

Fair Labor Association: Independent External Factory Assessment

Assessment Date :

10 Nov 2021



Factory Information

FLA Affiliates	Next Level Apparel,Russell Brands/Fruit of the Lo
Country	El Salvador
Number of Workers	536

Understanding this Report

Companies that join the FLA agree to uphold the FLA Workplace Code of Conduct throughout their entire supply chain. The Code of Conduct is based on International Labour Organization (ILO) standards, and defines labor standards that aim to achieve decent and humane working conditions.

FLA Code Element

Number of Violations

Compensation (C)	1
Employment Relationship (ER)	11
Freedom Of Association And Collective Bargaining (FOA)	2
Harassment Or Abuse (H/A)	1
Health, Safety And Environment (HSE)	7
Hours Of Work (HOW)	2
Nondiscrimination (ND)	1

Assessment Information

Assessor	Francisco Chicas
Assessment Date	10 Nov 2021
Assessment Purpose	Factory Assessment (In-Person)

ASSESSMENT RESULTS

Compensation (C)

Benchmark ID	C.1.1
Benchmark Details	Employers shall comply with all national laws, regulations and procedures concerning the payment of compensation to workers.
Finding Details	1) Rest day payments are completely deducted in cases of late arrival, or in cases where workers do not show up without just cause. These deductions constitute disproportional monetary penalties, as the amount deducted does not correspond to the specific time the workers were off; instead, the total payment of the rest day is deducted. 2) The factory does not pay workers the 75% of salary when they are under medical leaves that last three days or less. Salvadoran regulations require that the Social Security Institute (ISSS by its initials in Spanish) pay workers 75% of their salary in the case of medical leaves lasting four days or more, and such payment does not cover the first three days of medical leave, which should be the responsibility of the employer to pay.
Recommendation for Immediate Action	1) Stop the practice of implementing deductions of the total payment of rest days when workers do not show up to work, or when they show up late without a just cause. 2) Start paying the first three days of medical leave to the workers.
Compliance Classifications	Immediate Action Required
Local Law	Constitution, Art. 50; Social Security Law, Art. 100; Regulations for the Implementation of the Social Security Regime, Art. 24. (applicable to issue #2)

Employment Relationship (ER)

Benchmark ID	ER.1.2
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Benchmark Details	Employers shall assign responsibility for the administration of human resources to a clearly defined and adequately qualified staff member or staff members and ensure workers at all levels receive communication and training about existing policies and procedures or any revisions.
Finding Details	The factory does not conduct formal training sessions, in which training material is displayed, and detailed explanations for each topic are provided; instead, the factory conducts short talks with groups of workers on the production floor. These communication efforts (short talks) have not been sufficient for workers to be aware of their rights to freedom of association and collective bargaining; most of the interviewed workers lacked knowledge about the implications of these rights.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.2
Benchmark Details	Employers shall ensure that all legally mandated requirements for the protection or management of special categories of workers, including migrant, juvenile, contract/contingent/temporary, probationary workers, home workers, and pregnant or disabled workers, are implemented. Where local laws and FLA standards differ, the employer is expected to follow the highest applicable standard.
Finding Details	The factory has not hired the legally required number of workers with disabilities. Currently, the factory employs 12 disabled workers, but as per legal requirements there should be at least 44 (one worker with disability for every 20 workers).
Recommendation for Immediate Action	

Compliance Classifications	Sustainable Improvement Required
Local Law	Special Law on Inclusion of People with Disabilities, Art. 63.
Benchmark ID	ER.17.1
Benchmark Details	Employers shall have a clear and transparent system of worker and management communication that enables workers to consult with and provide input to management. This might include suggestion boxes, worker committees, designated spaces for worker meetings, union representatives, and meetings between management and workers' representatives.
Finding Details	The procedure for handling complaints through the open door policy does not include time frames for factory representatives to resolve the grievances at the different stages of the process.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.1.1
Benchmark Details	Employers shall have in place written policies and practices and maintain proper and accurate records governing all aspects of employment from recruitment, hiring and probation, including written terms and conditions of employment, job descriptions, administration of compensation, and working hours for all positions, through to retrenchment and termination processes.

Finding Details	1) The factory's Nondiscrimination Policy does not include gender identity; as a result, workers have not received communication and training on the topic. 2) There is no procedure on retrenchment. 3) Compensation policy and procedure are missing a description of steps and requirements for providing legal leaves in cases of: i) workers facing family issues/responsibilities (including illnesses of relatives); ii) paternity leave; iii) leaves for women who have faced gender violence to attend legal procedures and/or medical appointments. As a result, workers have not received communication and training on such type of leaves. 4) From a review of terminated workers personnel files, the assessors found that a Notary did not authenticate two resignation letters. Even when the resignation letters mentioned the presence of a Notary, the Notary's signature and seal were missing in the documents, in breach of the law.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Labor Code, Art. 29 section 6 (in relation to legal leaves); Article 3 of the Regulatory Law of Monetary Benefit for Voluntary Resignation; Articles 50, 51 and 54 of the Notaries Law.
Benchmark ID	ER.6.1
Benchmark Details	Employers shall have written policies and procedures and implement practices that encourage ongoing training of all categories of workers with the goal of raising or broadening skills in order to advance in their careers within the factory or beyond.
Finding Details	There is no system (policies or procedures) that encourage ongoing worker training with the goal of raising or broadening workers' skills so they can advance in their careers.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required

Local Law	
Benchmark ID	ER.7.1
Benchmark Details	Employers shall have written policies and procedures with regard to performance reviews that outline the review steps and process, demonstrate linkages to job grading, prohibit discrimination, are provided in writing and seek feedback and agreement/disagreement from employees in writing, and that follow all local legal requirements.
Finding Details	There are no policies and procedures on performance reviews. The factory does not perform any performance reviews.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.8
Benchmark Details	Employers shall have written policies and procedures with regard to promotion, demotion, and job reassignment that outline the criteria, demonstrate linkages to job grading, and prohibit discrimination or use of demotion or job reassignment as a form of penalty or punishment, are provided in writing and seek feedback from employees in writing, and follow all local legal requirements.
Finding Details	There are no policies and procedures on promotion and reassignment.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	

Benchmark ID	ER.15.3
Benchmark Details	Employers shall not demand that workers sign any declaration of good health, waivers or releases of other rights as a condition of receiving severance pay or other legal benefits* from the company, and shall not threaten to withhold benefits if workers do not sign.
Finding Details	The settlement signed by workers state that “workers have received full termination payouts”, with no amounts pending for payment; however, in practice, the termination payouts are paid in five installments; hence, the settlement should mention that payment will be made in installments.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.18.4
Benchmark Details	The disciplinary system shall include a third party witness during imposition, and an appeal process.
Finding Details	The disciplinary procedure does not include: i) time frames for imposing disciplinary actions; ii) the workers’ rights to defend themselves, and to bring witnesses of their own choosing during the imposition of disciplinary actions.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.16.2

Benchmark Details	When employers are faced with major changes in production, program, organization, structure, or technology and those changes are likely to result in temporary or permanent layoffs, employers shall communicate any alternatives to retrenchment that have been considered and consult any workers' representatives as early as possible with a view to averting or minimizing layoffs.
Finding Details	The factory implemented a retrenchment in July 2021, and around 24 workers were laid off. There is no documented evidence of consultations made with worker representatives on retrenchment decisions.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.16.3
Benchmark Details	Where temporary or permanent layoffs are unavoidable, a plan should be developed and implemented that mitigates the adverse effects of such changes on workers and their communities.
Finding Details	The factory implemented a retrenchment in July 2021, and around 24 workers were laid off; however, the factory did not design a written retrenchment plan; as a result, no plan was posted or shared with workers, and they missed the chance to provide feedback.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	

Freedom Of Association And Collective Bargaining (FOA)

Benchmark ID	FOA.15
Benchmark Details	Worker representatives shall have the facilities necessary for the proper exercise of their functions, including access to workplaces and office space where required by law.
Finding Details	<p>At the time of the assessment, there were five trade unions (known as seccionales sindicales in Spanish) at the factory; three of them (all three affiliated to the National Union Federation FEASIES) had already presented a joint request to the factory to initiate a dialogue table (request dated, August 20, 2021). Factory management commented they are open to hear and receive the unions' specific complaints any time union leaders want to raise them, but they have refrained from initiating a formal dialogue table with the unions. The assessors also reviewed minutes of a conciliation meeting between the FEASIES unions and the factory's lawyer (dated October 2018), in which FEASIES and its affiliated unions requested a dialogue table with the factory. The factory's position to refuse to initiate a dialogue table with unions goes against international labor standards, specifically, the International Labor Organization (ILO)'s Convention N° 135 and the related ILO's Recommendation N° 143, which consider "worker representatives" to the trade union representatives designated by unions, regardless of the amount of union affiliates the organizations have, or the percentage of representation the unions might have in a given facility. As a result, the management is not consulting with the union leaders, and has not given them the chance to establish a formal and ongoing dialogue process. ILO's Conventions ratified by El Salvador are part of the Salvadoran legal system, as established by the Article 144 of the Salvadoran Constitution. ILO's Convention N° 135 was ratified by El Salvador on September 06, 2006.</p>
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Constitution, Art. 144; ILO's Convention N° 135, Workers' Representatives, 1971, Articles 2 and 3; ILO's Recommendation N° 143, Workers' Representatives, Articles 2(a) and 13.
Benchmark ID	FOA.6

Benchmark Details	Workers who have been unjustly dismissed, demoted or otherwise suffered a loss of rights and privileges at work due to an act of union discrimination shall, subject to national laws, be entitled to restoration of all the rights and privileges lost, including reinstatement, if they so desire.
Finding Details	The assessors found that the factory terminated one union leader, and one former union leader. However, these two workers were still under the legal protection known as fuero sindical, which prohibits employers to terminate union leaders while they are members of the Union Board, and up to one year after their positions as union leaders end. Both workers were terminated on June 18, 2021. The assessors reviewed documentation issued by the Ministry of Labor probing that one worker was still a union leader, and the other worker was under the additional 1-year legal protection at the time of her termination, as her position as union leader ended in Aug 13, 2020. The factory did not have any documentation about these two workers available for review; management claimed the factory's lawyer had all the documentation related to this case, including the workers' personnel files. The union provided all documentation reviewed by the assessors in relation to these cases. The assessors also reviewed documentation showing that both workers have initiated legal labor procedures before Labor Courts against the factory to claim for their reinstatement.
Recommendation for Immediate Action	1. Reinstatement of both union leaders terminated on June 18, 2021. 2. Pay both workers loss wages since the date of their termination until the date they are reinstated. 3. Once workers are reinstated, avoid any form of retaliation against them.
Compliance Classifications	Immediate Action Required
Local Law	Constitution, Art. 47 section 6; Labor Code, Art. 248.
Harassment Or Abuse (H/A)	
Benchmark ID	H/A.5

Benchmark Details	Employers shall not use any form of verbal violence, including screaming, yelling, or the use of threatening, demeaning, or insulting language, as a means to maintain labor discipline.
Finding Details	Evidence indicates that three supervisors and two production managers, all from sewing production lines, commit verbal abuse against workers. Verbal abuse consists of screaming and using rude words when giving instructions to the workers.
Recommendation for Immediate Action	Ensure that workers at the sewing section are not subjected to any form of verbal abuse by supervisors and production managers.
Compliance Classifications	Immediate Action Required
Local Law	Labor Code, Article 62 section e).

Health, Safety And Environment (HSE)

Benchmark ID	HSE.5.1.4
Benchmark Details	All applicable, legally required or recommended elements of safe evacuation shall be complied with, including all the following: ensuring aisles/exits are not blocked and that workers are not blocked within their workstations
Finding Details	One aisle was found blocked by a table at second floor of sewing department. The factory addressed this issue by removing the table from the aisle.
Recommendation for Immediate Action	The factory addressed this issue by removing the table from the aisle.
Compliance Classifications	Immediate Action Required
Local Law	Regulations to the General Law on Occupational Risks Prevention at Workplace, Art. 7 sections 1 and 3.
Benchmark ID	HSE.14.1

Benchmark Details	All production machinery, equipment and tools shall be properly guarded and regularly maintained.
Finding Details	The factory's elevator was missing signs on the maximum capacity. The factory addressed this issue during the onsite assessment by posting the elevator's maximum capacity.
Recommendation for Immediate Action	The factory addressed this issue during the onsite assessment by posting the elevator's maximum capacity.
Compliance Classifications	Immediate Action Required
Local Law	Regulations to the General Law on Occupational Risks Prevention at Workplace, Art. 88 section 1.
Benchmark ID	HSE.1
Benchmark Details	Employers shall comply with all national laws, regulations and procedures concerning health, safety, and the environment.
Finding Details	1) The floor is uneven at the entrance of male restrooms on the second floor of the sewing department. There were no signs posted, as legally required. Signs are needed in order to warn workers walking around of the risk of falling. The factory addressed this issue during the onsite assessment by placing the relevant signs. 2) As part of the factory's H&S Committee, there is one union leader of one of the five existing unions in place; however, the factory has not followed the legal procedure for identifying from which union the representative should be selected (which is requesting a certification to the Ministry of Labor of the union with the majority of affiliates); instead, the factory unilaterally decided to choose the union.
Recommendation for Immediate Action	1) The factory addressed this issue during the onsite assessment by placing the relevant signalization. 2) Regulations on Risk Prevention Management (Decree N° 86), Article 15.
Compliance Classifications	Immediate Action Required
Local Law	1) Regulations to the General Law on Occupational Risks Prevention at Workplace, Art. 112.

Benchmark ID	HSE.20
Benchmark Details	Employers shall establish the number of toilets required under applicable laws within reasonable distance of the workplace. In addition, the following should also be considered: number of toilets based on number of workers, privacy for each individual and gender, accessibility and hygiene.
Finding Details	Number of toilets at male and female restrooms do not meet the legal requirements. Currently, there are eleven toilets in the male restrooms, but legally there should be fifteen, based on the actual number of male workers. In the case of women restrooms, there are twenty-five toilets, but there should be thirty-nine.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Regulations to the General Law on Occupational Risks Prevention at Workplace, Art. 21 section 3.
Benchmark ID	HSE.23.1
Benchmark Details	Safe and clean drinking water shall be freely available at all times, within reasonable distance of the workplace. Drinking water shall be of a reasonable temperature. The means to drink water (e.g. cups) must be safe and sanitary and available in an appropriate number.
Finding Details	The top of one drinking water bottle at second floor of sewing department was broken; hence, exposed to contamination. During the onsite assessment, the factory addressed this issue by replacing the top for a new one.
Recommendation for Immediate Action	During the onsite assessment, the factory addressed this issue by replacing the top for a new one.
Compliance Classifications	Immediate Action Required
Local Law	

Benchmark ID	HSE.10.2
Benchmark Details	Workers shall have free access to MSDS.
Finding Details	The stain-removal station was missing the MSDS of the one chemical product in use (detergent).
Recommendation for Immediate Action	Ensure that the MSDS of the detergent is available in the stain-removal station for workers to consult.
Compliance Classifications	Immediate Action Required
Local Law	

Benchmark ID	HSE.17.1
Benchmark Details	Workstations, including seating and standing arrangements and reach required to obtain tools, shall be designed and set-up in such a manner as to minimize bodily strains.
Finding Details	During the observation tour, the assessors noted that one worker operating a Fabric Fusing machine was not in a neutral position as his arms were higher than the neutral position, which exposed a risk of ergonomic injury. The factory addressed this issue during the onsite assessment, by decreasing the height of the Fusing machine.
Recommendation for Immediate Action	The factory addressed this issue during the onsite assessment, by decreasing the height of the Fusing machine.
Compliance Classifications	Immediate Action Required
Local Law	Regulations to the General Law on Occupational Risks Prevention at Workplace, Art. 64 section 2.

Hours Of Work (HOW)

Benchmark ID	HOW.14
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Benchmark Details	Employers shall provide workers taking annual leave their normal or average wages for the full period of annual leave in advance, unless specified differently under national laws, regulations and procedures.
Finding Details	The assessors reviewed two minutes of inspections conducted by the Ministry of Labor (Minute Ref. 19300-IC-10-21-E, dated September 23, 2021, and Minute Ref. 17509-IC-09-2021, dated September 23), in which the factory is ordered to reimburse four workers amounts due, as a result of miscalculation of vacation premiums; however, at the time of the assessment the factory had not complied with such resolutions, and the deadlines set by the Ministry of Labor to comply with the resolutions were October 07 and November 11 (the last day of the onsite assessment).
Recommendation for Immediate Action	Comply with the Ministry of Labor resolutions and reimburse workers the amounts due as a result of miscalculation of vacation premiums.
Compliance Classifications	Immediate Action Required
Local Law	Labor Code, Article 177.
Benchmark ID	HOW.11.1
Benchmark Details	Employers shall provide workers with paid annual leave as required under national laws, regulations and procedures.
Finding Details	Workers can choose to work during vacation period (annual leave) in order to receive additional compensation; however, the local law prohibits employers to compensate vacation days with money. As per law, workers should rest during all vacation period.
Recommendation for Immediate Action	Stop the practice of compensating vacation days (annual leave), and provide time off instead.
Compliance Classifications	Immediate Action Required
Local Law	Labor Code, Art. 188.

Nondiscrimination (ND)

Benchmark ID	ND.2.1
Benchmark Details	All employment decisions shall be made solely on the basis of a person's qualifications, in terms of education, training, experience, demonstrated skills and/or abilities, as they relate to the inherent requirements of a particular job.
Finding Details	There is no documented evidence that retrenchment decisions have been objectively made. During a retrenchment implemented in July 2021, the factory implemented a performance review form among candidates for retrenchment; however, from the review of filled out forms, the assessors found that the tool does not include objective criteria for making retrenchment decisions, and it did not generate a score to evaluate each of the workers' performance. Hence, it was not an objective system that helped to make impartial retrenchment decisions.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	

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