



FAIR LABOR
ASSOCIATION®

INDEPENDENT EXTERNAL ASSESSMENT REPORT



COMPANIES: TOMS Shoes
COUNTRY: China
ASSESSMENT DATE: 08/26/19
ASSESSOR: Openview
PRODUCTS: Footwear
NUMBER OF WORKERS: 1000

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	3
Hours of Work	2
Employment Relationship	9
Health, Safety, and Environment	9
Nondiscrimination	3

Findings and Action Plans

FINDING NO.1

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Policies & Procedures (Macro)

Finding Explanation

1. The factory does not have policies or procedures on Retrenchment, which should include consulting with worker/union representatives prior to making the final decision on retrenchment, a plan that mitigates the adverse effects of layoffs to workers and non-discriminatory criteria selecting individual workers who will be laid off. [ER.32.1]

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmark ER.32)

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. Factory will establish policies or procedures on retrenchment. The process will engage worker representative, trade union, local legal department and any other stakeholders.

2. Factory will notify employees of the retrenchment policy through regular trainings or official notice.

Company Action Plan Update

1. Factory has been in the process of establishing the retrenchment policy.

FINDING NO.2

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Review Process (Macro)

Finding Explanation

1. The factory has not conducted management or internal reviews to ensure that policies and procedures are updated according to local laws, FLA Workplace Code and Benchmarks for all Employment Functions. [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. Factory will establish the operating procedure to conduct the periodic internal review of its policies and procedures to ensure they are updated according to local laws, FLA Workplace Code and Benchmarks.
2. Factory will set up a committee to conduct the periodic internal review

FINDING NO.3

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Communication & Worker Involvement (Macro)

Finding Explanation

1. The worker integration component is missing from all Employment Functions. This indicates that the factory has not established procedures to receive worker input/feedback on the creation, implementation, and revision of its policies and procedures. Furthermore, workers are neither systematically integrated, nor consulted in the 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. Factory will establish the system and the operating procedure to ensure workers' engagement on the creation, implementation, and revision of its policies and procedures.
2. Factory will provide the ongoing training to encourage workers to participate in during the recreation, implementation, and revision of its policies and procedures.
3. Factory will provide the channels to collect employees' suggestions and integrate them into the employment functions.

FINDING NO.4

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Recruitment, Hiring & Personnel Development

Finding Explanation

1. The factory does not employ any disabled workers, which is a violation of the legal requirement stating that at least 1.5% of the total workforce should consist of disabled workers. Additionally, the factory does not contribute to the Employment Security Fund in lieu of employing disabled workers. [ND.2]
2. Workers do not receive written documentation that substantiates all the issues covered in orientation. [ER.15.3]
3. The factory requires new hires to have health examination before starting to work in the factory. However, new hires are required to pay for the health examination by themselves. [ER.5.3]

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.5 and ER.15)

Recommendations for Immediate Action

1. Pay for the cost of health examination for new hires.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. Factory will consider to use appropriate disabled workers or instead providing employment security fund to local organizations for the disabled to ensure the compliance with local law.
2. Factory will distribute the employee handbook to each employee, which briefs all the issues covered in the orientation.
3. Factory will absorb the fees whether the pre-job health examination is arranged by factory or handled by the new hire themselves. And the occupational health record will be established by individual.

Company Action Plan Update

1. Factory has planned to sign the labor contracts with a few disabled at local Municipal Disabled Labor and Employment Service Center.
2. Factory is simplifying the employee handbook so that it is easily kept and understood by employees.
3. Factory has revised the related policy and it would be put into effect since Feb 2020.

FINDING NO.5

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Compensation

Finding Explanation

1. The factory does not provide social insurance to all eligible workers. There are total 733 workers working in the factory and all of them

are eligible for social insurance contribution. The factory provided 452 out of 733 eligible workers (62%) with pension, medical, work-related injury, maternity and unemployment insurances in the latest payment month of July 2019. As a supplement, the factory has provided commercial accidental injury insurance to 281 workers not covered with work-related injury insurance, which is valid from April 15, 2019 to April 14, 2020 and has a maximum benefit amount of CNY 50,000 (USD 6,987) per worker. [C.1]

2. The contribution bases of the five types of social insurance are not in line with legal requirements. The factory contributes to pension insurance based on local minimum requirement of CNY 3,376 (USD 472) per month, to work-related injury and unemployment insurances based on CNY 1,550 (USD 217) per month, and to medical and maternity insurances based on CNY 2,356 (USD 329) per month. As per legal requirement, the factory should contribute to the five types of social insurance based on worker's average monthly wage of previous year. About 80% of workers' average monthly wages of previous year ranged from CNY 3,500 (USD 489) to CNY 5,000 (USD 699). [C.10.1]

3. The factory contributed to Housing Provident Fund for 120 out of 733 eligible workers (16%) in the latest payment month of July 2019. [ER.22.1]

4. The contribution base of Housing Provident Fund is not in line with legal requirements. The factory contributes to Housing Provident Fund based on CNY 3,100 (USD 433) per month, which is not in compliance with legal requirement of contribution based on worker's average monthly wage of previous year. About 80% of workers' average monthly wages of previous year ranged from CNY 3,500 (USD 489) to CNY 5,000 (USD 699). [ER.22.2]

Local Law or Code Requirement

China Labor Law, Article 72; Social Insurance Law of the PRC, Article 12 and Article 60; Regulations on Management of Housing Provident Fund, Article 15 and Article 16. 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 workers' average monthly wage of previous year.
3. Provide Housing Provident Fund to all eligible workers.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. Factory is making efforts to realize the percentage increase of Social Insurance and Housing Fund with appropriate contribution base gradually within five years, in order to meet local laws and FLA requirements.
2. Factory will hold meetings with all shareholders to discuss the percentage increase of Social Insurance and Housing Fund and make a progressive improvement plan towards final goal.
3. Factory will provide the training regarding Social Insurance and Housing Fund in orientation for new hire and regular meetings to have worker gain better understanding on its benefits and encourage workers to participate in.
4. Factory will ensure there is a system for monthly review of percentage of workers enrolling in the Social Insurance and Housing Fund in real time and track the progress.

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Compensation

Finding Explanation

1. According to records review and interviews, the factory does not take workers' external seniority (previous job experience prior to factory employment) into account when calculating annual leave, as required by law. [C.6]
2. The factory has not informed workers of the fringe benefit regarding mandatory prenatal leave. Therefore, eligible workers usually have their prenatal medical examinations arranged during weekends. [ER.22.1]
3. In Guangdong Province, female workers are entitled to 80 days of reward leave following maternity leave based on local law requirement. The factory has not implemented this policy. [ER.22.1]

Local Law or Code Requirement

The Implementation Measures for Employee Paid Annual Leave, Article 4; Special Rules on the Labor Protection of Female Employees (2012), Article 6; Guangdong Province Population and Family Planning Regulations, Article 30. FLA Workplace Code (Employment Relationship Benchmark ER.22; Compensation Benchmark C.6)

Recommendations for Immediate Action

1. Calculate annual leave based on workers' cumulative working experience (working age).
2. Provide pregnant workers with prenatal leave as per legal requirement.
3. Ensure the length of maternity leave in compliance with legal requirement.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. Factory will revise the regulation on annual leave calculating method to ensure it is made in accordance with local law.
2. Factory will establish the policy for female worker protection and put this into effect immediately to protect the legal rights of pregnant female workers.
3. Factory will provide the orientation for new hire that include the above policy and renew the training at least once a year.
4. Factory will maintain the records to track the operation.

Company Action Plan Update

1. Factory has been in revising the regulation on annual leave.
2. Factory has established the policy for female worker protection and formed an list of pregnant female workers to ensure the pregnant female worker is able to enjoy the legal rights.

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Hours of Work

Finding Explanation

1. According to time records from August 2018 to August 26, 2019 and worker interviews, monthly overtime hours for 80% of workers exceeded legal limit of 36 hours in a month in all reviewed months except February 2019, with a maximum of 66 overtime hours in December 2018 and July 2019 respectively. [HOW.1.1]
2. The factory production plan is based on 58 hours per week. The factory management sets production targets and production system at a level that workers need to work 18 overtime hours per week. [ER.24]
3. The factory does not provide female workers pregnant for more than seven months with one-hour rest time each day during work hours. [ND.8.1]
4. By reviewing payroll and time records, the factory arranged one female worker pregnant for seven months to work overtime in April 2019. [ND.8.1]

Local Law or Code Requirement

China Labor Law, Article 41; Special Rules on the Labor Protection of Female Employees of Guangdong Province, Article 10. FLA Workplace Code (Employment Relationship Benchmark ER.24; Hours of Work Benchmark HOW.1; Non-discrimination Benchmark ND.8)

Recommendations for Immediate Action

1. Ensure overtime hours do not exceed 36 in a month.
2. Set production plan based on regular working hours. Adjust production targets so that workers do not need to work overtime to meet them.
3. Provide one-hour rest time each day during work hours to female workers pregnant for more than seven months.
4. Ensure female workers pregnant for more than seven months do not work overtime.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. TOMS will look internally at the order placement process and talk to our planning team to balance the order placement on a yearly basis.
2. Factory is making efforts to reduce working hours gradually within three years, in order to meet local laws and FLA requirements. Factory will set up the order receiving system based on the actual capacity (regular overtime working hours not included) after accurate evaluation and reasonable incentive plan to reward the workers who contribute to productivity improvement. As needed, the additional workers will be recruited during the production peak months according to production plan as well as order status. Further, factory will discuss with the raw material suppliers to ensure the materials can be supplied in time with satisfied quality in order to shorten the lead time.
3. Factory will establish the policy for female worker protection and put this into effect immediately to protect the legal rights of pregnant female workers.

Company Action Plan Update

1. Factory has planned to have a kick-off meeting on advising the management team of working hour control goal (36 hours overtime in one month) as well as the following measures to be taken.
established the policy for female worker protection and formed an list of pregnant female workers to ensure the pregnant female worker is able to enjoy the rest time per law and is free from the stressful work.
2. Factory has

FINDING NO.8

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. Factory will provide the ongoing training to raise the awareness of workers in relation to union engagement and collective bargaining.
engagement and establish the related policy.
2. Factory will evaluate the current status of union
3. Factory will improve the functioning of the labor relations' mechanisms and ensure the union plays a bigger role in dispute resolution and collective bargaining.

FINDING NO.9

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Health & Safety

Finding Explanation

1. The fire alarm system is not centralized and does not have a backup battery. [HSE.5.3]
2. The factory has not installed emergency lights in about 50% of the evacuation passages in production building. [HSE.5.1]
3. The factory has not posted Material Safety Data Sheets (MSDS) for about 20% of chemicals in areas where those chemicals are used.

[HSE.10.1]

4. Needle guards on about 80% of sewing machines are too high to prevent the broken needles from hurting the operators. [HSE.14.1]
5. The factory has provided cotton masks to about 80% of workers in sewing and lasting departments with exposure to dust. [HSE.7]
6. The factory has assigned one pregnant worker to work in the position with chemical exposure. [HSE.11.1]

Local Law or Code Requirement

The Code for Design of Automatic Fire Alarm System (GB50116-2013), Article 4.8.5 and Article 10.1.1; The Code of Design on Building Fire Protection and Prevention (GB50016-2014), Article 10.3.1; The Regulation of Chemical Safety Usage in Workplace, Article 12; The Code of Design of Manufacturing Equipment Safety and Hygiene, Article 6.1.6; The Law of the China on Work Safety, Article 42; China Labor Law, Article 61. FLA Workplace Code (Health, Safety and Environment Benchmarks HSE.5, HSE.7, HSE.10, HSE.11 and HSE.14)

Recommendations for Immediate Action

1. Install centralized fire alarm system with backup battery.
2. Install emergency lights in evacuation passages in production building.
3. Post Material Safety Data Sheets (MSDS) in areas where chemicals are used.
4. Install proper needle guards on sewing machines.
5. Provide anti-dust masks to workers with exposure to dust.
6. Assign pregnant workers to positions with no chemical exposure.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. Factory will improve all defects auditor pointed out during the audit immediately.
2. Factory will reinforce the regular monitoring program on easily recurring issues and consider the applicability of current monitoring program (i.e. increase the inspection's frequency).
3. Factory will re-evaluate the effectiveness of the training program on workplace health and safety and ensure it works for all applicable workers.
4. Factory will collect stakeholders' comments (i.e. worker representative, clients' CSR team) to drive the continuous improvement whether on procedure or practice.

Company Action Plan Update

1. Factory has been in search for the qualified supplier for backup battery of fire alarm. The backup battery will be installed for all fire alarms in the facility when the supplier was finalized.
2. Factory has installed the emergency lights along all of the evacuation passages in production building. The frequency of spot check is weekly to ensure the devices are in normal operation.
3. Factory has posted MSDSs for all related chemicals at place where chemicals were used. The frequency of spot check is weekly to ensure the MSDSs are accessible for all workers in contact with chemicals.
4. Factory has adjusted the needle guards of all sewing machines to an appropriate position. The frequency of spot check is daily to prevent the broken needles from hurting the operators.
5. Factory has supplied all worker with exposure to dusts with anti-dust masks. In addition, the guide of PPEs wearing was displayed in the workplace as well.
6. Factory has established the policy for female worker protection and formed an list of pregnant female workers to avoid the pregnant female workers are assigned on the position with exposure to any occupational hazards.

FINDING NO.10

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Health & Safety

Finding Explanation

1. The factory has not obtained the fire permits or fire filing documents for the following buildings. i) One flat building with 850 square meters, constructed in the year of 2005 and used as power generator and power distribution room ii) Another flat building with 1,000 square meters, constructed in the year of 2005 and used as chemical warehouse and maintenance room. Factory management stated these two buildings belonged to the industrial park. [HSE.4]
2. The factory has not obtained the report on inspection and acceptance of completed construction project for the following buildings. i) One flat building with 850 square meters, constructed in the year of 2005 and used as power generator and power distribution room ii) Another flat building with 1,000 square meters, constructed in the year of 2005 and used as chemical warehouse and maintenance room. Factory management stated these two buildings belonged to the industrial park. [HSE.4]
3. The factory has never conducted safety inspections on either of the two pressure vessels (compressed air containers). [HSE.4]
4. The factory has never conducted an inspection on the lightning protection system. [HSE.13]
5. The factory has not provided pre-job or post-job occupational health examinations to eligible workers. In addition, about 10% of workers with exposure to high noise did not receive on-job an occupational health examination in the year of 2019. [HSE.1]
6. The factory does not take proactive steps to reduce repetitive-motion stress injuries of workers. The factory has not conducted an ergonomic risk assessment. There are no removable proper backrests on the chairs for workers working in the sitting position and no anti-fatigue mats for workers working in the standing position. [HSE.17.1]

Local Law or Code Requirement

Fire Prevention Law of the People's Republic of China, Article 11 and Article 13; The Construction Law of the People's Republic of China, Article 61; The Special Appliance Quality Safety Monitoring Regulation, Article 28; Technical Specifications for Inspection of Lightning Protection System (GB/T 21431-2015), Article 6; China Law of Prevention and Control of Occupational Diseases, Article 35. FLA Workplace Code (Health, Safety and Environment Benchmarks HSE.1, HSE.4, HSE.13 and HSE.17)

Recommendations for Immediate Action

1. Conduct regular safety inspection on pressure vessels.
2. Conduct annual inspection on the lightning protection system and maintain inspection reports.
3. Provide pre-job, on-job and post-job occupational health examination to workers with hazardous exposure.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. Factory will reach external qualified agency to do the fire inspection as well as construction safety inspection for two mentioned buildings, to ensure all buildings in use are safe for workers according to local legal standards.
2. Factory will arrange the immediate safety inspections for two pressure vessels and ensure the inspections for any special equipment in use are regularly renewed.
3. Factory will reach external qualified agency to do the an inspection on the lightning protection system to ensure all buildings in use are safe for workers according to local legal standards.
4. Factory will establish the procedure to ensure the pre-job, on-job and post-job occupational health examinations are provided to all eligible workers who were exposure to occupational hazards.
5. Factory will conduct an ergonomic risk assessment and provide the devices for workers to reduce repetitive-motion stress injuries accordingly.

Company Action Plan Update

1. Factory has been in search for the qualified agency outside. And when it is finalized, factory will arrange the inspections and maintain the related reports well for review.
2. Factory has communicated to local bureau who governs the regular inspection of special equipment. They are in the process of reaching an agreement. The inspection is supposed to be done after CNY.
3. Factory has communicated to local bureau who governs the lightning protection inspection. They are in the process of reaching an agreement. The inspection is supposed to be done after CNY.
4. Factory is revising the policy regarding occupational health examinations. The list of eligible workers are under making. The policy will be put into effect as soon as it was completed.
5. Factory has been in the process of conducting the ergonomic risk assessment for all workstations with different working mode.

FINDING NO.11

NOTABLE FEATURE

FINDING TYPE: Compensation

Finding Explanation

1. The factory provides workers with dormitory for free. Air conditioners are installed in each dormitory room and workers can use the air conditioners for free.
2. The factory provides free meals to workers who have been working in the factory for more than 3 years.