

Fair Labor Association: Independent External Factory Assessment

Assessment Date :

11 Sep 2023



Factory Information

FLA Affiliates	New Era Cap, LLC
Country	Vietnam
Number of Workers	2610

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)	5
Freedom Of Association And Collective Bargaining (FOA)	2
Health, Safety And Environment (HSE)	15
Hours Of Work (HOW)	2

Assessment Information

Assessor	Openview - Vietnam
Assessment Date	11 Sep 2023

Assessment Purpose	
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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	Both two kitchen workers who cook for the foreign management team earn less than the legal requirement for night shift salary. The working shifts of these kitchen workers are from 05:00 to 14:00 (shift 1) or from 08:00 to 17:00 (shift 2) and they change their working shifts weekly. When they work the first shift (shift 1), the working time from 05:00 to 06:00 (night time as regulated by law) is paid 100% instead of 130% of the normal rate as per law.
Recommendation for Immediate Action	Review and update the night shift salary calculation method for all workers as per legal requirement.
Compliance Classifications	Immediate Action Required
Local Law	Vietnam Labor Code No. 45/2019/QH14, Article 98 and Decree No. 145/2020/ND-CP, Article 56.
Benchmark ID	C.6
Benchmark Details	All wages, including payment for overtime, shall be paid directly and in full within legally defined time limits. When no time limits are defined by law, compensation shall be paid at least once a month.
Finding Details	One (1) out of two (2) sample selected worker is not paid for labor accident compensation/ benefit as per law. The worker was paid in seven days instead of within five days from the date that the factory makes decisions on compensation and benefit to workers who suffers labor occupational accidents.

Recommendation for Immediate Action	Re-check to ensure to pay the labor accident compensation or benefit for workers as per law required.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 84/2015/QH13, Article 38; Circular No. 28/2021/TT-BLDTBXH, Article 7.
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	<p>1. The severance allowance payment for one out of eight sampled resigned workers is less than the legal requirement. This worker resigned on May 5, 2023. The average salary of the last six months which is used to calculate and pay for severance allowance, should be calculated from November 2022 to April 2023 equal VND 5,498,000 instead of from October 2022 to March 2023, which is equal to VND 5,482,000. The selection for the six months did not follow the legal requirement and resulted in a lower severance payment for the resigned worker. 2. The factory pays an additional 1.5 hours of wages per month for all female workers if they work during their menstrual period, as legally required. However, workers who resign from the facility are not paid the additional 1.5 hours of wages for working during their menstruation period for the last month that they have worked. 3. The factory has reviewed and increased the basic salary for around 20% of workers working in the factory for one year and above. The evaluation result is calculated based on seven criteria: following the direction of leaders, following company policies, following health and safety regulations, following working time regulations, hardworking level, warning letter, and working skill. However, it was not clear why the basic salary was not increased for 22 out of 45 sample selected workers, as there is no guidance for scoring each criteria.</p>
Recommendation for Immediate Action	<p>1. Review and pay all kinds of wages and benefits for resigned and terminated workers in full amount as per legal requirement. 2. Ensure all female workers receive their additional pay for working during their menstruation period, including workers who resigned. 3. Follow guidance procedure and keep all evaluation data records of workers in place for review.</p>

Compliance Classifications	Immediate Action Required
Local Law	1. Vietnam Labor Code No. 45/2019/QH14, Article 46 and Decree No. 145/2020/ND-CP, Article 8. 2. Vietnam Labor Code No. 45/2019/QH14, Article 137. 3. Vietnam Labor Code No. 45/2019/QH14, Article 103.
Employment Relationship (ER)	
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	1. One sampled worker was handled with the disciplinary measure – reprimand on August 30, 2023 even though she is a pregnant worker (33 weeks pregnant) and should be exempted from labor discipline as per local laws during the pregnancy period. 2. The factory does not ensure to notify mandatory participants of the contents, time, and location of the disciplinary meeting at least five working days before the meeting is held as per local laws. Four (4) out of ten (10) sampled selected workers were affected based on the record review.
Recommendation for Immediate Action	1. Re-check and ensure that no disciplinary measurement applies to pregnant workers. 2. Follow the disciplinary procedure as per legal requirements.
Compliance Classifications	Immediate Action Required
Local Law	1. Labor Code No. 45/2019/QH14, Article 122; 2. Decree No. 145/2020/ND-CP, Article 70.
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 conducts performance review for workers annually for salary increasing purpose. However, the performance review is based on the supervisor's judgement without tracking data to provide objective reasoning for the performance reviews results.
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	1. The employment contracts do not cover all the major contents such as allowances and other additional payments of workers such as attendant allowance VND 350,000/month and transportation VND 320,000/month as legally required. 2. The termination notices of employment contracts with 3 days, 30 days, or 45 days is included in the probation contracts. However, the legal requirements state that either party has the right to terminate the concluded probation contracts or employment contracts without prior notice or compensation obligation during the probationary period.
Recommendation for Immediate Action	Review and update the employment contracts including all required contents as per legal requirements.
Compliance Classifications	Immediate Action Required

Local Law	Vietnam Labor Code No. 45/2019/QH14, Article 21, 24, 27 and Circular No. 10/2020/TT-BLDTBXH, Article 3
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	Workers are not consulted or integrated into the decision-making process of aspects concerning the workplace and working conditions. Policies and procedures are mainly developed by the social compliance team, Human Resources team, General Affairs team, and Health, Safety and Environment team without consultation or integration from workers.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	ER.18.3.4
Benchmark Details	Records of disciplinary action must be maintained in the worker's personnel file.
Finding Details	The records of disciplinary actions are not maintained in the workers' personnel files. Those records are kept in a separate area in the HR Department's room.
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	An insufficient number of employee representatives participated in the employee conference of 2023. There were 134 instead of at least 140 employee representatives who joined the employee conference of 2023 as being regulated in the factory's democratic regulation issue on December 25, 2020.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement Required
Local Law	
Benchmark ID	FOA.2
Benchmark Details	Workers, without distinction whatsoever, shall have the right to establish and to join organizations of their own choosing, subject only to the rules of the organization concerned, without previous authorization. The right to freedom of association begins at the time that workers seeks employment and continues through the course of employment, including eventual termination of employment, and is applicable as well to unemployed and retired workers.

Finding Details	FLA comments: 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.
Recommendation for Immediate Action	N/A.
Compliance Classifications	Sustainable Improvement Required
Local Law	Nil.

Health, Safety And Environment (HSE)

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	1. Two main exit routes between Workshop A and warehouse and Workshop B are too narrow and the width (approximately 1.2m) is not enough for the fire fighting truck’s accessibility in fire emergencies (if any), meanwhile the legal requires at least 3.5m width for the fire fighting truck access. 2. All emergency exit doors are not fire-resistant smoke-sealed doors. 3. There are no layouts for exit routes and evacuation maps in the parking areas with approximately 400 square meters.

Recommendation for Immediate Action	1. Make the road's width enough for fire truck's access. 2. Install the fire resistant smoke-sealed doors, as per requirement. 3. Clearly mark the exit routes and evacuation map at the parking area.
Compliance Classifications	Immediate Action Required
Local Law	1. QCVN 06/2022/BXD, Point 6.2.1. 2. TCVN 2622: 1995, Clause 5.5. 3. Vietnam Standard No. 2622.1995 for Fire Prevention, Part 7.5; Decree No. 136/2020/NĐ-CP, Article 5.
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	1. Approximately 30% of emergency exit aisles in sewing workshops A, B, and C, 2nd floor of workshop A (programming machine section) are partially obstructed by materials and cargos. 2. One (1) out of two (2) main emergency exit doors of the finished goods warehouse are obstructed by the containers which are parking for loading finished goods.
Recommendation for Immediate Action	1. Ensure all exit aisles are free from obstruction. 2. Ensure all emergency exit door are free from obstruction.
Compliance Classifications	Immediate Action Required
Local Law	1. QCVN 06:2022/BXD. Vietnam Building Code on Fire Safety of Buildings. Clause 1.4.16. 2. QCVN 06:2022/BXD. Vietnam Building Code on Fire Safety of Buildings. Clause 1.4.16
Benchmark ID	HSE.9.1
Benchmark Details	All chemicals and hazardous substances shall be properly labeled and stored in secure and ventilated areas and disposed of in a safe and legal manner, in accordance with applicable laws and international standards.

Finding Details	Chemical drums and cans in the electrical station room, parking area, maintenance room and elevator area of workshop C are not provided with secondary containers and identification labels in the local language.
Recommendation for Immediate Action	Provide the secondary containers and identification labels in local language for all chemicals.
Compliance Classifications	Immediate Action Required
Local Law	Law on Chemicals (No. 06/2007/QH12). Article 37; Decree No. 113/2017/ND-CP, Article 5.
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	1. The unsafe electrical wiring design is noted in the security room, parking area, automatic quilting room, laser room, and surrounding production building A. The electrical wires are not covered by the secondary layer and stuck directly on the metal roof of the worker parking area. 2. There is no inner safety guard for one electrical panel in the electrical station room. Additionally, two electrical switches in the fire water pump room and the electrical station are not installed with safety guards.
Recommendation for Immediate Action	1. Re-design the electrical wiring system and install the secondary layer cover for the electrical wiring. 2. Install the safety covers for electrical panel and switches for safety reasons.
Compliance Classifications	Immediate Action Required
Local Law	ELECTRICITY LAW No. 28/2004/QH11. Article 57
Benchmark ID	HSE.14.1

Benchmark Details	All production machinery, equipment and tools shall be properly guarded and regularly maintained.
Finding Details	1. The factory does not clearly mark the walk path and traffic lanes for internal roads throughout the factory premises. 2. There is one unsafe ladder being used for loading waste into a waste truck. This ladder is handmade from wood and bamboo material without quality or safety certification. The observation noted that the ladder is old and not in good physical condition. 3. There are no safety interlock devices for all three elevators in workshops A, B, and C. 4. Not all machines used at the factory are properly guarded as required. a. There are no safety guards for the pulley of one water pump in the fire water pump room. b. There are no needle guards installed in approximately 80% of sewing machines in workshops A, B, and C and the needle protection guards were installed too high to protect workers' fingers. c. There are four top table-cutting machines in workshop B that are not installed with safety guards properly. d. The safety guard of one observed table-cutting machine was also pulled too high to protect the workers' fingers. 5. There is no chain secured for two gas tanks in the kitchen of the expert dormitory to prevent from the risk of falling. 6. There is no LOTO (Lockout and Tagout) devices used for locking and tagging equipment and machines during repair, maintenance, and control of hazardous energy.
Recommendation for Immediate Action	1. Clearly mark the walk path and traffic lane for internal roads throughout the factory premises. 2. Replace the unsafe ladder by a safe ladder for safety reasons. 3. Maintenance and install the safety interlock devices for all elevators. 4. Install safety guards for all eligible machines and equipment and monitor for the implementation. 5. Install the safety devices for gas tanks. 6. Use proper LOTO devices for machines, and equipment that must be locked and tagged during maintenance or repair.
Compliance Classifications	Immediate Action Required
Local Law	3. Law 84/2015/QH13. Occupational Safety And Hygiene. Article 16 4. Law 84/2015/QH13. Occupational Safety And Hygiene. Article 16.
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. The factory has not installed the system for management of database on fire prevention and fighting as requirement from firefighting police on June 7, 2022. 2. There are no emergency lights equipped in all two fire water pump rooms. 3. There are no fire fighting equipment provided for the parking areas with approximately 300 square meters. 4. The factory does not install the emergency showers at the chemical warehouse as per law required.
Recommendation for Immediate Action	1. Install the system for management of the database on fire prevention and fighting as required by firefighting police. 2. Install the emergency exit lights at the fire water pump rooms. 3. Equip the fire fighting equipment at the parking areas. 4. Install the emergency showers in the chemical warehouse.
Compliance Classifications	Immediate Action Required
Local Law	1. Decree No. 136/2020/ND-CP, Article 5 & QCVN 02:2020/BCA. National Technical Regulation On Stationary Pumps For Fire Protection. Clause 2.1.7. 2. Decree No. 136/2020/ND-CP, Article 5 & QCVN 02:2020/BCA. National Technical Regulation On Stationary Pumps For Fire Protection. Clause 2.1.7. 3. Decree No. 136/2020/ND-CP, Article 5. 4. QCVN 05:2020/BCT, Clause 5.9
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	No construction permit or other equivalent document is in place for the mezzanine of Workshop B (around 340 square meters with 20 workers working); and mezzanine of Workshop C (around 190 square meters, with two (2) workers working). Note: Factory management states that these mezzanines were built in 2001. Factory has the building inspection certificates for Workshop A & Workshop B & Workshop C issued on January 24, 2018; Ultrasonic testing results of steel frame quality issued on April 13, 2018 for these mezzanines physical safety.
Recommendation for Immediate Action	Maintain compulsory permits for all buildings and provide for review.
Compliance Classifications	Immediate Action Required
Local Law	Law No. 62/2020/QH14 Law On Amendments To Construction Law, Article 1, Point 30.
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 labor accident was designated as a major accident on April 20, 2023. However, the factory has not sent the worker to an authorized institution to determine the level of injury for compensation or allowance as per laws. 2. There is no assessment to identify asbestos suspected materials (e.g., insulation materials, construction materials). In addition, there is no test report to demonstrate compliance for these asbestos suspected materials.
Recommendation for Immediate Action	1. Ensure the worker involved in the major accident visits an authorized institution to determine the level of injury for compensation or allowance, as per legal requirements. 2. Not applicable
Compliance Classifications	Immediate Action 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	There are no safety operating procedures (SOP) for two grinding machines and two drilling machines in the mechanical area and maintenance room. No SOP is posted in place for all five heat pressing machines in the laser room.
Recommendation for Immediate Action	Develop and post the safety operation procedure in local language for all machines for workers' reference.
Compliance Classifications	Immediate Action Required
Local Law	Article 16 of Law No. 84/2015/QH13 on Health and Safety
Benchmark ID	HSE.12
Benchmark Details	Employers shall ensure that women are not engaged in work that constitutes a substantial risk to their reproductive health.
Finding Details	The factory provides the occupational health checks only one time on July 10, 2023 for 245 workers (including workers who worked with chemical and in the down-filling room) instead of at least every six months as per legal requirements. Furthermore, the factory does not provide the occupation health checks for sewing workers who work in the hazardous working environment as per legal requirements.
Recommendation for Immediate Action	Provide the occupation health checks for all eligible workers at least every 6 months, as per legal requirements.
Compliance Classifications	Immediate Action Required
Local Law	Law 84/2015/QH13. Occupational Safety And Hygiene. Article 21
Benchmark ID	HSE.29

Benchmark Details	Employers shall provide all necessary protection for workers when working at heights, confined spaces, and other high-risk areas.
Finding Details	The safety fence on the mezzanine of the finished goods warehouse is not closed when not in use to prevent the falling risk and accident.
Recommendation for Immediate Action	Close the safety fence to prevent the falling down accident.
Compliance Classifications	Immediate Action Required
Local Law	Decree No. 83/2017/ND-CP. Regulation On Rescue Operations By Fire Departments, Article 8.
Benchmark ID	HSE.7
Benchmark Details	Workers shall be provided at no cost with all the appropriate and necessary personal protective equipment (e.g. gloves, eye protection, hearing protection, respiratory protection) to effectively prevent unsafe exposure (e.g. inhalation or contact with solvent vapors, noise, dust) to health and safety hazards, including medical waste.
Finding Details	Auditor observed that the factory does not provide safety shoes for two workers who operate the manual forklift/jack lift in the warehouse.
Recommendation for Immediate Action	Provide safety shoes for workers who operate the manual forklift for safety reasons.
Compliance Classifications	Immediate Action Required
Local Law	Law 84/2015/QH13. Occupational Safety And Hygiene, Article 7.
Benchmark ID	HSE.8

Benchmark Details	Workers shall be provided with training on the use and maintenance of personal protective equipment. Training shall be upon hire with periodic refresher training offered to all workers. Management will ensure use of PPE as necessary.
Finding Details	Approximately 40% of sewing workers were not using face masks during working time to protect themselves from occupational pneumoconiosis. The factory does provide the fabric face masks for all workers.
Recommendation for Immediate Action	Ensure all sewing workers wear their face masks during working time.
Compliance Classifications	Immediate Action Required
Local Law	LAW 84/2015/QH13. Occupational Safety And Hygiene. Article 23.
Benchmark ID	HSE.5.2
Benchmark Details	Workers shall be trained in evacuation procedures.
Finding Details	All sixty members of the Rescue Team are not provided with training and instructions about rescue, as per legal requirements. These members only participated in the training on fire prevention and fighting operations on December 23, 2022.
Recommendation for Immediate Action	Provide the training and instruction of knowledge about rescue to Rescue team as per legal requirement.
Compliance Classifications	Immediate Action Required
Local Law	Decree No. 83/2017/ND-CP, Article 11.
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	1. There are no anti-fatigue mats for Quality Control workers who handle prolonged standing work, and there are no backrest chairs for sewing workers in workshops A, B, C. 2. There is no backrest chair support for at least two observed pregnant workers in the production areas even though the factory claims to provide backrest chairs for pregnant workers.
Recommendation for Immediate Action	
Compliance Classifications	Sustainable Improvement 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	Workers work overtime more than the legal requirement as below: - In August 2023, four (4) out of 45 selected sample workers from the maintenance and finishing department worked daily overtime more than 4 hours legal requirement. These workers worked from 5.3 to 6.8 overtime hours in a day for two days. Eleven out of 45 selected sample workers from maintenance and finishing department worked monthly overtime more than 40 hours legal requirement. These workers worked from 41 to 59.8 overtime hours in a month. -In April 2023, six (6) out of 45 selected sample workers from the maintenance, finishing, and sewing department worked monthly overtime more than 40 hours legal requirement. These workers worked from 41 to 49.9 overtime hours in a month.
Recommendation for Immediate Action	1. Ensure that overtime is not included as a general practice in the factory's production planning. 2. Ensure the overtime hours work in a day and in a month are within legal requirements. 3. Review the production plan and work with the HR team to control the working hours in line with the legal requirements.

Compliance Classifications	Immediate Action Required
Local Law	Vietnam Labor Code No. 45/2019/QH14, Article 107 & Resolution No.17/2022/UBTVQH15, Art. 2.
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	Workers worked more than 60 hours in a week including normal workweek and overtime hours in August 2023. Four out of 45 sampled selected workers from maintenance and finishing department worked from 61 to 66 hours/week (including normal working hours and overtime hours) for one week.
Recommendation for Immediate Action	Ensure that workers do not work more than 60 hours in a week.
Compliance Classifications	Immediate Action Required
Local Law	

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