to identify and respond to those impacts.

## TRAINING AND COMMUNICATIONS

**4**

Train your board and key staff on how to respond appropriately when situations arise. Consider internal and external reporting to stakeholders about your response to labor and human rights impacts to provide transparency and accountability.

**5**

## MONITORING, AUDITING AND RESPONSE

Use qualitative and quantitative indicators and feedback from internal and external sources to assess whether your policies and practices are effective, including surveys, audits and grievance mechanisms focused on labor and human rights practices.

# WHAT WE DO

Our team has been at the forefront of developing international labor and human rights initiatives. We have helped shape and write international labor standards, worked on ILO committees considering labor and human rights challenges such as working time arrangements and the informal economy, and advised the UN Global Compact on its “Business for the Rule of Law” Initiative.

Based on this experience, we leverage our global network of almost 700 labor and employment lawyers across the globe to help businesses develop standards and implementation plans to put labor and human rights principles into operation. We also help companies manage their global labor relations to minimize risk. Our services include:

■ **Labor and human rights policies**

Advise on developing and implementing labor and human rights policies and statements (global codes of conduct, whistleblower policies, etc.)

■ **Corporate structure**

Advise on the design of integrated CSR decision-making structures that include key internal stakeholders to minimize brand and litigation risk

■ **Risk assessments**

Conduct global and country risk assessments to map external risk factors and identify key labor and human rights risks and impacts

■ **Human rights reporting**

Advise on labor and human rights reporting obligations and the content of strategic reports, CSR and sustainability reports, and websites

■ **Human rights compliance program**

Design and implement labor and human rights compliance programs

■ **Global supply chain risk management**

Advise on third-party contractor, supplier and sub-supplier statutory requirements and risk, including screening procedures, supplier codes of conduct, and audits

■ **Labor and human rights awareness training**

Provide tailored training to board members, senior leadership team members, corporate sourcing and procurement departments, suppliers and employees on labor and human rights issues

■ **Labor and human rights investigations**

Investigate allegations of labor and human rights violations and respond to complaints alleging noncompliance filed under the OECD Guidelines, bilateral trade agreements and other instruments

■ **Litigation**

Advise on the liability of parent companies for human rights abuses or complicity by their subsidiaries and defend clients in class action litigation related to supply chain allegations

■ **Global corporate campaigns**


Advise on trends in union activism and strategic responses to threatened or launched corporate campaigns domestically or internationally

■ **Labor and human rights due diligence in transactions**

Identify and assess potential and/or existing labor and human rights risks and impacts as part of overall due diligence

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1. Based on proposal submissions. Source: EY Center for Board Matters, Shareholder proposal landscape: 2015 proxy season insights (April 2015).
2. Michael E. Porter and Mark R. Kramer, How companies can enrich shareholders—and the planet, *Fortune* (20 August, 2015).
3. Source: Nielson, “Reputation’s Role in Unlocking Brand Value” (12 March, 2015).
4. Kevin Coon, Cynthia Jackson and Christopher Burkett, *Managing Corporate Supply Chains: Challenges & Success in the Fight to Combat Forced Labour and Human Trafficking* (2014).
5. Mark Fulton et al., *Sustainable Investing: Establishing Long-Term Value and Performance*, DB Climate Change Advisors, Deutsche Bank Group, 2012, [dbadvisors.com](http://dbadvisors.com).
6. EY, *Tomorrow’s investment rules 2.0: Global survey of institutional investors on non-financial performance* (2015).
7. Source: 2014 Sustainable Investment Review, Global Sustainable Investment Alliance.



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