

Fair Labor Association: Independent External Factory Assessment

Assessment Date :

04 Nov 2021



Factory Information

FLA Affiliates	Patagonia
Country	Vietnam
Number of Workers	

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)	4
Employment Relationship (ER)	5
Freedom Of Association And Collective Bargaining (FOA)	3
Harassment Or Abuse (H/A)	2
Health, Safety And Environment (HSE)	10
Hours Of Work (HOW)	3

Assessment Information

Assessor	OneStep Viet Co., Limited
----------	---------------------------

Assessment Date	04 Nov 2021
-----------------	-------------

Assessment Purpose	Factory Assessment (Virtual Compliance Check)
--------------------	---

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	Based on payroll and attendance record reviews during the past 12 months, interviews with factory management, and interviews with workers, it is noted that as a general practice, the factory does not contribute mandatory insurance for new workers who sign labor contracts after the 16th of the month. The mandatory insurance is contributed in the following month instead. For instance, worker A signed a labor contract on 17th May 2021 and worked 13 working days in May, however, the factory did not contribute mandatory insurance for this worker in May 2021. Remark: there are 26 workdays in May 2021.
Recommendation for Immediate Action	The factory is advised to contribute mandatory insurance for all employees who meet the legal requirement.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 58/2014/QH13, Article 85
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	<p>Based on payroll and attendance records review during the past 12 months, interviews with factory management, and interviews with workers, it is noted that the factory does not calculate accurately the payment for female workers who have children under 12 months old and work hazardous and heavy jobs as legally required (effective since February 2021). For instance, female worker A worked 7 regular hours/day during the time of nursing children under 12 months old and worked hazardous and heavy job: - Calculation of factory on a daily basis: paid 8 hours with 100% of premium rate; - Correct calculation on a daily basis: pay 8 hours with 100% + one (1) hour with 150% of premium rate. Thus, the worker is paid insufficient 150% of one (1) hourly rate. As legally required, female workers who have children under 12 months old and work hazardous and heavy jobs shall receive 60 minutes of the break with full payment and reduced one working/day with full payment. In case workers are willing to work overtime during 60 minutes of break, they shall be paid 100% of the premium rate and during the reduced one working hour, they shall be paid 150% of the premium rate. The factory has not applied to reduce one working hour yet. Thus, it is required to pay for this one working hour as overtime with 150% of one (1) hourly rate.</p>
Recommendation for Immediate Action	<p>1) Calculate sufficiently and correctly the payment and benefit for protected female workers as a legal requirement. 2) Payback affected workers.</p>
Compliance Classifications	<p>Immediate Action Required</p>
Local Law	<p>Labor Law No. 45/2019/QH14, Article 137 and Decree 145/2020/ND-CP, Article 80</p>
Benchmark ID	<p>C.1.1</p>
Benchmark Details	<p>Employers shall comply with all national laws, regulations and procedures concerning the payment of compensation to workers.</p>

Finding Details	Based on document reviews and confirmation from factory management, it is noted that the factory does not utilize the correct method to calculate annual leave payouts for resigning workers according to local law. For instance, worker A joined the factory on 11th June 2021 (with 17 days with pay) and resigned on 19th Sept 2021 (with 14 days with pay). The annual leave of this worker would be 4.6 days ($14/12 * 4$ actual working months), however, the factory provided only 4 days. The factory explained that due to this incorrect calculation, there were 13 resigned workers not provided with sufficient annual leave.
Recommendation for Immediate Action	The factory is advised to calculate annual leave accurately under new provisions of local law. In case an employee has an incomplete month of work, it will be considered a complete month (01 month) if the total working days and paid leave days (holidays, annual leave, and personal leave prescribed in Article 112, Article 113, Article 114, and Article 115 of the Labor Code) make up of at least 50% of the normal working days of the month.
Compliance Classifications	Immediate Action Required
Local Law	Decree No. 145/2020/ND-CP, Article 66
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	Based on worker interviews, it is noted that male workers confirm that they are not aware of the benefit for male workers on the condition of receiving the benefit of child care support allowance. Remark: - Factory has policy in place a child care support allowance for both male and female workers; - Based on the list of workers who are receiving child care support allowance, no male workers are on the list. Factory explained that no male workers applied the birth certificate to receive this allowance; - The child care support allowance is VND 5,000/child.

Recommendation for Immediate Action	Factory is advise to provide a comprehensive communication to all workers (both male and female) on the child care support allowance regulation, ensure that the child care support allowance shall be provided sufficiently for both male and female workers as long as they match with the condition of legal requirement.
Compliance Classifications	Immediate Action Required
Local Law	Labor Law No. 45/2019/QH14, Article 136

Employment Relationship (ER)

Benchmark ID	ER.1.2
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 occupational health and safety (OHS) training has not been conducted for canteen staff who are directly cooking and/or processing the foods at the canteen area.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Law No. 84/2015/QH13, Article 14; Decree No. 140/2018/ND-CP, Article 1, Clause 5 and Circular No. 06/2020/TT-BLDTBXH
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	Based on document reviews and interviews with factory management and trade union, it is noted that the factory has a grievance mechanism including indirect and direct mechanisms. However, the 2 hotline numbers used for receiving workers' grievances do not work while checking.
Recommendation for Immediate Action	The factory is advised to ensure the hotline numbers of the grievance mechanism should be functional during the working time.
Compliance Classifications	Immediate Action Required
Local Law	
Benchmark ID	ER.18.1
Benchmark Details	Employers shall have written disciplinary rules, procedures and practices that embody a system of progressive discipline (e.g. a system of maintaining discipline through the application of escalating disciplinary action moving from verbal warnings to written warnings to suspension and finally to termination).
Finding Details	Based on policy reviews, interviews with factory management and workers, it is noted that Freedom of association, Harassment & abuse, Non -Discrimination, and Forced Labor policies are developed in the factory and regulated that violator shall be applied the disciplinary measures as follow: - Major violations: receiving dismissal; - Minor violations: receiving warning letter & reassignment However, these disciplinary measures are not regulated in the Company Regulation.
Recommendation for Immediate Action	

Compliance Classifications	Sustainable Improvement Required
Local Law	Decree No. 145/2020/ND-CP, Article 69
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 does not have in place written policies and procedures with regard to promotion, demotion, and job reassignment that outline the criteria, demonstrate linkages to job grading, prohibit discrimination or use of demotion or job reassignment as a form of penalty or punishment, are provided in writing, seek feedback from employees in writing, and follow all local legal requirements as per FLA Benchmark.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement 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	Based on document reviews, interviews with factory management and workers, it is noted that the labor contract of workers states that an employee who works overtime during public holidays, paid leave shall be received at least 300% of the premium rate instead of receiving at least 300% PLUS the daily salary during the public holidays or paid leave for employees receiving daily salaries as a legal requirement.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Circular No. 10/2020/TT-BLDTBXH, Article 3

Freedom Of Association And Collective Bargaining (FOA)

Benchmark ID	FOA.1.1
Benchmark Details	Employers shall comply with all national laws, regulations and procedures concerning freedom of association and collective bargaining. national laws, rules, and procedures protecting the rights of workers to organize and bargain collectively. Where local laws and FLA standards differ, the employer is expected to follow the highest applicable standard.
Finding Details	Based on document reviews and interviews with factory management and trade union, it is noted that the factory remitted the trade union fee only one time in the 1st quarter of 2021 by the time of the assessment instead of paying the trade union once every month at the same time of compulsory social insurance payment for employees, as legally required.
Recommendation for Immediate Action	The factory shall pay trade union once every month at the same time of compulsory social insurance payment for employees, as legally required.
Compliance Classifications	Immediate Action Required

Local Law	Decree 191/2013/ND-CP, Article 6
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: Vietnam has not ratified ILO Convention 87. Under Vietnamese law, all unions are required to affiliate with the single trade union, the Vietnam General Confederation of Labor (VGCL), which is affiliated with the Communist Party. With respect to such union monopolies, the ILO Committee on Freedom of Association has stated that "the rights of workers to establish organizations of their own choosing implies... the effective possibility of forming... [trade unions] independent both of those which exist already and of any political party." Vietnam's legal framework is therefore not compatible with the ILO Principles on Freedom of Association and, as such, all factories in Vietnam fail to comply with the FLA Code standard on Freedom of Association.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	FOA.20.2
Benchmark Details	Provisions in collective bargaining agreements that contradict national laws, rules and procedures or offer less protection to workers than provisions of the FLA Workplace Code shall also be considered not applicable.

Finding Details	Based on document reviews and interviews with factory management, it is noted that the internal workplace democracy regulation is developed on March 27, 2021. However, this regulation is not reviewed and updated with new provisions of law (Decree 145/2020/ND-CP) such as the composition and quantity of participants in dialogue and quantity thereof.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	Decree No. 145/2020/ND-CP, Article 37

Harassment Or Abuse (H/A)

Benchmark ID	H/A.10.1.2
Benchmark Details	Body searches and physical pat downs shall only be undertaken when there is a specific, legitimate reason to do so and upon consent of workers, unless a state official with the power to do so (e.g. police officer) has ordered the search.
Finding Details	Based on factory management and workers interview, it is noted that the same-gender pat-down is reported in the factory. It is applied by the security department to the workers daily whenever they leave the factory for security purposes. The factory management explained that they were not aware of this FLA requirement.
Recommendation for Immediate Action	The factory is advised that body searches and physical pat downs shall only be undertaken when there is a specific, legitimate reason to do so and upon consent of workers.
Compliance Classifications	Immediate Action Required
Local Law	
Benchmark ID	H/A.10.1.3

Benchmark Details	Body searches shall not be undertaken in public and the person who undertakes the search shall be of the same sex as the person who is being searched.
Finding Details	Based on factory management and workers interview, it is noted that the same-gender pat-down is reported in the factory. It is applied by the security department to the workers at production workshops / warehouses daily whenever workers leave the factory for security purposes. The factory management explained that they were not aware of this FLA requirement.
Recommendation for Immediate Action	1) Body search shall not be undertaken as a routine. 2) Body searches shall not be undertaken in public area.
Compliance Classifications	Immediate Action Required
Local Law	

Health, Safety And Environment (HSE)

Benchmark ID	HSE.6.2
Benchmark Details	A sufficient number of workers shall be trained in first aid and firefighting techniques. Training shall be upon hire and with periodic refresher training.
Finding Details	No fire safety training for fire brigade: a) Around 155 members of the fire brigade are not provided annual fire safety training. The latest training for these members was conducted in May 2020. b) Around 28 members are not provided refresher fire safety training. They were trained in 2019. Remark: The factory explained that they could not conduct the training due to the Covid-19 pandemic.
Recommendation for Immediate Action	The fire brigade shall be provided with fire safety training properly.
Compliance Classifications	Immediate Action Required
Local Law	Decree No. 136/2020/ND-CP, Article 33

Benchmark ID	HSE.5.3
Benchmark Details	Alarm systems shall be regularly tested and evacuation drills shall be undertaken at least annually.
Finding Details	1) There is no drill with fire police for the past 12 months. The latest drill was on May 27, 2020 2) The factory conducts one instead of two evacuation drills at the dormitory during the latest 12 months as required by the FLA benchmark. The latest drill was on December 25, 2020. Remark: The factory explained that they could not conduct the fire drill due to Covid-19 pandemic. In addition, the factory conducted an evacuation drill at the dormitory quarterly in the year 2020.
Recommendation for Immediate Action	The factory is advised to: - Conduct fire drills according to the fire fighting and prevention plan annually. - Conduct fire drills for the dormitory at least semi-annually.
Compliance Classifications	Immediate Action Required
Local Law	Circular No. 149/2020/TT-BCA, Article 10
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 emergency exit aisle is partially blocked at workshop B when the moving cutting machine is placed at the end of the rails.
Recommendation for Immediate Action	Exit aisles / staircases shall be free from obstruction.
Compliance Classifications	Immediate Action Required
Local Law	Vietnam Building Code No. QCVN 06:2021/BXD, Article 3
Benchmark ID	HSE.2

Benchmark Details	All documents required to be available to workers and management by applicable laws (e.g. health and safety policies, MSDS, environmental emergency plans) shall be made available in the prescribed manner and in the local language or language spoken by the workers, if different from the local language.
Finding Details	1) The factory does not provide regular health checks as well as occupational diseases health checks every 6 months for workers who work in heavy and hazardous conditions. The latest regular health check and occupational diseases health check were in December 2020. Remark: the factory signed a contract for a health check in August 2021. However, they could not arrange the health check due to the Covid-19 pandemic. 2) According to the latest environmental monitoring report which was conducted in September 2021, wastewater assessment was not tested on surface-active substances as required in the wastewater discharge license.
Recommendation for Immediate Action	1) Provide regular health checks for workers as legally required. 2) Conduct environmental monitoring report as required in the wastewater discharge license.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 84/2015/QH13, Article 21 and Law No. 17/2012/QH13, Article 38
Benchmark ID	HSE.19
Benchmark Details	All facilities including workplace buildings, toilets, canteens, kitchens, and clinics, shall be kept clean and safe and be in compliance with all applicable laws, including relevant sanitation, medical, and safety and health regulations.
Finding Details	- Two (2) restrooms of workshop B do not have toilet tissue. In addition, one drying equipment in one restroom of workshop B is not connected with the power source. The factory has corrected those concerns on the day of the assessment. - The waste bin in the restrooms does not have cover and is not fully covered as well.
Recommendation for Immediate Action	Provide the toilet tissue, equip hand drying facility functionally as well as cover for waste bins to ensure sanitation.

Compliance Classifications	Immediate Action Required
Local Law	
Benchmark ID	HSE.13
Benchmark Details	All necessary ventilation, plumbing, electrical, noise and lighting services shall be installed and maintained to conform to applicable laws and to prevent or minimize hazardous conditions to workers in the facility.
Finding Details	Some electrical wires at one electrical control panel in the canteen area are placed on the ground where is a wet floor. In addition, the electrical wires at this electrical control panel in the canteen are not placed in the fireproof pipeline. Moreover, the electrical wires at the wastewater discharge point are not placed in the fireproof pipeline as its original protective equipment.
Recommendation for Immediate Action	The factory shall: - Keep electrical panel away from the wet floor; - Place the electrical wire in the fireproof pipeline.
Compliance Classifications	Immediate Action Required
Local Law	
Benchmark ID	HSE.14.1
Benchmark Details	All production machinery, equipment and tools shall be properly guarded and regularly maintained.
Finding Details	1) There is no wheel locking mechanism for two mobile platforms at material warehouses (workshop A). 2) There is no loading limit posted for the shelves at the warehouses. 3) The gas cylinders at the dormitory's kitchen are not chained to prevent falling.
Recommendation for Immediate Action	1) Mobile platforms shall be equipped wheel locking mechanism. 2) The factory is advised to post loading limits at shelters. 3) Compressed gas cylinders shall be chained to protect them from tipping fall.

Compliance Classifications	Immediate Action Required
Local Law	
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 a legal inspection for two compressed air distribution systems. Remark: the factory explained that they planned to conduct an inspection in December 2021.
Recommendation for Immediate Action	The factory is advised that strictly required equipment shall be inspected and certified.
Compliance Classifications	Immediate Action Required
Local Law	Decree No. 44/2016/ ND-CP, Article 16 and Circular No. 36/2019/TT-BLDTBXH, Article 2
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) According to risk assessment and fire risk assessment, the factory found that a short circuit could cause fire at facilities. However, the factory does not make the risk assessment as well as fire risk assessment for the translator room. 2) The hazardous waste has not been transported due to the Covid-19 outbreak. Thus, it is not ensured to classify all hazardous wastes in the hazardous waste storage as legally required.

Recommendation for Immediate Action	1) Risk assessment and Fire risk assessment shall cover all workplaces/areas. 2) The factory shall classify all hazardous wastes as legally required.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 84/2015/QH13, Article 77, Circular No. 07/2016/TT-BLDTBXH, Article 3 & 5 and Circular No. 36/2015/TT-BTNMT, Article 6
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	Workers who sit during the working time are provided chairs with back support. However, all of the chairs are not adjustable.
Recommendation for Immediate Action	Proactive steps to reduce repetitive-motion stress or injuries shall be taken e.g. breaks, adjustable workstations.
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	<p>1) Based on payroll and attendance record reviews during the past 12 months, it is noted that approximately 70% total of the workforce worked a maximum up to 58 OT hours from October to December 2020 and approximately 35% total of the workforce worked maximum up to 54 OT hours from January to September 2021 (excluding February & May in 2021) which exceeded 30 OT hours/month in 2020 & 40 OT hours/month in 2021 as legally required. 2) Based on payroll and attendance record reviews during the past 12 months, it is noted that approximately 79% total of the workforce worked maximum up to 521 OT hours in 2020 (From January to December 2020) & approximately 74% total of the workforce worked maximum up to 397 OT hours in 2021 (From January to September 2021) which were exceeded 300 OT hours/year as legally required. 3) Based on payroll and attendance record reviews of outsourced security and interview with security guards, it is noted that all security guards (16 persons) worked: - Maximum 168 OT hours/month in August and Sept 2021 which were exceeded 40 OT hours/month as legally required. - Maximum 84 hours/week in August and Sept 2021 which were exceeded 60 hours/week (including regular + overtime hours) as per standard requirement;</p>
Recommendation for Immediate Action	<p>The factory is advised that: 1) The number of overtime working hours of the employee shall not be more than 40 hours in a month and 300 hours in a year as legally required; 2) The number of overtime working hours of the employee shall not be more than 40 hours in a month and 300 hours in a year as legally required; 3) The number of total working hours (including regular + overtime) shall not be exceeded 60 hours per week as per standard requirement.</p>
Compliance Classifications	Immediate Action Required
Local Law	Vietnam Labor Law in 2012, Article 106 and Vietnam Labor Law in 2019, Article 107
Benchmark ID	HOW.22.3
Benchmark Details	Time worked by all workers, regardless of wage system, shall be fully documented by time cards or other mechanical or electronic recording systems.

Finding Details	Based on confirmation from factory management and outsourced security, it is noted that there is no timecard or other mechanical or electronic recording system to record detailed time-in and out of all security guards as per benchmark requirement. At the current practice, the daily time attendance is recorded by the manual record which is done by the Security Team Leader.
Recommendation for Immediate Action	The factory shall install a system to record working hours for security guards.
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	Based on payroll and attendance record reviews of outsourced security and interview with security guards, it is noted that all security guards (16 persons) worked continuously the whole month without any rest day in August and September 2021 instead of receiving at least 4 rest days/month as legally required.
Recommendation for Immediate Action	Security guards from the outsourced firm should be entitled to at least 4 rest days per month as legally required.
Compliance Classifications	Immediate Action Required
Local Law	Labor Law No. 45/2019/QH14, Article 111

