



FAIR LABOR  
ASSOCIATION<sup>®</sup>

## INDEPENDENT EXTERNAL ASSESSMENT REPORT



COMPANIES: Tervis Tumbler  
COUNTRY: China  
ASSESSMENT DATE: 07/29/19  
ASSESSOR: Openview  
PRODUCTS: Other  
NUMBER OF WORKERS: 220

## 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.

FLA Code Element	Number of Violations
Compensation	2
Hours of Work	2
Employment Relationship	15
Health, Safety, and Environment	8
Harassment and Abuse	1

## Findings and Action Plans

### FINDING NO.1

#### SUSTAINABLE IMPROVEMENT REQUIRED

#### FINDING TYPE: Recruitment, Hiring & Personnel Development

##### Finding Explanation

1. The factory has not hired any disabled workers, which is a violation of legal requirements that state at least 1.5% of the total workforce should be composed of disabled workers. Additionally, the factory does not contribute to the Employment Security Fund in lieu of employing disabled workers as allowed under the local law. [ND.2]

2. The factory has not conducted performance reviews for workers. [ER.29.1]

3. Workers do not receive a copy of the workplace rules or written documentation that substantiates all the issues covered in orientation. [ER.15.3]

##### Local Law or Code Requirement

Regulations on the Employment of Persons with Disabilities, Article 8. FLA Workplace Code (Non-discrimination Benchmark ND.2; Employment Relationship Benchmarks ER.15 and ER.29)

#### COMPANY ACTION PLANS

##### Action Plan no 1.

##### Description

1. The factory has not hired any disabled workers, which is

a violation of legal requirements that state at least 1.5% of the total workforce should be composed of disabled workers. Additionally, the factory does not contribute to the Employment Security Fund in lieu of employing disabled workers as allowed under the local law. [ND.2]

2. The factory has not conducted performance reviews for workers. [ER.29.1]

3. Workers do not receive a copy of the workplace rules or written documentation that substantiates all the issues covered in orientation. [ER.15.3]

### Company Action Plan Update

Factory provided attached documentation/photo.

## FINDING NO.2

### IMMEDIATE ACTION REQUIRED

#### FINDING TYPE: Compensation

##### Finding Explanation

1. The factory does not provide social insurance to all eligible workers. According to social insurance receipt and name list for June 2019, 110 out of 248 workers (44%) were provided with maternity, pension, unemployment and medical insurances. The factory has provided work-related injury insurance to all eligible workers. [C.1]

2. The contribution base for the five types of social insurances is not in line with legal requirements. The factory contributes to five types of social insurances based on local average wage requirement of CNY 3,060 (USD 444.1) per month, which is not in compliance with legal requirement of contribution based on worker's average monthly wage of previous year. About 90% of workers' average monthly wage of previous year ranged from CNY 3,061 (USD 444.2) to CNY 4,800 (USD 696.7). [C.10.1]

3. The factory doesn't contribute to Housing Provident Fund for any eligible workers. [ER.22.1]

##### Local Law or Code Requirement

The China Labor Law, Article 72; Social Insurance Law of the PRC, Article 12 and Article 60; Regulations on Management of Housing Provident Fund, Article 2, Article 3 and Article 15. FLA Workplace Code (Employment Relationship Benchmark ER.22; Compensation Benchmarks C.1 and C.10)

##### Recommendations for Immediate Action

1. Provide social insurance to all eligible workers.
2. Contribute to social insurance based on worker's average monthly wage of previous year.
3. Provide all workers with legally required Housing Provident Fund.

### COMPANY ACTION PLANS

#### Action Plan no 1.

##### Description

Provide social insurance to all eligible workers.

Contribute to social insurance based on worker's average monthly wage of previous year.

Provide all workers with legally required Housing Provident Fund.

## FINDING NO.3

### IMMEDIATE ACTION REQUIRED

#### FINDING TYPE: Hours of Work

##### Finding Explanation

1. According to the time records for the period from July 1, 2018 to July 28, 2019 and worker interviews, 90% of workers' monthly overtime exceeded 36 hours per month in all reviewed months except February 2019, with a maximum of 92 overtime hours in March 2019. [HOW.1]
2. The factory production plan is based on 48 to 60 hours per week. Factory management sets production targets and production system at a level that workers need to work eight to twenty overtime hours per week. [ER.24]
3. Based on document review and interviews with workers and management, the factory does not conduct analysis of working hours with the aim to progressively reduce excessive hours of work. [HOW.1.2]

##### Local Law or Code Requirement

China Labor Law, Article 41. FLA Workplace Code (Employment Relationship Benchmark ER.24, Hours of Work Benchmark HOW.1)

##### Recommendations for Immediate Action

1. Ensure overtime hours do not exceed legal limit of 36 hours per month.
2. Set production plan based on regular working hours.

### COMPANY ACTION PLANS

#### Action Plan no 1.

##### Description

Ensure overtime hours do not exceed legal limit of 36 hours per month.

Set production plan based on regular working hours.

##### Company Action Plan Update

Relevant documents have been formulated and implemented.

## FINDING NO.4

### SUSTAINABLE IMPROVEMENT REQUIRED

#### FINDING TYPE: Industrial Relations

##### Finding Explanation

1. 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. [FOA.2]

#### Local Law or Code Requirement

FLA Workplace Code (Freedom of Association Benchmark FOA.2)

## COMPANY ACTION PLANS

### Action Plan no 1.

#### Description

1. 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. [FOA.2]

#### Company Action Plan Update

Factory has applied to the Federation of Trade Unions

## FINDING NO.5

## SUSTAINABLE IMPROVEMENT REQUIRED

### FINDING TYPE: Communication & Worker Involvement (Macro)

#### Finding Explanation

1. The worker integration component is missing across all Employment Functions. This indicates that the factory has not established procedures to request 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. [ER.1.3]

#### Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmark ER.1)

## COMPANY ACTION PLANS

### Action Plan no 1.

## Description

1. The worker integration component is missing across all Employment Functions. This indicates that the factory has not established procedures to request 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. [ER.1.3]

### Company Action Plan Update

Factory has applied to the Federation of Trade Unions (ACFTU)

## FINDING NO.6

### SUSTAINABLE IMPROVEMENT REQUIRED

#### FINDING TYPE: Workplace Conduct & Discipline

##### Finding Explanation

1. The disciplinary system does not include workers' right to appeal the disciplinary action or workers' ability to have a third-party witness during the imposition of disciplinary actions. [ER.27.4]

##### Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmark ER.27)

## FINDING NO.7

### SUSTAINABLE IMPROVEMENT REQUIRED

#### FINDING TYPE: Policies & Procedures (Macro)

##### Finding Explanation

1. The factory does not have policies or procedures on Personnel Development, including:

- a) Policy and procedures on performance reviews that include steps and processes, linkages to job grading, nondiscrimination, written feedback, and compliance with legal requirements. [ER.29.1]
- b) Policies and procedures that encourage ongoing training with the goal of raising or broadening workers' skills so they can advance in their careers. [ER.28.1]
- c) Policies and procedures on promotion, demotion and job reassignment. [ER.30.1]

2. The factory does not have policies or procedures on Retrenchment. The factory also does not have written guidance on the calculation of final payouts. [ER.32.1]

3. The factory does not have policies or procedures on Industrial Relations. [ER.25]

4. The factory does not have a written policy on harassment or abuse, including a system to discipline supervisors, managers, and workers who engage in any form of harassment or abuse. [ER.1.1]

##### Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmarks ER.1, ER.25, ER.28, ER.29, ER.30 and ER.32)

## COMPANY ACTION PLANS

Action Plan no 1.

## Description

1. The factory does not have policies or procedures on Personnel Development, including:

a) Policy and procedures on performance reviews that include steps and processes, linkages to job grading, nondiscrimination, written feedback, and compliance with legal requirements. [ER.29.1]

b) Policies and procedures that encourage ongoing training with the goal of raising or broadening workers' skills so they can advance in their careers. [ER.28.1]

c) Policies and procedures on promotion, demotion and job reassignment. [ER.30.1]

2. The factory does not have policies or procedures on Retrenchment. The factory also does not have written guidance on the calculation of final payouts. [ER.32.1]

3. The factory does not have policies or procedures on Industrial Relations. [ER.25]

4. The factory does not have a written policy on harassment or abuse, including a system to discipline supervisors, managers, and workers who engage in any form of harassment or abuse. [ER.1.1]

## Company Action Plan Update

Relevant documents and measures have been collated.

## FINDING NO.8

### IMMEDIATE ACTION REQUIRED

### FINDING TYPE: Health & Safety

#### Finding Explanation

1. The factory did not conduct the pre-assessment of occupational disease hazards or assessment of effects of occupational disease hazards control prior to the acceptance check of the construction project for Production Buildings 4, 5 and 6, which is in violation of the local law. Although the factory contracts a licensed institution to test the occupational disease hazard factors, it is focused on testing of the exposure level of hazards rather than identifying or evaluating all types of hazards in a comprehensive way. [HSE.1]

2. The factory has not posted the legally required occupational hazard notification card in the spray painting section or polishing section. Occupational hazard notification cards include basic information on the kind of occupational hazard, what risk and how to deal with them in case of an emergency issue and daily protection procedures. The factory also has not posted the legally required occupational hazard disease test report in spray painting section or polishing section. [HSE.1]

3. The factory provides pre-job and on-job occupational health examinations to eligible workers with hazardous exposure to chemicals and noise. However, the factory does not provide post-job occupational health examinations to eligible workers. [HSE.1]

4. The factory does not provide safety shoes to workers working in the molding room. In addition, the factory has provided anti-dust masks to workers in polishing room, but does not supervise workers to ensure that they consistently wear the anti-dust masks. About 50% of workers in the polishing room wear disposable masks instead of anti-dust masks. Based on information from worker interview, some workers buy disposable masks to use because they feel uncomfortable wearing anti-dust masks. [HSE.7] [HSE.8]

#### Local Law or Code Requirement

China Law of Prevention and Control of Occupational Diseases, Article 17, Article 18, Article 24 and Article 35; Provisions on the

#### Recommendations for Immediate Action

1. Post the occupational hazard notification card and occupational hazard disease test report in the spray painting and polishing sections.
2. Provide post-job occupational health examination to workers with hazardous exposure to chemicals and noise.
3. Provide safety shoes to workers in molding room. Train and supervise workers in polishing room to ensure that they consistently wear anti-dust masks.

### COMPANY ACTION PLANS

#### Action Plan no 1.

##### Description

Post the occupational hazard notification card and occupational hazard disease test report in the spray painting and polishing sections.

Provide post-job occupational health examination to workers with hazardous exposure to chemicals and noise.

Provide safety shoes to workers in molding room. Train and supervise workers in polishing room to ensure that they consistently wear anti-dust masks.

##### Company Action Plan Update

Posted the occupational hazard notification card and occupational hazard disease test report in the spray painting and polishing sections.

Provided post-job occupational health examination to workers with hazardous exposure to chemicals and noise.

Provided safety shoes to workers in molding room. Train and supervise workers in polishing room to ensure that they consistently wear anti-dust masks.

### FINDING NO.9

### IMMEDIATE ACTION REQUIRED

FINDING TYPE: Health & Safety



#### Finding Explanation

1. The evacuation doors of 2nd, 3rd, and 4th floor in Production Building 5 are roll down doors, which create an evacuation risk during an emergency. [HSE.5.1]
2. All of the evacuation signs in the production areas are very blurry. [HSE.5.1]
3. The factory does not post Material Safety Data Sheets (MSDS) or provide secondary containment for any of the chemicals stored in the chemical warehouse. [HSE.9.1] [HSE.10.2]

#### Local Law or Code Requirement

PRC Code for Fire Protection Design of Buildings GB50016-2014, Article 6.4.11; Setting Standards for Fire Safety Evacuation Signs, Article 3.1.2; Regulations on the Safety Administration of Dangerous Chemicals, Article 20. FLA Workplace Code (Health, Safety and Environment Benchmarks HSE.5, HSE.9 and HSE.10)

#### Recommendations for Immediate Action

1. Ensure evacuation doors open to the direction of evacuation.
2. Re-paint the evacuation signs on the floors to indicate exit routes in production areas.
3. Post MSDS and provide secondary containment in the chemical warehouse.

### COMPANY ACTION PLANS

#### Action Plan no 1.

##### Description

1. Ensure evacuation doors open to the direction of evacuation.
2. Re-paint the evacuation signs on the floors to indicate exit routes in production areas.
3. Post MSDS and provide secondary containment in the chemical warehouse.

##### Company Action Plan Update

The rolling shutter door has been fixed by protective welding and cannot be closed. Some rolling shutter doors have been opened.

Repainted the evacuation signs on the floors to indicate exit routes in production areas.

Posted MSDS and provide secondary containment in the chemical warehouse

### FINDING NO.10

### SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Training (Macro)

Finding Explanation

1. The factory does not provide specific training to relevant supervisors on any of the Employment Functions. [ER.17.1]

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmark ER.17)

COMPANY ACTION PLANS

Action Plan no 1.

Description

Arrange training for relevant managers.

Company Action Plan Update

Training was completed for relevant managers

FINDING NO.11

NOTABLE FEATURE

FINDING TYPE: Compensation

Finding Explanation

1. The factory provides dormitory accommodation to workers, free of charge.