

Fair Labor Association: Independent External Factory Assessment

Assessment Date :

15 Sep 2021



Factory Information

FLA Affiliates	Tervis Tumbler
Country	China
Number of Workers	165

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)	3
Employment Relationship (ER)	4
Freedom of Association & Collective Bargaining	1
Freedom Of Association And Collective Bargaining (FOA)	2
Harassment Or Abuse (H/A)	1
Health, Safety And Environment (HSE)	2
Hours Of Work (HOW)	2
Nondiscrimination (ND)	1

Assessment Information

Assessor	Openview- China Shenzhen
Assessment Date	15 Sep 2021
Assessment Purpose	Factory Assessment (In-Person)

ASSESSMENT RESULTS

Compensation (C)

Benchmark ID	C.12.1
Benchmark Details	All legally mandated deductions for taxes, social insurance, or other purposes shall be deposited each pay period in the legally defined account or transmitted to the legally defined agency. This includes any lawful garnishments for back taxes, etc.
Finding Details	The contribution base of the five types of social insurances for three out of 81 eligible workers (4%) is not in line with the legal requirement. The factory contributes to pension, medical, work-related injury, unemployment and maternity insurances based on three levels of CNY 3,800 (USD 590), CNY 4,090 (USD 635) and CNY 5,390 (USD 837) per month. The level of CNY 3,800 (USD 590) is for 73 production workers that complies with their average monthly wage. The level of CNY 4,090 (USD 635) is for three administrative staff and two workshop supervisors that complies with their average monthly wage. The level of CNY 5,090 (USD 837) is for three managers that is below their average monthly wage of CNY 6,000 (USD 928), while local law requires that the contribution shall be based on worker's average monthly wage of previous year.
Recommendation for Immediate Action	Contribute to social insurance based on worker's average monthly wage of previous year.
Compliance Classifications	Immediate Action Required
Local Law	Social Insurance Law of the PRC, Article 12 and Article 60
Benchmark ID	C.21.1
Benchmark Details	Employers shall provide all legally mandated benefits, including holidays, leave, bonuses, severance payments and 13th month payments to all eligible workers within legally defined time periods.

Finding Details	The factory does not provide Housing Provident Fund to 12 out of the 81 eligible workers.
Recommendation for Immediate Action	Provide all eligible workers with the legally required Housing Provident Fund.
Compliance Classifications	Immediate Action Required
Local Law	Regulations on Management of Housing Provident Fund, Article 15
Benchmark ID	C.3.1.3
Benchmark Details	Where probationary employment is legally allowed, no workers shall work more than three months in this employment category.
Finding Details	The factory requires workers to sign a 3-year labor contract that stipulates a probation period of six months. However, according to the FLA Code and Benchmarks, the probation period shall not exceed three months.
Recommendation for Immediate Action	Ensure the length of the probation period last no longer than three months.
Compliance Classifications	Immediate Action Required
Local Law	Nil

Employment Relationship (ER)

Benchmark ID	ER.4
Benchmark Details	Employers shall inform workers about workplace rules, environmental protection systems, health and safety information, and laws regarding workers' rights with respect to freedom of association, compensation, working hours, and any other legally required information, and the FLA Code through appropriate means, including posted in local language(s) throughout the workplace's common areas.

Finding Details	The factory has posted the Tervis Tumbler (FLA affiliate company) Code of Conduct at the workplace. However, it is in English, and no Chinese version is available.
Recommendation for Immediate Action	Post Tervis Tumbler's Code of Conduct in the local language (Chinese) at the workplace.
Compliance Classifications	Immediate Action Required
Local Law	Nil
Benchmark ID	ER.19.1
Benchmark Details	Employers shall maintain on file all documentation needed to demonstrate compliance with the FLA Workplace Code and required laws.
Finding Details	The Employee Handbook does not cover the legal protection for lactating workers that no overtime work shall be arranged during the lactating period.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Special Rules on the Labor Protection of Female Employees, Article 9
Benchmark ID	ER.1.3
Benchmark Details	Employers should implement an annual, review process with input from workers of all policies, procedures and their implementation to ensure they meet legal requirements and the FLA Workplace Code.

Finding Details	1. The factory does not review or update the internal policies and procedures annually. The employment procedures, which include recruitment procedures and compensation procedures, were last updated in April 2015. 2. The worker integration component is missing across all Employment Functions. This indicates that the factory has not established procedures to request and receive workers' input and feedback regarding the creation, implementation and updating of its policies and procedures. Workers are neither systematically integrated nor consulted in decision-making processes.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Nil
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 discipline procedure does not cover the requirement of a third-party witness during the imposition of disciplinary actions.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Nil
Freedom of Association & Collective Bargaining	
Benchmark ID	FOA.19.3

Benchmark Details	Where a union exists in the workplace, employers shall make available a copy of the collective bargaining agreement to all workers and other interested parties.
Finding Details	The factory does not provide workers with a copy of the Collective Bargaining Agreement (CBA) and none of the interviewed workers are aware of the CBA.
Recommendation for Immediate Action	Provide workers with a copy of the CBA.
Compliance Classifications	Immediate Action Required
Local Law	Nil

Freedom Of Association And Collective Bargaining (FOA)

Benchmark ID	FOA.11
Benchmark Details	Employers shall not interfere with the right of workers to: draw up their constitutions and rules; to elect their representatives; or to organize their administration and activities
Finding Details	The factory has seven union committee members re-elected on February 15, 2019, only two are production workers. The Chairman of the union committee is the deputy manager and four union committee members are management, including workshop supervisor, office supervisors and managers.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Nil
Benchmark ID	FOA.10

Benchmark Details	Employers shall refrain from any acts of interference with the formation or operation of workers' organizations, including acts which are designed to establish or promote the domination, financing or control of workers' organizations by employers.
Finding Details	FLA Comment: The Chinese constitution guarantees Freedom of Association; however, the Trade Union Act prevents the establishment of trade unions independent of the sole official trade union – the All-China Federation of Trade Unions (ACFTU). According to the International Labor Organization (ILO), many provisions of the Trade Union Act are contrary to the fundamental principles of freedom of association, including the non-recognition of the right to strike. As a consequence, all factories in China fall short of the ILO standards on the right to organize and bargain collectively. Recently, however, the government has introduced new regulations that could improve the functioning of the labor relations' mechanisms. The Amended Trade Union Act of October 2001 stipulates that union committees have to be democratically elected at members' assemblies and trade unions must be accountable to their members. The trade union has the responsibility to consult with management on key issues of importance to their members and to sign collective agreements. It also grants the trade union an enhanced role in dispute resolution. In December 2003, the Collective Contracts Decree introduced the obligation for representative trade unions and employers to negotiate collective agreements, in contrast to the previous system of non-negotiated administrative agreements.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Nil
Harassment Or Abuse (H/A)	
Benchmark ID	H/A.11

Benchmark Details	Employers shall have a system to discipline supervisors, managers or workers who engage in any physical, sexual, psychological or verbal violence, harassment or abuse, through measures such as compulsory counseling, warnings, demotions, and terminations or a combination thereof regardless of whether such action was intended as a means to maintain labor discipline with a view to preventing the reoccurrence of violence and harassment, and facilitating their reintegration into work, where appropriate.
Finding Details	The factory does not establish a system to discipline supervisors, managers, or workers who engage in any form of harassment and abuse.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Nil

Health, Safety And Environment (HSE)

Benchmark ID	HSE.4.1
Benchmark Details	Employers shall at all times be in possession of all legally required and valid permits and certificates related to health, safety, and environmental issues, such as: Purchase and storage of chemicals; Fire safety inspections; Machinery inspections; Waste disposal; Environmental licenses/permits; Sanitation permits, including those required for canteens; and Vehicle inspection and driver permits for all employer provided transportation.
Finding Details	The factory has never conducted any kind of assessment on occupational disease hazards since it moved to its current location in January 2021.
Recommendation for Immediate Action	Conduct an assessment of current conditions of occupational disease hazards and obtain valid reports.

Compliance Classifications	Immediate Action Required
Local Law	The Measures for Supervision and Administration of the “Three Simultaneities” for Occupational Disease Protection facilities at Construction Projects, Article 4
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 occupational hazards test in March 2021 indicates that the noise level at a total of three test points in the embroidery section exceeds legal limit of 85 dB and up to 87.4 dB. 2. The factory does not post occupational hazards test results in the workshops where the hazards are present.
Recommendation for Immediate Action	1. Reduce noise level to achieve full compliance with legal requirement. 2. Post occupational hazards test results in the workshops where the hazards are present.
Compliance Classifications	Immediate Action Required
Local Law	China Law of Prevention and Control of Occupational Diseases, Article 24 and Article 26

Hours Of Work (HOW)

Benchmark ID	HOW.1.1
Benchmark Details	Employers shall comply with all national laws, regulations and procedures concerning hours of work, public holidays and leave.
Finding Details	Overtime hours exceed the legal limit of 36 hours per month. Time records for the period from September 2020 to September 14, 2021 and worker interviews indicate that about 50% of workers worked more than 36 overtime hours in December 2020, January, March, April and June 2021, with a maximum of 67 overtime hours in June 2021.

Recommendation for Immediate Action	Control overtime hours to achieve full compliance with legal requirement.
Compliance Classifications	Immediate Action Required
Local Law	The China Labor Law, Article 41
Benchmark ID	HOW.20
Benchmark Details	Employers shall have in place practices that conduct regular analysis of hours of work in their workplaces and procedures that demonstrate a commitment to progressively reducing excessive hours of work.
Finding Details	The factory production plan is based on 55 hours per week during rush orders and the factory experiences 10-20 rush orders each month. Factory management sets production targets and the production system at a level that workers need to work 15 overtime hours (three overtime hours per workday) per week.
Recommendation for Immediate Action	Set production plan based on regular working hours. Adjust production targets so that workers do not need to work overtime to meet them.
Compliance Classifications	Immediate Action Required
Local Law	Nil
Nondiscrimination (ND)	
Benchmark ID	ND.8.1

Benchmark Details	Employers shall abide by all protective provisions in national laws and regulations benefitting pregnant workers and new mothers, including provisions concerning maternity leave and other benefits; prohibitions regarding night work, temporary reassignments away from work stations and work environments that may pose a risk to the health of pregnant women and their unborn children or new mothers and their new born children, temporary adjustment of working hours during and after pregnancy, and the provision of breast-feeding breaks and facilities.
Finding Details	The factory does not provide one lactating worker with one-hour paid rest break per day in three out of seven months of her lactation period. The worker has been within the lactation period since before June 2021 - she worked eight hours per day from March to May 2021. In addition, the worker was arranged to work three overtime hours per day on two to five workdays per week from March to May 2021. Remark: The factory management explained that the worker applied to waive the breastfeeding break and working overtime as other workers.
Recommendation for Immediate Action	Provide the lactating workers with one-hour paid rest break per day and avoid arranging them to work overtime during lactation period, as per legal requirement.
Compliance Classifications	Immediate Action Required
Local Law	Special Rules on the Labor Protection of Female Employees, Article 9

