

Protect Act 2003: Why U.S. Businesses & NGOs Must Pay Attention to Federal Law on Child Sexual Exploitation

If you're like most visionary leaders you're appropriately laser-focused on vision, mission, outcomes, and deliverables to your stakeholders – be they investors or supporters. You've also likely experienced the benefits of good peripheral vision and occasional glances at prudent risk management. The Federal PROTECT ACT of 2003 fits that category of meriting a fresh look for businesses and nonprofits sending their folks abroad. Though this far reaching statute has been on the books for a dozen years, like most burgeoning teens, it may be about to come of age and ask for your keys.

Originally known for creating the nationwide AMBER Alert system, the Prosecutorial Remedies and Other Tools to End Child Exploitation Today (PROTECT) Act is now doing much more – increasing penalties and extending the reach of prosecutors in scope and numbers. Under the law, if your employee or agent commits a sexual act with a minor during a legitimate business trip for your organization, he or she can now be prosecuted upon return. And you, as the employer, can be held criminally liable for failing to take affirmative actions to prevent it.

These powerful laws are designed to stop U.S. citizens or resident aliens from performing abroad what would be illegal here at home – any sexual activity with minors. They cover the U.S. citizen and resident alien employees of all U.S.-based organizations (nonprofit or business) wherever they go. And this point is critical because the law is triggered by acts that may not be illegal in the country where the acts are committed. For example, the fact that another country's age of consent is younger than 18 is no defense to PROTECT's prohibition against sex with that minor. Or, the fact that it is "common practice" for some foreign corporations to provide an "escort" to visiting business men of a certain status upon their arrival to their hotel room is no defense under PROTECT. Likewise, in some countries the possession of child pornography, in contrast to its creation, is not a crime. Under PROTECT, however, that possession is a felony whether it occurs overseas or not.

The PROTECT Act applies to all US citizens or aliens admitted for permanent residence and criminalizes the following:

-) Knowingly transporting a minor from the United States with intent to engage that minor in prostitution or in any sexual activity which is a criminal offense in the U.S.;
-) Traveling in "foreign commerce" "for the purpose" of engaging in *any* illicit sexual conduct with another person; and,
-) Traveling in foreign commerce or residing, either temporarily or permanently, in a foreign country, and engaging in *any* illicit sexual conduct with another person. (The term "illicit sexual conduct" generally includes almost any sexual act involving a person under 18 years of age.)

Bottom line: an employee or contractor that sexually exploits a minor while overseas can be prosecuted in the United States regardless of his intent. And you as an employer may be found criminally liable under federal law for failing to take affirmative steps to prevent it.

How can a U.S.-based business or nonprofit that sends its employees or contractors on international travel avoid such activities or liability?

-) Organizations must train their employees and volunteers about the illegalities of child sexual exploitation and the requirements of the law. This should supplement the organization's training in its values and code of ethics;
-) Organizations must design their background investigations and due diligence efforts to investigate conduct *prior* to engagement as well as during employment or volunteering;
-) Organizations should identify high risk geographical areas and known locations where child sexual exploitation or abuse occur and provide additional guidance and training, along with an appropriately enhanced accountability regime;
-) Organizations should ensure that their human resource policies and safety and risk management plans: encourage and protect children and staff who report abuse; employ a sound investigative and reporting process; and, make it difficult for a solitary adult to be alone with a minor; and,
-) Organizations must ensure that their physical property and computer technology are secured against misuse by personnel, visitors, and staff.

Finally, effective safety and risk management protects individual staff members and constituents on the inside as much as it does the organization on the outside. Here are some starter questions you can ask of your organization:

-) In the developing world the international workers and agents of NGOs and businesses are generally trained in and insured against hostage and ransom situations, but what about extortion arising out false accusations of sexual exploitation against such persons?
-) Employees of US companies are often perceived to be rich or to have some authority or valuables that a child or, more likely an adult exploiter working through the child, might want. What are the policies, procedures and training that your organization provides its international agents to address these risks?
-) Is your organization building a reputation as an environment that is hostile to abuse, exploitation, and corruption, so as to discourage individuals whose real intent is to gain access to children from even applying for employment or to volunteer?
-) Finally, would your organization pass a best-practices audit under the PROTECT Act, not only so that it avoids financial and reputational damage, but so that it is known as promoting a culture of safety, protection, and flourishing for children wherever its footprint lands around the globe?

Your employees' overseas illegal activities can cause enormous reputational harm, financial exposure, and criminal liability, not to mention damage to the "soul" and morale of your organization. Gammon & Grange is here to help businesses and nonprofits protect themselves from such risks.

Bob Flores, Senior Counsel at Gammon & Grange, has more than 30 years of experience prosecuting, investigating, and overseeing national investigative efforts involving child sexual abuse and exploitation for the Manhattan District Attorney's Office and the United States Department of Justice. Attorney **Christine Johnson** litigated employment suits in the Illinois Attorney General's Office and is well-versed in navigating issues arising out of employee misconduct. They are available for a free initial consultation with organizations concerned about these issues and can provide expert advice where misconduct or criminal acts have occurred and, more importantly, on how to prevent them.

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