



COMPANIES: WinCraft Inc.

COUNTRY: China

ASSESSMENT DATE: 08/31/16

ASSESSOR: Openview

PRODUCTS: Apparel

NUMBER OF WORKERS: 108

FLA Comments

This report was submitted to the FLA and the FLA affiliated company by the assessor. Despite deadline reminders and extensions for submission of a corrective action plan, the FLA has not received a plan to address the risks and noncompliances raised in the report. Therefore, the report is posted in its current state and will be updated once a corrective action plan has been submitted to and reviewed by the FLA.

Summary of Code Violations

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.

While it is important to note when violations of the FLA Workplace Code of Conduct occur, the purpose of these assessments is not simply to test compliance against a particular benchmark, but rather to develop an understanding of where and how improvements can be made to achieve sustainable compliance. Code of Conduct violations can be found throughout the course of an assessment of the employment and management functions, and are addressed in companies' action plans.

Findings and Action Plans

FINDING NO.1

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Recruitment, Hiring & Personnel Development

Finding Explanation

1. The job application form includes questions regarding marital status, which may lead to discrimination during the recruitment process.
2. The factory has not hired any disabled workers, which is a violation of legal requirement that states at least 1.5% of the total workforce should be composed of disabled workers. Although the factory contributes to the Employment Security Fund in lieu of employing disabled workers as allowed under local law, this practice poses a risk of discrimination.
3. There are no written job descriptions for any of the positions at the factory.
4. The factory does not have written policies and procedures outlining the process for performance reviews; therefore, the factory does not conduct regular performance reviews.
5. There are no policies and procedures regarding employees' career paths and Personnel Development; therefore, the factory does not have specific career paths or skill development plans for employees.
6. The factory does not have a system to review the performance of new employees during the probation period.

Local Law or Code Requirement

Regulation on the Employment of the Disabled (2007), Articles 8 and 9; FLA Workplace Code (Employment Relationship Benchmarks ER.1, ER.3, and ER.29; Non-Discrimination Benchmarks ND.2 and ND.4)

Recommendations for Immediate Action

Remove all discriminatory questions regarding marital status from the job application form.

FINDING NO.2

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Compensation

Finding Explanation

1. A review of social insurance payments from August 2015 to August 2016 and interviews with workers and management showed that the factory does not provide employees with sufficient social insurance. For example, in August 2016 only 53 out of 124 (42.7%) eligible employees were provided with work-related injury, maternity, pension, unemployment and medical insurance.
2. The contribution base of all of employees for work-related injury, pension, unemployment and maternity insurance is calculated based on workers' lowest wage (e.g. CNY 2408 (USD 361) per month for pension insurance and CNY 3091 (USD 463) per month for work-related

injury insurance) rather than their average wage over the last year (around CNY 3100 (USD 464) per month based on the payroll review) as legally required.

3. The factory does not contribute to the Housing Provident Fund for employees.

4. The factory does not provide sick leave for employees as per legal requirements. Although the factory has a policy and procedures on sick leave, about 90% of the employees interviewed were not aware of this legal benefit and no employees took sick leave in the past 12 months.

5. The factory does not provide a high temperature allowance for employees, as legally required. The factory also does not identify the eligible employees. For example, the daily temperature logs show that the welding workshop temperature exceeded 33°C and reached 33-36°C during June to August 2016, which qualifies the welding workers (around 10% of the factory's workforce) for this allowance.

Local Law or Code Requirement

China Labor Law, Articles 72 and 73; Social Insurance Law of the PRC, Articles 12 and 58; Regulations on Management of Housing Provident Fund, Articles 2, 3 & 15; The Opinion of the Ministry of Labor on Several Questions Concerning the Implementation of the China Labor Law, Article 59; Guangdong Province Measure on Labor Protection for High Temperature Weather, Article 13; FLA Workplace Code (Employment Relationship Benchmarks ER.1 and ER.22; Compensation Benchmarks C.1 and C.10; Hours of Work Benchmark HOW.16)

Recommendations for Immediate Action

1. Provide social insurance benefits for all workers.
2. Calculate contributions to social insurance based on workers' average wage over the last year.
3. Contribute to the Housing Provident Fund.
4. Provide workers with sick leave and ensure that they are aware of their right to use it.
5. Provide high temperature allowances to eligible workers.

FINDING NO.3

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Hours of Work

Finding Explanation

1. The factory bases its production plan on 61 hours of work per week.
2. According to a review of the factory's time records from August 2015 to August 2016 as well as worker interviews, 114 workers (about 80%) worked an average of 81 hours of overtime per month, exceeding the legal limit of 36 hours of overtime per month. Monthly overtime hours reached a maximum of 89 hours in August 2015, affecting about 50% of workers.
3. About 80% of workers in the factory worked more than 60 hours per week for about 80% of the weeks from August 2015 to August 2016, with the exception of February and August 2016. The maximum number of hours worked was 63 and the average was 61.5 hours.

Local Law or Code Requirement

China Labor Law, Article 41; FLA Workplace Code (Hours of Work Benchmarks HOW.1, HOW.8.1, and HOW.8.3)

Recommendations for Immediate Action

1. Do not include overtime in production planning.
2. Ensure that workers do not work more than the legal limit of 36 hours of overtime per month.
3. Ensure that workers do not work more than 60 hours per week.

FINDING NO.4

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Termination & Retrenchment

Finding Explanation

1. The factory does not have policies or procedures for managing Retrenchment; therefore, the factory does not communicate the policies and procedures to the general workforce or review them periodically.
2. The Termination procedures do not include the method used to calculate final payouts.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmarks ER.1, ER.16, ER.19, and ER.32)

FINDING NO.5

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Industrial Relations

Finding Explanation

1. The factory does not provide worker representatives with the necessary facilities for the proper exercise of their functions, e.g. regular meetings with workers and other representatives.
2. According to interviews with factory management, worker representatives, and employees, two worker representatives were freely elected by all employees in March 2016. However, the factory did not maintain the election records.
3. FLA Comments: The Chinese constitution guarantees Freedom of Association; however, the Trade Union Act prevents the establishment of trade unions independent of the sole official trade union – the All-China Federation of Trade Unions (ACFTU). According to the International Labor Organization (ILO), many provisions of the Trade Union Act are contrary to the fundamental principles of freedom of association, including the non-recognition of the right to strike. As a consequence, all factories in China fall short of the ILO standards on the right to organize and bargain collectively. Recently, however, the government has introduced new regulations that could improve the functioning of the labor relations' mechanisms. The Amended Trade Union Act of October 2001 stipulates that union committees have to be democratically elected at members' assemblies and trade unions must be accountable to their members. The trade union has the responsibility to consult with management on key issues of importance to their members and to sign collective agreements. It also grants the trade union an enhanced role in dispute resolution. In December 2003, the Collective Contracts Decree introduced the obligation for representative trade unions and employers to negotiate collective agreements, in contrast to the previous system of non-negotiated administrative agreements.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmark ER.26; Freedom of Association Benchmarks FOA.2 and FOA.15)

FINDING NO.6

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Workplace Conduct & Discipline

Finding Explanation

1. Workers do not receive written documentation that substantiates all the topics covered during orientation.
2. Workers do not receive a copy of the workplace rules during orientation.
3. The procedures on Workplace Conduct & Discipline do not cover the documentation of disciplinary actions or the workers' right to have a third party witness present during the imposition of disciplinary actions.
4. Employee and management interviews revealed that there have been a few cases of employees violating factory regulations in recent years. Management normally handled the cases verbally, without maintaining written records of disciplinary actions in the employees' personnel files.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmarks ER.2, ER.15, and ER.27)

FINDING NO.7

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Grievance System

Finding Explanation

Management does not maintain grievance records. According to interviews with workers and management there were a few grievances in recent years, but they were handled verbally or through meetings with employees.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmark ER.2)

FINDING NO.8

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Training (Macro)

Finding Explanation

Managers and supervisors do not receive specific training on any of the Employment Functions: Recruitment, Hiring & Personnel Development; Compensation; Hours of Work; Industrial Relations; Grievance System; Workplace Conduct & Discipline; Termination & Retrenchment; Health & Safety; and Environmental Protection.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmarks ER.1, ER.17, and ER.27)

FINDING NO.9

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Communication & Worker Involvement (Macro)

Finding Explanation

The worker integration component is missing across all Employment Functions. This indicates that the factory has not established procedures to request and/or receive workers' input/feedback regarding the creation, implementation, and updating of its policies and procedures. Workers are neither systematically integrated nor consulted in decision-making processes.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmarks ER.1 and ER.25)

FINDING NO.10

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Health & Safety

Finding Explanation

1. The fire alarm system in the factory is not centralized or automated. Electrical switches are installed on a wooden board in the Zinc alloy smelting workshop, and about 20% of the wires in the metal processing workshops are spliced with duct tape.
2. The cable conduit in the chemical warehouse is not explosion-proof.
3. Proper safety devices such as interlockers or double manual buttons have not been installed on any of the 20 punching machines in the metal processing workshop. The pulley covers for three out of 20 punching machines are broken.
4. Two out of ten Material Safety Data Sheets (MSDS) are incomplete. They do not include the Chemical Abstracts Service (CAS) Registry Number.
5. Neither of the two printing workers who handle paint were wearing gloves in the printing workshop.
6. The test report on occupational disease hazard factors issued by the local Center for Disease Control (CDC) in March 2016 indicates that the concentration of toluene in the factory exceeds the standard limit.
7. The occupational disease hazard factor test results are not available to workers.
8. The factory does not have policies or procedures on pre-job and post-job occupational health examinations for workers exposed to occupational health hazards. The factory does not provide occupational health examinations for the two workers in the Zinc alloy smelting workshop who work in a high temperature environment or for the two hand-painting workers sampled by assessors.
9. The factory does not take steps to reduce repetitive-motion stress/injuries. They do not provide adjustable workstations, removable armrests, or chairs with proper backs for seated workers. There are no anti-fatigue mats provided for workers who work in a standing position.
10. The factory does not provide lifting belts for workers who lift goods.
11. The factory has not obtained a Report on Inspection and Acceptance of Completed Construction Project for an expanded spraying workshop (about 60 m²) constructed in 2012 on the 3rd floor of the three-story production building.
12. The factory does not have a lightning protection report for the factory buildings.
13. The factory could not provide the pressure vessel operator's license for assessors to review.
14. The factory did not provide the occupational disease hazard assessment report for assessors to review.

Local Law or Code Requirement

GB/T13869-2008 The General Guide for Safety of Electric Use, Article 6.7; GB50016-2014 Code for Fire Protection Design of Building, Article 10.2.4; Regulation for Safety of Dangerous Chemical, Article 20; Regulation for Punching Safety Management, Article 8; Code of Design of Manufacturing Equipment Safety and Hygiene, Article 6.1; GB/T16483-2008 Safety Data Sheet for Chemical Products – Content and Order of Sections, Article 4.1; Law of the China on Work Safety, Article 42; China Law of Prevention and Control of Occupational Diseases, Articles 27 & 36; Construction Law of the People's Republic of China, Article 61; GBT21431-2008 Technical Specifications for Inspection of Lightning Protection System in Building, Article 6; Special Appliance Quality Safety Monitoring Regulation, Article 38; Regulation on Workplace Occupational Health Supervision, Article 20; FLA Workplace Code (Health, Safety & Environment Benchmarks HSE.1, HSE.2, HSE.4, HSE.5, HSE.8, HSE.13, HSE.14, and HSE.17)

Recommendations for Immediate Action

1. Install a centralized and automated fire alarm system.
2. Install electrical switches in compliance with legal requirements; maintain electric wiring in good condition.
3. Install an explosion-proof cable conduct in the chemical warehouse.
4. Install safety guards on the punching machines.
5. Ensure that all MSDS are complete and accurate.
6. Train workers on the proper use of Personal Protective Equipment (PPE).
7. Ensure the air quality in the workshops meets legal standards.
8. Provide workers with the appropriate PPE, including lifting belts for workers who lift goods and gloves for workers in the printing workshop.
9. Ensure that the pressure vessel operator has a legal certificate.

FINDING NO.11

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Environmental Protection

Finding Explanation

1. The factory does not use its volatile organic compound (VOC) air emission treatment system to treat air emissions from the printing and hand-painting processes.
2. The wastewater treatment system is not properly maintained so wastewater from the polishing process in the spraying workshop is overflowing into the storm sewer.

Local Law or Code Requirement

China Law of Prevention and Treatment of Air Pollution, Article 45; China Law of Prevention and Treatment of Water Pollution, Article 21; FLA Workplace Code (Health, Safety & Environment Benchmark HSE.1)

Recommendations for Immediate Action

1. Use the VOC air emission treatment system to prevent air pollution; repair the system if necessary.
2. Repair and regularly maintain the wastewater treatment system so that wastewater does not flow into the storm sewer.