



FAIR LABOR
ASSOCIATION®

INDEPENDENT EXTERNAL ASSESSMENT REPORT



COMPANIES: Pelican

COUNTRY: United States

ASSESSMENT DATE: 09/27/16

ASSESSOR: Miriam Rodriguez

PRODUCTS: Other

NUMBER OF WORKERS:

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

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Recruitment, Hiring & Personnel Development

Finding Explanation

1. Temporary workers, hired through a temporary employment agency, do not have a direct employment relationship with the factory. The factory also does not have a contract with the agency to ensure equality of compensation and workplace standards as established under the FLA Workplace Code. At the time of the assessment, 35 out of the 230 manufacturing workers were hired through the temporary employment agency.

2. The factory's personnel files for active temporary agency workers assigned to the factory are limited; they only include documents related to training and time clock registers. Permanent personnel files for temporary workers are only maintained by the temporary employment agency.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmarks ER.6.1, ER.11.3, and ER.11.5)

COMPANY ACTION PLANS

Action Plan no 1.

Description

Develop a process to audit the pay practices for temp agencies including ownership, audit frequency, and remediation plans if non-compliant.

Company Action Plan Update

07/17/17 : Partnered with Elite Logistics Services onsite manager to begin developing audit process and setting expectations.

Action Plan no 2.

Description

Develop audit process including frequency, ownership and remediation of non-compliance, to review temporary agency files and employment agreements.

Note: Pelican uses Elite Logistics Services for all temporary staff. Elite provides two Onsite representatives. Elite employee files are kept on Pelican premises. We have no plans to duplicate temp agency employee files y maintaining a second Pelican copy.

Company Action Plan Update

07/17/17 : Confirmed Temporary Agency employees files are kept on client premises. Agency has confirmed employment agreement for all active temps. Client has yet to audit to confirm employment agreements exist but has confirmed awareness of employee files existence and location.

FINDING NO.2

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Compensation

Finding Explanation

The factory only provides seniority and fringe benefits to permanent workers. Interviews with factory management confirmed that workers are converted to the factory's payroll from the temporary employment agency's payroll if the factory has an open job position for a qualified individual. So far in 2016, approximately 16 temporary workers have been converted to permanent workers. However, when workers are converted to the factory's payroll and become permanent workers, their seniority is dated to their first day as a permanent worker, rather than their first day as a temporary worker at the factory. This practice does not comply with the FLA Code and Benchmarks which stipulate that for any temporary worker who becomes a permanent worker, seniority and other fringe benefits must be dated from their first day as a temporary worker.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmark ER.12)

COMPANY ACTION PLANS

Action Plan no 1.

Description

Pelican already factors first date as temporary worker in health benefit eligibility.

We are in the process of reviewing the feasibility of adjusting the seniority date for other benefits such as vacation accruals, merit increase eligibility (timing), education reimbursement eligibility, bonus eligibility if applicable, service awards, and 401k eligibility. In initial conversations with program managers, all seem manageable except the 401k plan eligibility because the plan description would require a rather large effort and financial spend to amend. Current 401k eligibility is 1st quarterly open enrollment after date of hire, not adjusted date of hire.

There is no resistance to comply to Employment Relationship Benchmark ER.12. We simply need to iron out policy language, system configuration requirements with third parties and associated time and effort.

FINDING NO.3

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Hours of Work

Finding Explanation

1.Overtime work is not voluntary. The factory's employee handbook (revised Jan 2010, page 18) states that "all employees will be expected to work overtime hours as required." In August 2016, management announced that workers would be required to work overtime in increments of two, four, or eight hours.

2.Management does not maintain records identifying all pregnant women and nursing mothers who are entitled to legal protections concerning working hours, as per the Fair Labor Standards Act. However, factory management provides access to the first aid room office to any female worker who requests such accommodations.

Local Law or Code Requirement

Fair Labor Standards Act (FLSA), Section 7(R); FLA Workplace Code (Hours of Work Benchmarks HOW.5.1 and HOW.8.2)

Recommendations for Immediate Action

Do not require workers to work nonconsensual overtime.

COMPANY ACTION PLANS

Action Plan no 1.

Description

Pelican has obtained FLA confirmation that the NEW Pelican Code of Ethics and Business Conduct is in alignment with FLA standards. These standards include our new position on overtime in that overtime will be consensual going forward. As a result of the monitoring visit, factory leadership is now aware of the importance of complying and have worked to develop create ways to solicit volunteers to work overtime and we have adjusted our workforce schedules to provide increased machine capacity.

Company Action Plan Update

07/17/17 : Updated policy currently being translated into languages required by countries in which we operate.

Action Plan no 2.

Description

Following onsite FLA audit, we formally began managing our list of all pregnant women and nursing mothers on our Leave and Accommodation Tracker list. Women are added to this list once we are made aware or it is visibly apparent.

Company Action Plan Update

07/17/17 : Compliance met immediately following monitoring visit in September 2016.

FINDING NO.4

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Termination & Retrenchment

Finding Explanation

1. The factory does not have a policy or procedures on Retrenchment. Therefore, management does not regularly review and update these policies and procedures according to local laws and FLA regulations, or communicate the policies, procedures, or their updates to the general workforce. The factory also does not provide specific training to supervisors or ongoing training to workers on Retrenchment.
2. The factory does not consult with workers and/or their representatives before reaching a final decision on layoffs; however, the factory has not dealt with layoffs in recent years.
3. The factory's current employment handbook (revised Jan 2010, page 46) states "should any employee desire to leave [the factory] voluntarily, the employee is requested to provide at least ten (10) working days' notice of termination." This does not align with Massachusetts "At Will" Employee Guidelines, and contradicts Appendix G "Employment Agreement" (page 69 of the aforementioned employee handbook) which states "my employment may be terminated at any time, either by me or by Pelican with or without cause or notice."

Local Law or Code Requirement

Massachusetts "At Will" Employee Guidelines; FLA Workplace Code (Employment Relationship Benchmarks ER.1, ER.16.1, ER.17, ER.19, and ER.32)

COMPANY ACTION PLANS

Action Plan no 1.

Description

Pelican does not have policies to cover all aspects of ER.1.

Pelican does have practices and maintains records for all aspects of recruitment, hiring and probation, including written terms and conditions of employment, job descriptions, administration of compensation and working hours.

Pelican does not have a written progressive discipline practice as suggested by the monitoring assessor.

Corrective action includes documenting existing practices into policy form and creating progressive discipline and termination policies and procedures.

Action Plan no 2.

Description

Pelican has not had an occurrence of layoffs in several years. Past practice involves exploring all opportunities to reassign impacted workers and when not possible, to provide separation pay, outplacement services, education reimbursement allowance and monies toward continuation of health coverage. When layoffs have been discussed, there were a number of key employees who took part in exploring all options prior to coming to the determination. If business conditions require consideration of layoffs, we will commit to considering the possibility of engaging employees prior to making a final decision.

Company Action Plan Update

07/17/17 : It is our position that we comply with consulting requirements to the degree that when layoffs are being considered, a number of people are included in a review of possible alternatives to avoid layoffs or minimize impact.

Action Plan no 3.

Description

Pelican does not require notification of separation from employees by requesting notification of intent to separate be provided at least 10 working days prior to separation. We include this language as a matter of guidance to employees seeking information on what would be a good amount of time to provide an employer.

We are an At-Will employer and we re-state our At-Will status in all job change letters in addition to 5 times mentioned in our employee handbook. Employees planning to leave Pelican periodically request guidance on how many days they should give. We always advise that while we appreciate 10 days, it is not required as we are an At-Will employer.

Company Action Plan Update

07/17/17 : 2016 version of Global Employee Handbook and USA Appendix documents in at least 5 locations our At Will employee guidelines.

FINDING NO.5

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Industrial Relations

Finding Explanation

1. The factory does not have policies or procedures on Industrial Relations.
2. On page six of the Employment Handbook (rev Jan 2010), the factory makes the following statement: "Pelican believes that an "outsider," such as a union, is not necessary and will not contribute to the success of our business. Third party involvement makes it much more difficult for there to be one-on-one business relationships, which are the best and most effective means to resolve problems and issues. Pelican's employees are not required to pay any initiation fees or dues to an outside party or union in order to remain employed." This could violate Section 8(a)(1) of the National Labor Relations Act, which states that employers may not "interfere with, restrain, or coerce employees in the exercise of the [right to unionize]".
3. The factory does not cover Industrial Relations, including Freedom of Association, during the orientation training provided to new workers.
4. The factory does not provide specific training for supervisors or ongoing training for workers on Industrial Relations.
5. Since the factory does not have policies and procedures on Industrial Relations, management does not regularly communicate with the general workforce on Industrial Relations, nor does it have established procedures for consulting with workers' representatives.
6. Since the factory does not have policies and procedures on Industrial Relations, management does not regularly review and update them according to local laws/FLA regulations.

Local Law or Code Requirement

National Labor Relations Act, Section 8(a)(1); FLA Workplace Code (Employment Relationship Benchmarks ER.1.1, ER.1.2, ER.1.3, ER.15.1, ER.16.1, ER.17.1, ER.25, and ER.26; Freedom of Association Benchmark FOA.1)

COMPANY ACTION PLANS

Action Plan no 1.

Description

Develop Industrial Relations Policy to include existing policies and practices supporting FLA referenced benchmarks. Outside of Retrenchment and Progressive Discipline "policies", all other benchmarks exist in the form of a well established and communicated practice or policy.

Plan to review FLA suggested Industrial Relations Policy and build from there.

Company Action Plan Update

07/17/17 : Portions of Industrial Relations Policy exist already. Other policies are Planned or In Progress to be included in larger Industrial Relations Policy.

Action Plan no 2.

Description

The quoted statement from Pelican's Jan2010 employee handbook has been eliminated from the more updated 2016 version. During the audit of Sept 2016, we had not yet completed our handbook update. Updated language seen below.

Company Action Plan Update

07/17/17 : Pelican is committed to maintaining direct, open, and honest communications among all levels of employees, and striving to provide fair treatment, and competitive wages and benefits. We believe that the success of the business and the development of a harmonious work environment depend on maintaining the best possible relationships between Pelican and its employees. Our experience has shown that when employees deal openly and directly with supervisors, the work environment can be excellent, communications can be clear, and attitudes can be positive. We believe that Pelican amply demonstrates its commitment to employees by responding effectively to employee concerns. Pelican's procedures for problem resolution are referenced in the country-specific Appendix. These procedures provide an avenue to ensure that employees' concerns will receive consideration and that every employee's issues are properly and adequately addressed.

Action Plan no 3.

Description

The US Dept of Labor NLRB poster speaking to the Freedom to Associate was not posted at the factory during the monitoring assessment factory tour. The auditor made us aware and we posted the same day it was pointed out.

August 31, 2016, the FLA confirmed that the company's code meets or exceeds the FLA Workplace Code of Conduct on Freedom of Association and Collective Bargaining.

We have setup a rule in our Learning Management System to assign the Code of Ethics and Business Conduct to all employees annually and requiring their acknowledgement to support training of all employees. Scheduling launch of Learning Assignment in next couple weeks.

Company Action Plan Update

07/17/17 : We have setup a rule in our Learning Management System to assign the Code of Ethics and Business Conduct to all employees annually and requiring their acknowledgement to support training of all employees.

FINDING NO.6

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Workplace Conduct & Discipline

Finding Explanation

The factory does not have formal written procedures on Workplace Conduct & Discipline. There are some disciplinary guidelines in place, but the factory does not ensure that they are updated according to local laws and FLA Code requirements. For example, they are not clear and do not embody a system of progressive discipline. They also do not outline how workers can appeal disciplinary actions taken against them or require a third-party witness to be present during the imposition of disciplinary actions.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmarks ER.1.1, ER.27.1, and ER.27.4)

COMPANY ACTION PLANS

Action Plan no 1.

Description

Develop formal written procedure on Workplace Conduct and Discipline and numerous policies that include specific information on what is considered policy violation as well as potential company response based on policy violations (i.e. Rules of Conduct, Drug

and Alcohol policy, Computer Use and Misuse Policy) These policies have been in place for many years. This benchmark as interpreted is suggesting we have progressive disciplinary procedures formalized which we do not.

Need to develop the progressive discipline portion. We have attached our Rules of Conduct as an example of existing Workplace Conduct policies.

FINDING NO.7

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Health & Safety

Finding Explanation

The factory provides all Personal Protective Equipment (PPE) to workers free of charge – including safety glasses, hearing protection, and gloves – except for safety shoes. The factory allocates up to \$100.00 for each permanent worker towards the cost of a pair of safety shoes and the worker is responsible for the balance of the cost. The temporary employment agency does not reimburse workers for the cost of safety shoes.

Local Law or Code Requirement

FLA Workplace Code (Health, Safety & Environment Benchmark HSE.7)

Recommendations for Immediate Action

Provide workers with all forms of PPE, including safety shoes, free of charge. Ensure that the employment agency reimburses workers assigned to the factory for the cost of required PPE.

COMPANY ACTION PLANS

Action Plan no 1.

Description

Pelican provides all Pelican employees who work in PPE designated areas with the appropriate PPE at no cost to the employee. As written, Pelican disagrees with the finding "factory allocates up to \$100.00 for each permanent worker towards the cost of a pair of safety shoes and the worker is responsible for the balance of the cost". Yes Pelican allocates \$100 annually as described. Pelican coordinates the industrial shoe truck to come onsite to provide shoe options and if work schedules and shoe truck schedules conflict, the employee is given a voucher for \$100. The vendor used has several options to choose from that are more than covered by the \$100. If the employee chooses to select a pair that are more than \$100, then the employee must pay the difference. There are no plans to pay more than \$100 per Pelican employee.

Temporary workers can work 1 day assignments. We are exploring the possibility of not assigning temporary workers to work areas requiring PPE. In doing so, we are also reviewing our PPE requirements which have not been reviewed in many years however, the work environment has changed so it is possible that we may be able to re-designate PPE requirements and redefine appropriate positions for temporary workers.

Policy and temp agency contributions (funding) to this expense has not been completed as of this Action Plan update

Other PPE requirements are being provided to Temporary Workers at no cost to the Temporary Worker (i.e. gloves, eye protection, hearing protection, gloves).

Company Action Plan Update

07/17/17 : Evaluation of PPE needs, policy and funding currently in process.