

Fair Labor Association: Independent External Factory Assessment

Assessment Date :

01 Nov 2021



Factory Information

Country	China
Number of Workers	191
FLA Affiliates	Gymshark Ltd.

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

FLA Code Element	Number of Violations
Compensation (C)	6
Employment Relationship (ER)	10
Freedom Of Association And Collective Bargaining (FOA)	1
Health, Safety And Environment (HSE)	9
Hours Of Work (HOW)	4
Nondiscrimination (ND)	1

Assessment Information

Assessor	Openview- China Shenzhen
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Assessment Date	01 Nov 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 is not in line with legal requirements. The factory contributes to five types of social insurances based on CNY 3,330 to CNY 3,850 (USD 512 to USD 592) per month, which is not in line with legal requirement of contribution based on worker's average monthly wage of previous year. All workers' average monthly wages of previous year were higher than CNY 3,850 (USD 592), ranging from CNY 4,000 (USD 615) to CNY 6,800 (USD 1,046).
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.8
Benchmark Details	All workers shall be credited with all-time worked for an employer for purposes of calculating length of service and determine the benefits to which workers are entitled.
Finding Details	The factory does not take workers' external seniority (previous job experience prior to factory employment) into account when calculating annual leave, as required by law.

Recommendation for Immediate Action	Calculate annual leave based on worker's cumulative working experience (working age).
Compliance Classifications	Immediate Action Required
Local Law	Implementation Measures of workers' Paid Annual Leave, Article 4
Benchmark ID	C.9.3
Benchmark Details	Employees shall be compensated for overtime hours at such premium rate as is legally required in the producing country
Finding Details	Workers are paid insufficiently for overtime hours. Time and payroll records for the period from October 2020 to October 2021 indicate that about 80% of workers received insufficient overtime pay in all reviewed months. The payroll only shows a lump sum of overtime pay, with no breakdown of the number of overtime hours or the amount of overtime pay on regular weekdays and rest days. The factory representative could not explain how the overtime pay was calculated, because the Human Resources personnel was not in the factory during the assessment days. For instance, time record shows one worker worked 69 overtime hours on regular weekdays and 88 overtime hours on rest days in March 2021. Payroll record shows this worker received basic wage of CNY 2,400 (USD 375) i.e., CNY 13.79 (USD 2.16) per hour [CNY 2,400/21.75 days/8 hours] and overtime pay of CNY 2,160 (USD 338) in March 2021. While as per legal requirement, this worker should receive overtime pay of CNY 3,854.3 (USD 603) [69 hours*CNY 13.79 per hour *1.5+88 hours*CNY 13.79 per hour*2] in that month. The shortfall amount is CNY 1,694.3 (USD 265) [CNY 3,854.3-CNY 2,160].
Recommendation for Immediate Action	Fully compensate the overtime hours as per legal requirement i.e., at least 150% and 200% of the regular pay rate for overtime hours on regular weekdays and rest days respectively. Ensure that workers who were not correctly compensated for overtime pay are back paid the correct wages.
Compliance Classifications	Immediate Action Required
Local Law	Labor Law of PRC, Article 44

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	The factory does not provide social insurance to all eligible workers. There is a total of 90 workers working in the factory. All 90 workers are eligible for social insurance contribution. The factory has provided 25 out of 90 eligible workers (27.77%) with pension and unemployment insurances and 27 out of 90 eligible workers (30%) with medical, work-related injury and maternity insurances. As a supplement, the factory has provided commercial accidental injury insurance to 26 workers, which is valid from March 22, 2021 to March 21, 2022 and has a maximum benefit amount of CNY 500,000 (USD 76,923) per worker.
Recommendation for Immediate Action	Provide social insurance to all eligible workers.
Compliance Classifications	Immediate Action Required
Local Law	The China Labor Law, Article 72
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	1. Termination payouts are paid on the regular pay day on the 30th of the following month. According to local law, termination payouts should be paid within five days upon contract termination. 2. The factory does not contribute to the Housing Provident Fund for any of the 90 eligible workers.
Recommendation for Immediate Action	1. Pay termination payout within five days upon contract termination, as per legal requirement. 2. Provide all eligible workers with the legally required Housing Provident Fund.
Compliance Classifications	Immediate Action Required

Local Law	Regulations on the Payment of Wages in Zhejiang, Article 19; Regulations on Management of Housing Provident Fund, Article 15
Benchmark ID	C.15.1.3
Benchmark Details	Employers shall provide workers a pay statement each pay period and not less frequently than once a month, which shall show total number of hours worked.
Finding Details	The payroll does not include the total number of hours worked, number of regular working hours, or number of overtime hours on regular weekdays and rest days.
Recommendation for Immediate Action	Include the total number of hours worked, number of regular working hours, and number of overtime hours on regular weekdays and rest days in the payroll.
Compliance Classifications	Immediate Action Required
Local Law	

Employment Relationship (ER)

Benchmark ID	ER.17.5
Benchmark Details	Employers shall have in place procedures to track the number, types, and timing and resolution of grievances, and to communicate the resolution of grievances to the workforce.
Finding Details	The factory provides four channels to workers to lodge grievances: speaking directly with supervisors, management representative, General Manager, or filing grievances through a suggestion box. However, interviewed workers are not aware of the channels of reporting to management representative and General Manager or the grievance resolution process. In addition, the factory does not maintain any grievance records. No workers have filed grievances through suggestion box and the factory has not recorded any verbal grievances raised by workers with their supervisors.

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 any disabled workers. Legal requirements state that at least 1.5% of the total workforce should be composed of disabled workers. Although the factory contributes to the Employment Security Fund in lieu of employing disabled workers as allowed under the local law, this practice carries the risk of discrimination based on FLA Workplace Code and Benchmarks.
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	The factory does not have a procedure for managing retrenchment. Additionally, the termination procedure does not include the method to calculate final payout.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local 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	The factory has not established written procedures on personnel development that encourage ongoing 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	The factory has not established a performance review procedure or conducted performance review for any workers.
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	The factory has not established written procedures on promotion, demotion, or job reassignment.
Recommendation for Immediate Action	
Compliance Classifications	Immediate Action Required
Local Law	
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 not received the FLA Code, and as a result, has not communicated the FLA Code to its workers or supervisors.
Recommendation for Immediate Action	Communicate the FLA Code to all workers and supervisors through training or posting the Code at the workplace.
Compliance Classifications	Immediate Action Required
Local Law	
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 factory has not received the Gymshark (FLA affiliated company) Code of Conduct, and as a result, has not communicated the code to its workers or supervisors.
Recommendation for Immediate Action	Communicate the Gymshark Code to all workers and supervisors through training or posting the Code at the workplace.
Compliance Classifications	Immediate Action Required
Local Law	
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	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	
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 system does not include a third-party witness or an appeal process during imposition.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Nil

Freedom Of Association And Collective Bargaining (FOA)

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	<p>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.</p>
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	

Health, Safety And Environment (HSE)

Benchmark ID	HSE.5.1
Benchmark Details	<p>All applicable, legally required or recommended elements of safe evacuation shall be complied with, including all of the following elements: posting evacuation plans; the installation and maintenance of fire alarms; the installation and maintenance of emergency lighting; ensuring aisles/exits are not blocked and that workers are not blocked within their workstations; employee education and training; and evacuation procedures and fire drills.</p>

Finding Details	1. One out of two emergency exits does not have an exit sign or emergency light on the first floor of the production and warehouse combined building. 2. Both emergency exits have rolling doors on the first floor of the production and warehouse combined building, which do not open in the direction of evacuation as per legal requirement.
Recommendation for Immediate Action	1. Install exit signs and emergency lights at all emergency exits. 2. Replace the rolling doors with side-hinged doors open in the direction of evacuation.
Compliance Classifications	Immediate Action Required
Local Law	Code of Design on Building Fire Protection and Prevention, Article 6.4.11 and Article 10.3.5
Benchmark ID	HSE.5.1.2
Benchmark Details	All applicable, legally required or recommended elements of safe evacuation shall be complied with, including all the following elements: installation and maintenance of fire alarms;
Finding Details	The fire alarms throughout the factory do not have backup battery power.
Recommendation for Immediate Action	Install backup battery for the fire alarm system.
Compliance Classifications	Immediate Action Required
Local Law	The Code of Design on Building Fire Protection and Prevention, Article 10.1.6
Benchmark ID	HSE.26
Benchmark Details	All dormitory facilities must be structurally sound, in good repair, and located separately from production, warehouse and hazardous chemical storage areas.

Finding Details	The workers' dormitory is located on the west side on the second and the third floor of the production and warehouse combined building, around 100 square meters per floor and around 20 workers living inside.
Recommendation for Immediate Action	Relocate workers' dormitory to be separate from the production and warehouse building.
Compliance Classifications	Immediate Action Required
Local Law	Code of Design on Building Fire Protection and Prevention, Article 3.3.5 and 3.3.9
Benchmark ID	HSE.14.1
Benchmark Details	All production machinery, equipment and tools shall be properly guarded and regularly maintained.
Finding Details	Seven out of eight sewing machines do not have needle guards to prevent broken needles from hurting operators.
Recommendation for Immediate Action	Install needle guards on all sewing machines, to prevent broken needles from hurting operators.
Compliance Classifications	Immediate Action Required
Local Law	Code of Design of Manufacturing Equipment Safety and Hygiene, Article 6.1.6
Benchmark ID	HSE.6.1
Benchmark Details	All safety and medical equipment (e.g. fire fighting equipment, first aid kits) shall be available in sufficient numbers throughout the workplace, maintained and stocked as prescribed, and easily accessible to workers.
Finding Details	The factory has never conducted a comprehensive inspection for the firefighting equipment.

Recommendation for Immediate Action	Conduct comprehensive inspection for the firefighting equipment on an annual basis.
Compliance Classifications	Immediate Action Required
Local Law	China Fire Prevention Law, Article 16 (3)
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 not conducted the pre-assessment of occupational disease hazards and the assessment of current condition of occupational disease hazards since it was founded in 2012.
Recommendation for Immediate Action	Conduct assessment of current condition 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	The factory does not provide pre-job or on-job occupational health examinations to any of the eligible workers in the sewing workshop with hazardous exposure to noise ranging from 80 dB to 85 dB. Two workers are eligible for pre-job occupational health examinations and four workers are eligible for on-job occupational health examinations during the past 12 months.
Recommendation for Immediate Action	Provide pre-job and on-job occupational health examination to all eligible workers with hazardous exposure to noise.
Compliance Classifications	Immediate Action Required
Local Law	China Law of Prevention and Control of Occupational Diseases, Article 35
Benchmark ID	HSE.14.2
Benchmark Details	Workers shall receive training in the proper use and safe operation of machinery, equipment and tools they use.
Finding Details	The factory does not provide safety training to designated workers working with special and high risk responsibilities, including electrical issues, machine maintenance, or working at heights.
Recommendation for Immediate Action	Provide safety training to designated workers working with special and high risk responsibilities.
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	The factory does not take steps to reduce repetitive-motion stress or injuries. The factory does not provide chairs with armrests and backrests to workers working in the sitting position or anti-fatigue mats to workers working in the standing position.
Recommendation for Immediate Action	Provide chairs with armrests and backrests to workers working with sitting position and anti-fatigue mats to workers working with standing position.
Compliance Classifications	Immediate Action Required
Local Law	

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 three hours per day and 36 hours per month. Time records for the period from October 2020 to October 2021 and worker interviews indicate that about 80% of workers worked more than three overtime hours per day on 20% of the workdays per month in all reviewed months except February 2021, and about 80% of workers worked more than 36 overtime hours per month in all reviewed months except February 2021, with a maximum of 157 overtime hours in March 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 58 hours per week. Factory management sets production targets and the production system at a level that workers need to work 18 overtime hours (two overtime hours per day on five weekdays, eight overtime hours on Saturday) 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	
Benchmark ID	HOW.21
Benchmark Details	Other than in exceptional circumstances, the total weekly work hours (regular work hours plus overtime including any alternative shifts such as 4x4 or 3x3) shall not exceed 60 hours per week.
Finding Details	Total working hours exceed 60 per week. Time records for the period from October 2020 to October 2021 and worker interviews indicate that weekly working hours for 80% of workers exceeded 60 hours and up to 80 hours in three to four weeks per month in all reviewed months, except February 2021.
Recommendation for Immediate Action	Control total working hours do not exceed 60 in a week.
Compliance Classifications	Immediate Action Required
Local Law	
Benchmark ID	HOW.2

Benchmark Details	Workers shall be entitled to at least 24 consecutive hours of rest in every seven- day period. If workers must work on a rest day, an alternative consecutive 24 hours must be provided within that same seven-day period or immediately following.
Finding Details	Workers are not provided with at least one day off in every seven-day work period. Time records for the period from October 2020 to October 2021 and worker interviews indicate that about 80% of workers worked more than six consecutive days per month in all reviewed months except February 2021, with a maximum of 31 consecutive days from March 1 to 31, 2021.
Recommendation for Immediate Action	Provide workers with at least one day off (24-consecutive hours of rest) for every seven-day work period.
Compliance Classifications	Immediate Action Required
Local Law	

Nondiscrimination (ND)

Benchmark ID	ND.3
Benchmark Details	Recruitment and employment policies and practices, including job advertisements, job descriptions, application and interview questions and job performance/evaluation policies and practices shall be free from any type of discriminatory bias.
Finding Details	The job advertisement posted at the factory gate contains age and gender requirements. For example, sewing jobs require applicants between 18 to 50 years old and be female. In practice, males and people over the age of 50 were working in the facility. No workers were under the age of 18.
Recommendation for Immediate Action	Remove age and gender requirement from the job advertisement.
Compliance Classifications	Immediate Action Required

Local Law

The China Labor Law, Article 12

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