
Sancroft

NHS Supply Chain Country Profile: USA

December 2017

USA – Labour Standards and Ethical Trade Profile



Population	326,625,791 ¹
Main Religion ¹	Protestant (46.5%), Roman Catholic (20.8%), Mormon (1.6%), Jehovah's Witness (0.8%), other Christian (0.9%), Jewish (1.9%), Muslim (0.9%), Buddhist (0.7%), Hindu (0.7%), other (1.8%), unaffiliated (22.8%), don't know/refused (0.6%)
Minimum working age	14 years old* ²
Minimum wage ³ (per hour per month)	<p>US minimum wage is determined by the Fair Labor Standards Act (FLSA), non-exempt employees must be paid minimum wage or higher. When the state minimum rate is higher than the federal rate, employers are required to pay workers the higher amount.</p> <p>Some employees are exempt from minimum wage requirements, such as those who are not protected by the Fair Labor Standards Act, tipped employees such as waitstaff, for example, and others can be paid at a lower rate than minimum wage.</p> <p>Ranges from US\$7.25 – 12.50 Per Hour Ranges from US\$1,200-1,300 per month⁴</p> <p>A map and information on the different state minimum wages can be viewed here: https://www.dol.gov/whd/minwage/america.htm</p>
Maximum working hours ⁵	<p>40 hours a week</p> <p>Each business is entitled to establish their own workweek, not having a workweek, or using another time-period is considered FLSA non-compliance. If a non-exempt employee works more than the standard 40-hour workweek, you must give the employee overtime wages (one and a half times the regular pay). Some state and localities have stronger overtime laws.</p>

*“The rules vary depending upon the particular age of the minor and the particular job involved. As a general rule, the FLSA sets 14 years of age as the minimum age for employment, and limits the number of hours worked by minors under the age of 16.”

Working week	Monday to Friday
Main exports ¹	Agricultural products (9.2%), industrial supplies (26.8%), capital goods (49.0%), consumer goods (15.0%)

Context

Politics

The United States of America are organised as a federal republic. Three separate branches of government share powers created through the constitution; these are the Legislative Branch, Executive Branch and Judicial Branch. Congress sits in the Legislative Branch, consists of the Senate and the House of Representatives and is responsible for making federal laws. Executive power lies with the President, who makes up the Executive Branch, and is responsible for enforcing and administering laws and government. Finally, the Supreme Court and the federal courts form the Judicial Branch, where judicial power lies, and laws are applied on a case by case basis.⁶

The Democratic and Republican parties are the country's two major parties. Americans vote for a particular candidate rather than directly voting in a specific party. Presidents are restricted to two terms in government. In November 2016, Donald Trump of the Republican Party was controversially elected as President. He is a climate change denier and his attitudes to immigration are particularly radical and highly contested both within and beyond the US.

Trump announced plans in June 2017 to leave the Paris Climate Agreement⁷ and promised to revive the US coal industry⁸. In December 2017, The Trump administration announced as part of a new national security strategy that climate change has been removed from a list of global threats. The president continues to support the rejuvenation of the country's fossil fuel sector, placing a focus on 'energy dominance', through promoting exports, innovation and cutting regulations, rather than 'anti-growth climate policies⁹. Corporate America is increasingly distancing itself from Trump due to his radical views, this includes several members leaving the manufacturing council, which has since been ended by Trump¹⁰.

Economics

The US has the world's most technologically powerful economy, with an estimated GDP of \$18.46 trillion in 2016¹¹. The country's growth rate currently sits at 3.8%. Since 2014, the US is the world's second largest in terms of PPP, trailing China. The US dollar is the most used currency in international transactions and the country has one of the world's largest and most influential financial markets, with the New York Stock Exchange being the world's largest based on market capitalization¹².

The US are the world's third largest oil producer and rank second for manufacturing, making up a fifth of global manufacturing output¹³. In 2016, US overtook China to become the largest trading nation in the world, exporting \$1.45 trillion worth of goods and importing \$2.25 trillion worth¹⁴.

In the highly diversified economy, the services sector dominates in terms of GDP, contributing 79.5%. Industry contributes 19.4%, whilst agriculture only makes up 1.1% of GDP¹. The major industries include motor vehicles, petroleum, steel, aerospace, telecommunications, chemicals and electronics. Information-technology firms and construction-related companies dominate the fastest-growing industries¹⁵. Due to its high energy consumption, the US economy is heavily influenced by the oil price which has a strong impact on the overall health of the economy.

Hurricanes Harvey and Irma, both Category 4 hurricanes, hit the US in September 2017, causing devastating damage to Texas and Florida in particular¹⁶. It is predicted that the hurricanes could slow US GDP to 2.8%¹⁷. However, the central bank does not expect any long-lasting economic effects on

growth or unemployment rates¹⁸. In general, the economy faces several long-term problems including stagnation of wages for low-income families, insufficient investment in deteriorating infrastructure, significant costs related to pension and medical schemes for an aging population, energy shortages and the world's largest current account and budget deficit.

Demographics

With a population of 326.6 million in July 2017¹, the United States are the world's most populous country. A pattern of declining birth-rates has emerged since 2008¹⁹. In 2016, there were 3.94 million births, which were the fewest since 1995 and as a proportion of population, birth-rate is the lowest ever, with the total fertility rate standing at 1.82 in 2016. The US population is ageing; the median age is 38.1 years and nearly 30% population are over 55 years. There has also been a reduction in net immigration, an additional significant factor in the decline in population growth²⁰.

The US is known for having a national ethos of the 'American Dream', which postulates that its citizens have an equal opportunity to prosperity and success²¹. However, 1% population control approximately 38.5% of the country's wealth, this is almost double of that controlled by the bottom 90% of the population. The middle class is heavily dependent on debt to finance homes, cars and education. The Census Bureau reported in 2014 that more than 45 million people, 14.5% of the US population, lived below the poverty line in 2013²². According to the IMF, The Republican's newly proposed tax plan could further exacerbate inequalities.²³

According to the world bank 82% of US population lives in urban areas, making it a highly urbanized country²⁴. There are large urban clusters across the eastern half of the US and the western tier states. The US' five largest cities by population are New York City, Los Angeles, Chicago, Houston and Philadelphia²⁵. Mountainous areas and the deserts in the southwest are less densely populated. In Alaska, the population is centred on the city of Anchorage and for Hawaii it is concentrated on the island of Oahu.¹

Labour Market Profile

Industry Summary:

Labour Force Occupation (2016) ²⁶	
Agriculture	1.62%
Industry	18.39%
Services	79.99%

In 2016, the US labour force was estimated at 159.2 million and the unemployment rate stood at 4.1% in October 2017, this is reportedly the lowest level in nearly 17 years²⁷. However, youth unemployment is a critical problem for the US, standing at an estimated 9% in October 2017²⁸. Despite this, the US labour market is in a strong position with comparatively low job cuts and 228,000 new jobs added to the market in November; a continued recovery from the slump caused by the hurricanes in September 2017²⁹.

The country's biggest employer is the services sector. It has nearly 80% of the US' workforce. Industry supports 20% of the workforce, whilst agriculture is the smallest by a considerable margin. Despite this, as a result of mechanisation, exports of US agricultural goods have more than doubled since 2000³⁰. Although President Trump has declared his intentions to increase the number of manufacturing jobs in the US, data from August 2017 shows that manufacturing was the only sector with job losses.³¹

In October 2017, a report published by the Pew Research Center illustrated that women in the US remain at a disadvantage. Although significant improvements have been achieved, 43% of women have reported to have experienced gender discrimination or unfair treatment, the gender pay gap persists, and women remain underrepresented in leadership positions. Despite it being reported that a record number of 32 females are CEOs in the most recent Fortune 500 list, this is still just 6.4% of the total.³²

Medical Technology

The US' medical device market is the world's largest. It had an estimated value of \$147.7 billion in 2016 and is expected to reach \$173 billion in 2019. The continued growth is due to the country's extensive history of chronic disease alongside its rapidly aging population. In 2010, Obama introduced The Patient Protection and Affordable Care Act to improve accessibility to healthcare services for groups of the population who were previously unable to afford insurance. Therefore, cost-effective medical devices are needed to meet increasing demands at an affordable price and adjust to the cost limits of the new healthcare system³³. In October 2017, Trump continued with efforts to derail Obama's health care law, the Affordable Care Act. Trump plans to stop subsidy payments being paid to health insurers, which may trigger spikes in premium payments, detrimentally impacting working and middle-class families in particular³⁴.

In October 2017, US-based medical device firms sought suspension or withdrawal of India's exporter's import duty benefits under the Generalized System of Preferences (GSP), as an act of retaliation against the Indian government's decision to fix retail prices of several medical devices.³⁵

MedTech Regulatory Environment

The 21st Century Cures Act was signed into law in December 2016. It is designed to help accelerate medical product development and bring new innovations and advances to patients who need them faster and more efficiently³⁶. The Act has been met with mixed opinions; it was supported by large pharmaceutical manufacturers but opposed by consumer organisations. Criticism included concerns that it would allow drugs and devices being approved on weaker evidenced, bypassing randomised, controlled trials and ultimately bringing unsafe medications and medical devices to market³⁷.

In November 2017, the President announced Alex Azar, a former pharmaceutical executive, as the country's new health secretary; the first health secretary to come from an industry regulated by the department³⁸.

Price Transparency

A drug pricing transparency law in California was signed in in October 2017. The law aims to make drug prices for both public and private health plans more transparent in California. It will require pharmaceutical companies to notify health insurers and government health plans like Medi-Cal at least 60 days before scheduled prescription drug price hikes that would exceed 16 percent over a two-year period. It will also force drug companies to explain the reasons behind those increases³⁹. Similar laws have also been passed in Maryland, Nevada, New York and Vermont⁴⁰.

In December 2017, the US' most influential science advisory group released a report declaring the need for change in the US pharmaceutical market and detailing eight steps to reduce drug prices. The group highlight how there is an increasing trend of drug importation as a means to avoid the high prices. Although individual states have passed laws and Trump has called for lower drug prices, Congress are yet to act.⁴¹

Key Risk Areas

Companies sourcing from the USA will need to be aware that there is a risk of labour rights abuse within their supply chain. No global supply chain will be categorically free of issue and buyers have a responsibility to ensure that they are doing all they can to mitigate the risk of occurrence within their realm of business and, where an issue is discovered, take steps towards remediation. The below outlines the key risk areas pertinent to the USA and the areas in which a company sourcing from the USA may want to be particularly vigilant.

Bribery and Corruption

In Transparency International's Corruption Perception Index the US ranked as the 18th least corrupt country. Despite the government's attempts to amend laws, the health care industry has several corruption issues that persist and need to be addressed, particularly associated with consumer exploitation, overmedication, internal corruption and billing inconsistencies; violations include fraudulent billing, inflated prices and misuse of funds⁴².

Cybersecurity

Implanted devices, such as pacemakers and insulin pumps, and in-hospital diagnostic equipment have been subject to cyber-attacks⁴³. In December 2016, recommendations were published by the US Food and Drug Administration (FDA) for how cybersecurity risks should be managed in the manufacturing of internet connected medical devices. However, these are not legally enforceable⁴⁴.

Migrant Workers

Migrant workers have played a significant role in the US workforce for decades. In 2014, it was estimated that the country was home to 19.6 million legal immigrant workers, about 12.1% of the total U.S and approximately 8 million, or 5% of the U.S. workforce, illegal immigrants. Current trends show that the number of migrant workers is declining⁴⁵. In particular, this has negatively impacted agriculture, the American Farm Bureau Federation requested that Congress consider issuing more agricultural worker visas⁴⁶. This is likely to be exacerbated by President Trump's proposed changes to the immigration system.

Modern Slavery and Forced Labour⁴⁷

The 2016 Global Slavery Index estimated that 57,700 people were in modern slavery in the US. The country attracts many undocumented workers, migrants and refugees. Research undertaken in San Diego, California and North Carolina suggests that undocumented seasonal labourers are particularly vulnerable due to significant language barriers, cultural differences and fear of deportation.

Large multinational companies are under increasing pressure from consumers and changing regulation to seriously engage with labour abuses in their supply chains. The US was the first country to obligate companies with annual worldwide receipts larger than \$100,000 to report on measures taken to ensure supply chains are modern slavery free. Further to this, federal contractors and sub-contractors are also obligated to undertake preventative measures. These laws include the *2010 California Transparency in Supply Chains Act* and the *2012 United States Executive Order 13627*. Additionally, in February 2016, the Government amended a loophole in the *Tariff Act of 1930* requiring Customs and Border Protection to seize and block imports made with forced labour.

Trafficking⁴⁸

The United States is a source, transit and destination country for men, women and children. It occurs in both legal and illicit industries including manufacturing, construction, health care and care for persons with disabilities. Government, companies and NGOs have expressed a particular concern for trafficking in global supply chains. Top three countries of origin for persons subjected to trafficking in FY2016 were the US, Mexico and the Philippines.

Aligning with global trends, a new Federal Acquisition, Ending Trafficking in Persons was introduced. This bans federal contractors from charging workers recruitment fees, as well as prohibiting other misleading and fraudulent recruitment practices. In 2015, the United State Advisory Council on Human Trafficking was also appointed, forming a formal platform from which survivors of trafficking can advise and make recommendations to the federal government on policies and programs. The country is ranked as Tier 1 in the Trafficking in Persons Report, which means the government fully meets the Trafficking Victims Protection Act's (TVPA) minimum standards.

Prison Labour

The prison industry complex is one of the fastest-growing industries in the United States. By some estimates, the economic output of federal and state inmates now exceeds two billion dollars per year⁴⁹. The contracting of prison labour by private corporations has been legalised by at least 37 states. There are a few federal prisons that pay minimum wage, but these are exceptions; pay of as little as 2 cents an hour has been reported in privately-owned prisons⁵⁰. Prison workers are high risk as a result of lacking a constitutional right to be free of forced servitude. This forced labour is not subject to protection checks, therefore risk of exploitation is high⁵¹.

Case Study

In September 2016, the country's largest prison strike took place over working conditions and wages. The strike was led by the inmate-led Free Alabama Movement (FAM) and coordinated by the Incarcerated Workers Organizing Committee (IWOC), a branch of an international labour union⁵². Strikes have been increasingly regular as a result of mounting grievances associated with the prison jobs that amount to forced labour⁵³. The strike organizers contended that incarcerated men and women should be fairly paid for the work they undertake, and that the "punishment for a crime" exception should be repealed⁵⁴.

Governance

Context

The Department of Labour is responsible for administering and enforcing more than 180 federal laws and thousands of regulations. The mandates and the regulations employed to implement them apply to many workplace activities for the country's employers and workers. It is becoming increasingly standard for cities and counties to pass their own laws, especially relating to implement higher minimum wage rates and paid sick leave, to make up for insufficiencies in state and federal legislation⁵⁵.

National Legislation

Particularly significant employment and labours law include^{56/57}:

- The Occupational Safety and Health Act (OSHA): This regulates health and safety conditions in private-sector industries to ensure safe working environments, free from hazards.
- The Fair Labor Standards Act: Determines wage and overtime pay of one and half times the regular rate of pay. It also regulated child labour.
- The Labor-Management Reporting and Disclosure Act (LMRDA): This protects union funds and promotes union democracy.

International Trade Union Confederation (ITUC) Rights Index⁵⁸

The ITUC rights index uses a methodology that considers the standards of fundamental rights at work, in particular the right to freedom of association, the right to collective bargaining and the right to strike. Using this methodology countries are ranked on a scale of 1-5, with a high score suggesting a

government is failing to guarantee these rights. In 2017, the USA received a ranking of 4. Therefore, workers have reported systematic violations of rights.

International Standards

Of the eight fundamental ILO conventions USA have only ratified two: Abolition of Forced Labour and Worst Forms of Child Labour. Out of 14 Conventions ratified by United States, 12 are in force. No Convention has been denounced and none have been ratified in the past 12 months.⁵⁹

Other Useful Resources

Further information is available on the following websites:

- ILO Labour Law Database -
http://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p_lang=en&p_country=USA
- Transparency International Corruptions Perception Index
<https://www.transparency.org/country/USA>
- US State Department Database on Forced and Child Labour per product
<http://www.dol.gov/ilab/reports/child-labour/list-of-goods/>

¹ <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html>

² <https://www.dol.gov/general/topic/youthlabor/agerequirements>

³ <https://www.thebalance.com/2017-federal-state-minimum-wage-rates-2061043>

⁴ <http://www.reuters.com/subjects/global-minimum-wage>

⁵ <https://www.patriotsoftware.com/payroll/training/blog/how-to-determine-a-workweek-and-employee-pay/>

⁶ <https://www.thoughtco.com/overview-united-states-government-politics-104673>

⁷ <https://www.nytimes.com/2017/09/18/climate/trump-adviser-un-paris-climate-agreement.html>

⁸ <http://www.independent.co.uk/news/world/americas/donald-trump-us-coal-industry-bleak-future-hiring-growth-prospects-energy-environment-rick-perry-epa-a8051886.html>

⁹ <https://www.theguardian.com/us-news/2017/dec/18/trump-drop-climate-change-national-security-strategy>

¹⁰ <https://www.cnbc.com/2017/08/16/trump-abruptly-ends-manufacturing-council-after-ceos-disband-strategy-and-policy-forum.html>

¹¹ <http://www.imf.org/external/pubs/ft/weo/2017/01/weodata/weorept.aspx?pr.x=57&pr.y=7&sy=2016&ey=2020&scsm=1&ssd=1&sort=country&ds=.&br=1&c=111&s=NGDPD%2CNGDPDPC%2CPPPGDP%2CPPPPC&grp=0&a=>

¹² <https://www.forbes.com/pictures/eddk45iglh/new-york-stock-exchange/#62ad8dc744bb>

¹³ <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2078rank.html>

¹⁴ <https://asia.nikkei.com/Politics-Economy/Economy/US-overtook-China-as-top-trading-nation-in-2016>

¹⁵ <https://www.forbes.com/sites/sageworks/2017/04/09/the-10-fastest-growing-industries-in-the-u-s/#62c37741ef2a>

¹⁶ <https://www.bloomberg.com/view/articles/2017-08-31/harvey-won-t-hold-back-houston>

¹⁷ <https://www.cnbc.com/2017/09/15/texas-and-florida-face-economic-blow-from-hurricanes-harvey-and-irma.html>

¹⁸ <https://www.cnbc.com/2017/09/20/fed-says-hurricanes-will-have-no-lasting-economic-impact.html>

¹⁹ <https://www.bloomberg.com/view/articles/2017-09-20/the-consequences-of-the-u-s-baby-bust>

²⁰ <http://www.prb.org/Publications/Articles/2012/us-population-growth-decline.aspx>

²¹ <https://www.weforum.org/agenda/2017/11/the-pursuit-of-happiness-how-the-american-dream-turned-into-greed-and-inequality/>

²² http://www.huffingtonpost.co.uk/entry/poverty-household-income_n_5828974

²³ https://www.washingtonpost.com/news/worldviews/wp/2017/11/15/the-republicans-new-tax-plan-will-increase-inequality-thats-bad-for-democracy-2/?utm_term=.6878fd4a6e4f

²⁴ <https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS>

²⁵ <https://blog.upack.com/posts/10-largest-us-cities-by-population>

²⁶ <https://www.statista.com/statistics/270072/distribution-of-the-workforce-across-economic-sectors-in-the-united-states/>

²⁷ <http://fortune.com/2017/12/08/november-job-report-unemployment-rate/>

²⁸ <https://tradingeconomics.com/united-states/youth-unemployment-rate>

²⁹ <https://www.theguardian.com/business/2017/nov/03/us-economy-jobs-report-october>

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³¹ <https://www.theguardian.com/business/2017/aug/04/trump-us-economy-july-jobs-report>

³² <http://fortune.com/2017/10/18/gender-equality-in-america/>

³³ <https://www.emergogroup.com/resources/market-united-states>

³⁴ <http://time.com/4980955/donald-trump-insurance-subsidy-obamacare/>

³⁵ <http://www.livemint.com/Industry/J70UDplawPBfzj71hcGYFM/US-medical-devices-industrys-push-to-restrict-market-access.html>

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- ⁴¹ <https://khn.org/news/experts-tell-congress-how-to-cut-drug-prices/>
- ⁴² <https://healthlaw.hofstra.edu/resources/articles/major-corruption-cases-in-u-s-health-law/>
- ⁴³ <https://www.darkreading.com/vulnerabilities---threats/hospital-medical-devices-used-as-weapons-in-cyberattacks/d/d-id/1320751>
- ⁴⁴ <https://www.theverge.com/2016/12/27/14095166/fda-guidance-medical-device-cybersecurity-cyberattack-hacking-guidelines>
- ⁴⁵ <http://money.cnn.com/2017/03/08/news/economy/immigration-workforce/index.html?iid=EL>
- ⁴⁶ <http://money.cnn.com/2017/03/16/news/economy/immigrant-workers-jobs/index.html>
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- ⁴⁹ <https://www.newyorker.com/news/news-desk/a-national-strike-against-prison-slavery>
- ⁵⁰ <https://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>
- ⁵¹ <https://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/>
- ⁵² <https://qz.com/777415/an-unprecedented-prison-strike-hopes-to-change-the-fate-of-the-900000-americans-trapped-in-an-exploitative-labor-system/>
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