

Fair Labor Association: Independent External Factory Assessment

Assessment Date :

22 Jun 2023



Factory Information

FLA Affiliates	TOMS Shoes
Country	Vietnam
Number of Workers	421

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)	6
Freedom Of Association And Collective Bargaining (FOA)	2
Health, Safety And Environment (HSE)	6
Hours Of Work (HOW)	4

Assessment Information

Assessor	OneStep Viet Co., Limited
Assessment Date	22 Jun 2023

Assessment Purpose	Factory Assessment (In-Person)
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ASSESSMENT RESULTS

Compensation (C)

Benchmark ID	C.7
Benchmark Details	All payments to workers, including hourly wages, piecework, fringe benefits and other incentives shall be calculated, recorded, and paid accurately.
Finding Details	The factory does not provide an additional amount of payment during the menstruation period (30 mins/day, 3 days/month) for female workers who are still working during the menstruation break time. The additional payment should be equal to 1.5 hours with 100% of premium rate as legally required.
Recommendation for Immediate Action	Pay an additional amount of payment for female workers, in case workers do not use this break time as legally required.
Compliance Classifications	Immediate Action Required
Local Law	Article 137, Vietnam Labor law and Article 80 Decree No. 145/2020/ND-CP
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) The factory does not contribute Health Insurance and Social Insurance as legally required for seven out of nine foreign experts. 2) The factory did not contribute mandatory insurance for one worker in April 2022 due to human mistake. Remark: this worker resigned by the time of this assessment.

Recommendation for Immediate Action	1) Contribute the Health Insurance and Social Insurance for foreign employees as legally required. 2) Ensure that the Mandatory Insurance contribution accurately and sufficiently as legal requirement.
Compliance Classifications	Immediate Action Required
Local Law	1) Decree No. 143/2018/ND-CP, Article 2. 2) Article 85 of Law on Social Insurance No. 58/2014/QH13
Benchmark ID	C.17
Benchmark Details	Employers shall ensure that all legally required payroll documents, journals and reports are available, complete, accurate and up-to date.
Finding Details	The factory is using an on-site contractor for security service. However, there are no payroll records provided for review during the assessment time. Thus, the information regarding wage, benefit and working hours cannot be verified. Remark: There are 3 security employees working at the time of the assessment. The factory management explains that they are not aware of this FLA requirement.
Recommendation for Immediate Action	Monitor and keep payroll and benefit records of all onsite workers.
Compliance Classifications	Immediate Action Required
Local Law	N/A

Employment Relationship (ER)

Benchmark ID	ER.5.1
Benchmark Details	Employers shall ensure that all supervisors are trained in national laws, workplace regulations, and the FLA Code, workplace grievance systems, and the appropriate practices to ensure compliance.

Finding Details	All (9) supervisors/managers were provided with training on FLA Codes on March 3, 2023. However, the training did not include the grievance procedure.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	N/A
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 does not have policies and procedures regarding retrenchment. 2) The factory provides a bonus payment named “Thưởng Tiến Độ” (i.e. progress-based incentive) as monthly basis. However, this bonus payment is not regulated in any policy, procedure or criteria, the factory also cannot explain clearly how to define this bonus payment to all workers. In practice, the bonus payment is a different amount in every month and ranging from under VND 100,000 to more than VND 9,000,000/person/month.
Recommendation for Immediate Action	1) Establish policy and procedure on retrenchment. 2) Ensure that all kind of allowance / bonus / benefit should be regulated clearly in a specific policy / procedure to ensure the fair and transparent implementation.
Compliance Classifications	Immediate Action Required
Local Law	N/A
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 has developed updated policies/procedures based on the law. However, new legal requirements have not been updated accordingly. In detail: - The anti-child labor policy and juvenile policy applies the old Labor law which expired from January 1, 2021. In practice, there is neither child labor nor juvenile in the factory. - The working policy and regulation for female workers about the menstruation break does not mention the case in which the workers shall receive the compensation for not yet taken menstruation break. In practice, the menstruation benefit does not fully comply with legal regulation. Please refer to the detail information in question C.7.
Recommendation for Immediate Action	Update the relevant policies/procedures and provide benefit for employees as legally required.
Compliance Classifications	Immediate Action Required
Local Law	Labor Code (Law No. 45/2019/QH14), Article 143, 145 and Decree No. 145/2020/ND-CP, Article 80
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 does not have policies and procedures and implementation on performance reviews that include steps and processes, linkages to job grading, non-discrimination, written feedback. The factory only applies the performance review for the probation period. However, the performance assessment form is simple (just mentioned "OK" for pass) and there is no written feedback from workers.

Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	N/A
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 policies and procedures on promotion, demotion and job reassignment.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	N/A
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	1) The factory is using an onsite contractor for security service. However, there are no labor contracts provided for review during the assessment time. Thus, the information regarding employment practice cannot be verified. Remark: there are 3 security employees working at the time of the assessment. The factory management explains that they are not aware of this FLA requirement. 2) The factory applies 31 days of probation duration instead of maximum 30 days for production workers as legal requirement.

Recommendation for Immediate Action	1) Monitor and keep attendance record of all onsite workers. 2) Ensure the probation duration should not exceed 30 days for production workers as legal requirement.
Compliance Classifications	Immediate Action Required
Local Law	Article 13, 14 and 25 of Vietnam Labor Law 2019

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	The factory pays the trade-union fee until April 2023 instead of paying trade-union fee once monthly at the same time of compulsory social insurance payment to as legally required. Remark: the factory paid the trade-union fee in May 2023 on the second assessment day.
Recommendation for Immediate Action	Pay trade-union fee once monthly at the same time of compulsory social insurance payment on the basis of registration with trade-union organizations as legally required.
Compliance Classifications	Immediate Action Required
Local Law	Decision No. 1908/QD-TLD, Article 24
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	The factory does not designate a room for Labor union.
Recommendation for Immediate Action	Designate a room for Labor union.
Compliance Classifications	Immediate Action Required
Local Law	N/A

Health, Safety And Environment (HSE)

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	1) All waste bins do not have cover to ensure the sanitation at toilet area. 2) The food samples are not kept at least 72 hours and not more than 4 degree Celsius as per applicable standard. They are kept within 24 hours (and 48 hours for Saturday) and at 5 - 7 degree Celsius as being mentioned in food sample record. Remark: This practice is compiled to local legal requirement.
Recommendation for Immediate Action	1) Equip cover for waste bins to ensure the sanitation. 2) The food samples are kept at least 72 hours and maintain the cooling temperature for storing at 4 degrees Celsius or lower than 4 degree Celsius as applicable standard.
Compliance Classifications	Immediate Action Required
Local Law	N/A
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	There is no inner cover for one electrical panel at the air compressor area.
Recommendation for Immediate Action	Ensure electrical device properly covered.
Compliance Classifications	Immediate Action Required
Local Law	N/A
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	1) There is no fire extinguisher equipped at two parking areas (160 square meters for each area). 2) All (3) firefighting pumps are checked/tested monthly instead of weekly as legally required.
Recommendation for Immediate Action	1) Equip firefighting equipment sufficiently. 2) Check/inspect firefighting equipment regularly as legally required.
Compliance Classifications	Immediate Action Required
Local Law	1) National Standard TCVN 3890:2023, Article 5 2) National technical regulation QCVN 02:2020/BCA, 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) A small amount of wastewater (condensation water from two air compressor tanks) is discharged directly into the environment without any treatments. The factory improved this issue on the assessment days. 2) One person who performs the occupational safety and sanitation is not provided the Occupational, Safety and Health (OSH) training (defined as Group 2) as being required by local law. 3) Workers are not provided with the health check as legally required: a) The factory does not provide regular health check for workers who working in arduous, hazardous and dangerous job/position once every 06 months. Two latest health check-ups were in June 2022 and June 2023. Remark: The factory is waiting for the results of the health check-up conducted in June 2023. b) Around 20 out of 267 workers were not provided with health check-ups in June 2022 and at least 15 out of 262 workers were not provided health check-up in June 2023.
Recommendation for Immediate Action	1) Wastewater shall be collected and treated correctly. 2) Provides OSH training for defined person as legally required. 3) Provide regularly health check for all workers as legally required.
Compliance Classifications	Immediate Action Required
Local Law	1) Law on Environmental protection (No. 72/2020/QH14), Article 7. 2) Law on Occupational safety and hygiene (No. 84/2015/QH13), Article 14 and Circular No. 06/2020/TT-BLDTBXH, Article 1. 3) Law on Occupational safety and hygiene (No. 84/2015/QH13), Article 21
Benchmark ID	HSE.18.1
Benchmark Details	Medical facilities shall be established and maintained in factories as required by applicable laws.
Finding Details	The factory signed a contract for medical support with the qualified medical facility on December 2, 2022. However, this contract does not regulate that the medical staff would be present at the factory within 30 minutes upon the emergency occurrence.
Recommendation for Immediate Action	

Compliance Classifications	Sustainable Improvement Required
Local Law	Decree No. 39/2016/ND-CP, Article 37
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 provide chairs with backrests for workers performing prolonged sitting jobs (e.g. sewing workers) and standing mats for cutting workers performing prolonged standing jobs.
Recommendation for Immediate Action	Provide chairs with backrest (standing mats) for workers performing prolonged sitting (standing) jobs.
Compliance Classifications	Immediate Action Required
Local Law	N/A

Hours Of Work (HOW)

Benchmark ID	HOW.3
Benchmark Details	Employers shall provide reasonable meal and rest breaks, which, at a minimum, must comply with national laws.
Finding Details	According to the internal regulation, the factory regulates that the short break is 10 minutes per day without specific time. As the confirmation made by the workers, they are not aware of the short break and therefore do not receive it.
Recommendation for Immediate Action	Regulate and provide the short break for workers.

Compliance Classifications	Immediate Action Required
Local Law	Labor Code (Law No. 45/2019/QH14), Article 109
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	<p>The factory did not calculate annual leave for workers in 2022 as below: a) The factory does not apply the new law provision to calculate the annual leave method for workers who have not sufficiently served 12 months in a year, in which the number of paid working days was more than 50% of the total number of actual working days in the month, the workers would receive one full day of annual leave. For instance, worker A joined on 14th of June 2022 and received only 7.7 annual leave days in 2022 instead of 8.2 days as legal requirement ($14/12 \times 7$ actual working months); b) The factory does not provide the additional annual leave for workers who have served 5 working years (from 2017 to 2022). Remark: the factory made the back payment (in cash) for impacted workers on the second day of the assessment. c) When the balance of annual leave of workers has the decimal less than 0.5, the factory shall round down to 0 instead of keeping the actual leave days for workers (e.g., 5.3; 4.2; 6.1).</p>
Recommendation for Immediate Action	Apply the new law provision to calculate the annual leave accurately for new workers, workers who have served sufficiently 5 working years shall be received one additional leave day and make sure that the result of the annual leave shall be kept without rounding down the decimal.
Compliance Classifications	Immediate Action Required
Local Law	Article 114 of Vietnam Labor Law 2019 and Article 66 of Decree No. 145/2020/ND-CP
Benchmark ID	HOW.16

Benchmark Details	Employers shall provide workers with sick leave as required under national laws, regulations and procedures.
Finding Details	There is a case that one worker does not receive the compensation payment of sick leave in 2022. In detail, workers who work in arduous, hazardous and dangerous job/position shall receive maximum 40 paid sick leave days per year. However, due to lacking of cross-check with local department (Social insurance agency), this worker receives compensation payment of sick leave with 30 days instead of the maximum 40 days.
Recommendation for Immediate Action	Check carefully with the local department to ensure that worker who work in arduous, hazardous and dangerous job/position shall be received sick leave with 40 days maximum in a year.
Compliance Classifications	Immediate Action Required
Local Law	Article 26 of Law on Social Insurance No. 58/2014/QH13
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	The factory is using an onsite contractor for security service. However, there are no attendance records provided for review during the assessment time. Thus, the information regarding wage, benefit and working hours cannot be verified. Remark: there are 3 security employees working at the time of the assessment. The factory management explains that they are not aware of this FLA requirement.
Recommendation for Immediate Action	Monitor and keep employment document of all onsite workers.
Compliance Classifications	Immediate Action Required
Local Law	N/A

