

# Fair Labor Association: Independent External Factory Assessment

Assessment Date :

**17 Nov 2022**



## Factory Information

FLA Affiliates	Nike, Inc
Country	Vietnam
Number of Workers	1200

## 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)	8
Freedom Of Association And Collective Bargaining (FOA)	1
Health, Safety And Environment (HSE)	8
Hours Of Work (HOW)	1

## Assessment Information

Assessor	Openview - Vietnam
Assessment Date	17 Nov 2022

Assessment Purpose	
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## ASSESSMENT RESULTS

### Compensation (C)

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>(1) The factory reduces the workload for nursing workers and pregnant workers by 1 hour each day with full pay, which means that they work 7 hours instead of 8 hours.. However, when nursing workers and pregnant workers work more than 7 hours in a day, the factory rounds up to 0.88 day for 7 working hours instead 0.875 day to calculate for overtime payment. This practice leads to the total working hours in a month being reported as higher than the actual working hours, and therefore the overtime payment of those workers (paid by piece rate salary) being lower than they are due. For example, the factory used 184 hours instead of 183 hours when calculating overtime for one sampled worker. The sampled worker was paid VND635,406 instead of VND638,653 due to this wrong calculation because the hourly rate was lower when divided by 184 hours worked instead of 183 hours. (2) The factory regulates to pay overtime if workers clock-in 15 minutes or more before the normal start time or clock-out 15 minutes or more later than the normal end time. However, a sampled worker clocked out at 16:18pm on August 12, 2022 and the factory did not count 15 minutes for overtime. Meanwhile, another sampled worker clocked out at 16:16pm on August 05, 2022 and was paid for 15 minutes of overtime.</p>
Recommendation for Immediate Action	(1) Calculate and pay correctly for overtime of workers. (2) Ensure to calculate and pay overtime for all workers as per laws and factory policy consistently.
Compliance Classifications	Immediate Action Required

Local Law	(1) Decree 145/2020/ND-CP, Article 55 (2) Law No. 45/2019/QH14, Article 94
Benchmark ID	C.19.1.5
Benchmark Details	Employers shall communicate orally and in writing to all workers all relevant information in the local language or language spoken by the workers, if different from the local language.
Finding Details	The factory does not publicly share and post the information about trade union contributions, payment of social insurance, health insurance and unemployment insurance premiums as per local law.
Recommendation for Immediate Action	Ensure to publicly post information such as trade union contributions, payment of social insurance, health insurance and unemployment insurance premiums for workers to refer.
Compliance Classifications	Immediate Action Required
Local Law	Decree No. 145/2020/ND-CP, Article 43
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	As a general practice, the factory conducts performance evaluations to increase the wage level of workers once they have worked in the factory for 5 years. However, according to five sampled workers began to work at the factory in September 2015, the factory increased the wage level of these workers in January 2022 instead of in September 2020 as per factory regulation.
Recommendation for Immediate Action	Review and ensure workers are increased the wage level on time as per factory regulation.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 45/2019/QH14, Article 103

## 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 grievance procedure does not regulate the timeline for each step of implementation and the method for workers to raise anonymous grievances.
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 termination procedure (No. PTT-QT-LĐ-01 issued on March 15, 2022) does not provide guidance on termination without cause/fault, termination due to work-related death or incapacity, and leaving job without notice in advance. The procedure does not regulate for the timeline of each required step of implementation.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement 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	The factory's internal labor rules (registered with the local authority on January 11, 2022) do not cover certain elements that are required by local law: (1) Special cases of overtime work (2) Cleaning, decontamination and disinfection at the workplace (3) Compliance to job re-assignment by the employer.
Recommendation for Immediate Action	Update the internal labor rules with all required contents, as per legal requirement.
Compliance Classifications	Immediate Action Required
Local Law	Decree No. 145/2020/ND-CP, Article 69
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 policies and procedures for personnel development to 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 written policies and procedures for performance reviews that include steps and processes for reviews, linkages to job grading, nondiscrimination, written feedback, and compliance with the legal requirements. The factory has not conducted the performance review for the workers.
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	The factory does not maintain written records of workers' consent for voluntary wage deduction of the trade union fee; worker's documentation checklists; or worker's commitment in worker's personnel files. These documents are required to be kept in the personnel files by the factory's own recruitment policy and procedure.
Recommendation for Immediate Action	



Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.3.1
Benchmark Details	Employers shall provide an orientation to new employees at the time of hiring, which includes explanations of the employers' rules, compensation package and policies for human resources, grievance systems, industrial relations, including respect of the right to freedom of association, workers' rights and responsibilities, FLA Code of Conduct, health and safety, and environmental protection.
Finding Details	(1) The records of worker orientation training provided by the factory proved to be inaccurate. For example, test results provided for review indicate that a certain sampled worker completed the training on August 1, 2, 2022. However, the training records for that round of training show no indication (name, department and signature on the attendance sheet) that the worker attended. In another case, a security staffer who worked Shift 2 from 2:00 pm to 10:00 pm on August 2, 2022 was listed in a training record indicating that he joined the training from 7:00 am to 4:00 pm on August 2. There is no overtime noted. The factory explained that this was due to a mistake in the training records and worker did not register overtime for training. (2) The orientation training does not include content on retrenchment, industrial relations, the worker involvement process, promotion and demotion.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement 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 factory has not consulted or integrated workers into the decision-making processes impacting the workplace and working conditions. Policies and procedures are established by the Social Compliance team, HR team, and HSE team without consultation or integration from workers.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	

## 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	(1) FLA Comment: Vietnam has not ratified ILO Convention 87. Under Vietnamese law, all unions are required to affiliate with a 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. (2) Factory does not have the written procedures to provide the steps to be taken when various types of disputes arise, including strikes and other major industrial actions, the persons responsible for executing and supervising those steps.

Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	

## Health, Safety And Environment (HSE)

Benchmark ID	HSE.30.1
Benchmark Details	Employers shall develop, maintain, and regularly review health, safety, and environmental policies to ensure that they comply with all national laws, regulations and the FLA Workplace Code concerning health, safety, and environmental standards, regulations and procedures.
Finding Details	The health and safety policy of the factory does not include that it must apply for onsite subcontracted workers working in the factory.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	

Benchmark ID	HSE.5.1
Benchmark Details	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.

Finding Details	Three out of five emergency exit doors at each floor of a five-story building used for production workshops are not fire-resistant smoke-sealed doors.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement 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	There is no warning sign for forklift hazards and no designated forklift travelling routes in the factory compounds.
Recommendation for Immediate Action	Post forklift warning sign, and clearly mark forklift traveling routes in the factory compounds.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 84/2015/QH13, Art. 16
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	Though the factory conducted a construction safety assessment for the building on Oct 17, 2022, there is no construction permit for the new material warehouse (one-story building) of the factory. Note: Dimension of the warehouse is 1,153 square meters.

Recommendation for Immediate Action	Ensure to have construction permit for new materials warehouse as required by law.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 62/2020/QH14, Article 89 (1,3); Decree No. 136/2020/NĐ-CP, Article 13, and Appendix V.
Benchmark ID	HSE.28
Benchmark Details	Employers shall create a system to ensure that all necessary Health and Safety protections are provided for external contractors; including protection when working within , confined spaces, maintenance issues, and general Health and Safety Issues.
Finding Details	The factory does not provide safety information, conduct safety inspection, and issue work permits to onsite contractors such as maintenance, construction contractors.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	HSE.14.3
Benchmark Details	Employers shall ensure safety instructions are either displayed or posted near all machinery or are readily accessible to the workers in language(s) spoken by workers.
Finding Details	The factory has posted hazard warning signs, but there is no standard operating procedure or safety instructions for five out of ten heat transfer machines, all observed band knife cutting machines, elastic band joining machines, sewing machines, overlock machines, and electric forklifts.
Recommendation for Immediate Action	Post standard operating procedure, safety instruction for all machines and electric forklifts.

Compliance Classifications	Immediate Action Required
Local Law	Law No. 84/2015/QH13, Article 16(6)
Benchmark ID	HSE.10.1
Benchmark Details	Material Safety Data Sheets (MSDS) for all chemicals and hazardous substances used in the workplace must be available at the usage and storage sites of the chemicals and hazardous substances, in the local language and the language spoken by workers, if different from the local language.
Finding Details	The facility does not post Material Safety Data Sheets (MSDS) for the industrial dry salt that is stored and used at RO (reverse osmosis) plant for water treatment.
Recommendation for Immediate Action	Ensure to post MSDS in the workplace for all chemicals.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 06/2007/QH12, Art. 29; Decree No. 113/2017/ND-CP, Art. 24
Benchmark ID	HSE.30.2.6
Benchmark Details	The health, safety, and environmental policies shall contain the framework for a comprehensive health, safety, and environmental management system including a HS&E risk assessment within which the following are clear and regularly tested and reviewed:protections to workers who allege health, safety, and environmental violations;
Finding Details	The OHS (occupational health and safety) risk assessment does not cover related risks in canteen, RO (reverse osmosis) plant, motorbike parking lot and onsite subcontractors.
Recommendation for Immediate Action	Conduct OHS risk assessment for canteen, RO plant, onsite contractors, and motorbike parking lot to identify the risks and propose the remediation.

Compliance Classifications	Immediate Action Required
Local Law	(2) Circular No. 07/2016/TT-BLDTBXH, Art. 3; Circular No. 07/2016/TT-BLDTBXH, Art. 3
<b>Hours Of Work (HOW)</b>	
Benchmark ID	HOW.22.1
Benchmark Details	Employers shall have in place policies for managing all working hour, overtime, and leave records in normal and exceptional circumstances.
Finding Details	(1) The factory's working hour policy of the factory does not specify how it applies for onsite subcontracted workers working in the factory. The working hour policy (at Point D) regulates the limit for daily overtime and monthly overtime but does not regulate the yearly overtime limit. (2) The working hour policy only mentions overtime regulations for workers who are pregnant or nursing a child less than 12 months in age if those workers work at the production lines and agree. The procedures need to be updated with overtime regulations to apply all workers (both production and non-production, male and female) to work overtime if there is demand and they agree. In practice, all workers work overtime voluntarily, and agreed by workers before working overtime.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	

