



FAIR LABOR
ASSOCIATION®

INDEPENDENT EXTERNAL ASSESSMENT REPORT



COMPANIES: Mountain Equipment Co-op (MEC)

COUNTRY: China

ASSESSMENT DATE: 06/07/16

ASSESSOR: FLA China

PRODUCTS: Equipment

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

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Compensation

Finding Explanation

1. The factory does not pay into the Housing Provident Fund for any of the workers, as legally required.
2. Although 6.4% of the workers contribute to the Rural Insurance program (instead of the national social insurance programs) they are not covered by pension, medical, maternity, or unemployment insurance. Rural insurance costs less than, but is not a substitute for, the other legally mandated types of insurance. For the workers who do contribute to pension, medical, maternity, and unemployment insurance, the contribution base for 15.3% of them is lower than their actual earnings, since the contribution is 2423 CNY while their earnings are from 2500 CNY to 2600CNY.
3. The factory does not take workers' cumulative work experience (previous job experience prior to employment at the factory) into account when calculating annual leave, as legally required.
4. Workers' paid annual leave was uniformly arranged during the National Holiday in October, without worker consultation or consent.
5. There are no policies or procedures on prenatal leave and no records to show that the eligible workers (14 pregnant workers in the past 12 months) have received this benefit. Female workers are only allowed to take 90 days of maternity leave, whereas the law states that they are entitled to 98 days. The factory only provides additional breastfeeding breaks for three months, instead of the legally required one year.
6. During the assessment, 70% of the workers interviewed were not well informed about sick leave, and assessors only found a few records of workers taking sick leave.

Local Law or Code Requirement

Labor Law of PRC, Article 72; Social Insurance Law of PRC, Articles 58 and 60; Regulation on the Housing Provident Fund Management (2002), Article 15; Implementation Measures of Employees' Paid Annual Leave (2008), Article 4; Special Rules on the Labor Protection of Female Employees, Article 6; Notice on Adjustment of Social Insurance Contribution Base of Qingdao City (2015); FLA Workplace Code (Employment Relationship Benchmarks ER.16, ER.22.1, and ER.22.2; Hours of Work Benchmark HOW.11; Non-Discrimination Benchmark ND.8.1; Compensation Benchmarks C.1 and C.17.1.3)

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. The facility will review the Housing Provident Fund and will reflect in next year wage increases. The facility has committed to collecting worker's opinions before creating their procedure to implement. MEC has recommended the facility maintain a checklist/documentation when collecting worker's opinions.

Due: Feb 28, 2017

2. MEC has recommended that the facility invites a local government officer to provide a training to the workers on all social insurance benefits.

The facility has started collecting worker's opinion regarding the social insurance based on their actual income. MEC has requested the facility share this with us. The facility has expressed workers are very sensitive to pay more for insurance, therefore additional training is highly recommended and please keep the training material and the attendance record for our report to the FLA.

3. The facility has agreed to change their procedure so that worker's cumulative experience will be taken into account once they provide the record of their previous job. The facility has revised their policy. Please find attached.

4. The facility has prepared the workers agreement and signatures from the past National Holiday in October (please see attached).

5. The facility has updated their internal policy based on local law. (MEC had discussed with the FLA in July 2016 the facilities policy on pregnant workers. FLA agreed on the factory direction and it was communicated to the facility to please move ahead with the changes to the policy and to provide training to supervisors and workers. Please review supporting documents attached.

6. As per the document review, MEC notes that the policy has been updated on sick leave (please see attachment); however, the facility still requires to execute training to workers.

Due: December 31, 2016

Update April 29,2020:

Pending the factory's update.

FINDING NO.2

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Termination & Retrenchment

Finding Explanation

1. The factory does not include unused annual leave in termination payouts. During the past 12 months, there have been 21 workers who did not receive payment for unused annual leave after resigning.

Local Law or Code Requirement

Implementation Measures of Employees' Paid Annual Leave (2008), Article 12; FLA Workplace Code (Employment Relationship Benchmarks ER.19.1 and ER.22.1).

Recommendations for Immediate Action

1. Include unused annual leave in termination payouts and make retroactive payments to the 21 affected workers who have left the factory over the past 12 months.

COMPANY ACTION PLANS

Action Plan no 1.

Description

The facility transferred the unused annual leave compensation to all 21 workers on Aug 17, 2016 (as per attached documents). The facility has updated their policy regarding to final payment to resigned workers to include their unused annual leave (please see HR policy attached and Updated Policy)

FINDING NO.3

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Hours of Work

Finding Explanation

1. The factory bases its production planning on 50 or 58 hours/week alternately. For example, week 1 is based on 50 hours and week 2 is based on 58 hours. This means that 10 to 18 hours of overtime per week are regularly included in production planning.
2. During the past 10 out of 12 months, 90% of the workers' monthly overtime working hours were between 47 and 62 hours, with an average of 54 hours. This exceeds the legal limit of 36 overtime hours per month.
3. There is no accurate tracking system to ensure that all workers who are 7 or more months (28+ weeks) pregnant do not work overtime.
4. Four workers who are more than 7 months (28 weeks) pregnant work eight hours per day. However, according to local law workers who are more than 28 weeks pregnant are entitled to one hour of rest per working day.

Local Law or Code Requirement

Labor Law of PRC (1995), Articles 41 and 61; Special Rules on the Labor Protection of Female Employees (2012), Article 6; Special Rules on the Implementation of Labor Protection of Female Employees of Shandong Province, Article 9; FLA Workplace Code (Employment Relationship Benchmark ER.24; Hours of Work Benchmarks HOW.1.1, HOW.1.3, HOW.2, and HOW.8.1; Non-Discrimination Benchmark ND.8.1)

Recommendations for Immediate Action

1. Do not include overtime in production planning.
2. Develop a plan to decrease overtime gradually and ensure that it complies with legal requirements.
3. FLA Affiliate Company's Sourcing and Social Compliance teams should: a) implement FLA Principles of Fair Labor and Responsible Sourcing and b) coordinate on the topics mentioned below to help the factory address its excessive hours issue:
 - a. How to provide better order forecasts to the factories;
 - b. Possible workshops/consultancy for the factory on how to improve productivity/quality;
 - c. Clear guidelines on how to extend shipment deadlines in case of contingencies;
 - d. Steps that factory management must follow if overtime is inevitable (steps for how to communicate with the brand's Sourcing and Social Compliance teams);
 - e. Clear guidelines on the calculation and setting of reasonable production targets that will not demand work beyond regular working hours or during breaks;
 - f. Clear guidelines on how and when the factory can use subcontractors and/or temporary workers to avoid excessive overtime.
4. Establish an effective system to track pregnant workers' status and ensure that workers who are 7 or more months pregnant do not work overtime.
5. Provide workers who are seven or more months pregnant an additional one-hour rest per working day.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1 & 2. The facility is trying to reduce the working hour. MEC has requested that the facility fill out monthly reports on working hours to track hours and to help determine root causes. Please find attached the working hours summary report for July and August. Once the facility receives all orders for 2017, they will be able to make a proposal for decreasing hours in the new year. MEC as a customer will continue to move our production into the low season to not add any pressure on the facility during the peak.

3. The facility has arranged a tracking information section on the time card which show workers who are 7 or more months (28+ weeks) pregnant in order to ensure they do not work overtime (please see attached).

4. The facility agrees that workers who are more than 28 weeks pregnant are entitled to one hour of rest per working day. In the time record, there is a reminder to workers that everyday they should rest for half an hour in the morning and hour an hour in the afternoon. They can self arrange when to take the time off (please see attachments).

Due: January 31, 2017

Update April 29, 2020:

1 & 2. According to the time records of Aug. and Sep., 2019 for 5 sampled workers, monthly overtime still exceeds 36 hours and reached a maximum of 58 hours, please continue reducing overtime hours and provide the original time records of Oct. 2019 (from Oct. 1 to 31) for at least 5 production workers to us for review in early Nov. 2019. We will review 3 months' time records to track the improvement of this issue.

According to the time records of Oct. 2019 for 5 sampled workers, 3 out of 5 sampled workers' monthly overtime exceeds 36 hours and reached a maximum of 40 hours. Please continue reducing overtime hours and auditor needs to verify in next audit.

MEC will mark this item as ongoing and follow up during the next audit.

3. COMPLETE.

4. COMPLETE.

FINDING NO.4

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Industrial Relations

Finding Explanation

1. The factory has a trade union that was established in 1995 under the ACFTU (All China Federation of Trade Unions). Factory management filled all six trade union committee member positions. Furthermore, the factory did not have multiple candidates for the union committee election as legally required.
2. The factory has not provided a designated office with the necessary equipment for the union to conduct daily meetings and perform related functions.

3. FLA Comment: 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 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 does stipulate 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 (Freedom of Association Benchmarks FOA.2, FOA.10, FOA.11, FOA.12, FOA.15, FOA.16, and FOA.24)

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. The facility will hold a union election next year and will arrange for multiple candidates to be involved. They are currently waiting on the union election schedule from the local office and will make their detailed plan accordingly. Further training on unions and their election process is recommended to the facility.

2. The facility has provided a designated office (as seen in attached pictures). All union records will be stored in this office.

Due: March 31, 2017

FINDING NO.5

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Environmental Protection

Finding Explanation

1. The factory has not arranged for a licensed waste handler to dispose of its hazardous waste (fluorescent tubes, toner cartridges, etc.).

Local Law or Code Requirement

Prevention and Control Law of Environmental Pollution, Solid Waste (2013), Article 57; FLA Workplace Code (Health, Safety & Environment Benchmarks HSE.1 and HSE.4)

Recommendations for Immediate Action

1. Arrange for a licensed waste handler to dispose of all hazardous waste.

COMPANY ACTION PLANS

Action Plan no 1.

Description

The facility contacted several licenses waste handler as per FLA recommendation and Openview Service provided links; however, the handlers are not fit for the small sewing factories and/or have no authorisation for waste cartridge and fluorescent tubes. Please refer to the facility provided records where they are tracking each contacted waste carrier (17).

The facility is still looking for a suitable waste handler. In the meantime, they will store all hazardous wastes in the warehouse (as attached photo shows) until they find the suitable licensed handler.

Pending next update from the facility.

Due: December 31, 2016

FINDING NO.6

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Health & Safety

Finding Explanation

1. Sewing machine oil is stored with empty fire extinguishers and an unused diesel tank in a warehouse. The factory has provided secondary containment for the sewing machine oil.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmark ER.31; Health, Safety & Environment Benchmarks HSE.3, HSE.4, HSE.9.1, and HSE.17)

Recommendations for Immediate Action

1. Segregate the sewing oil from the waste fire extinguishers and diesel tank.

COMPANY ACTION PLANS

Action Plan no 1.

Description

The facility contacted several licenses waste handler as per FLA recommendation and Openview Service provided links; however, the handlers are not fit for the small sewing factories and/or have no authorisation for waste cartridge and fluorescent tubes. Please refer to the facility provided records where they are tracking each contacted waste carrier. The facility has arranged with the fire department to take the empty fire extinguishers.

The facility is still looking for a suitable waste handler. In the meantime, they will store all hazardous wastes in the warehouse (as attached photo shows) until they find the suitable licensed handler. They have segregated the sewing oil from the waste fire extinguishers and diesel tank.

Pending next update from the facility.

Due: December 31, 2016

FINDING NO.7

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Training (Macro)

Finding Explanation

1. There is no ongoing training for the general workforce on any of the Employment Functions.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmarks ER.1.2, ER.15.2, and ER.17)

COMPANY ACTION PLANS

Action Plan no 1.

Description

The facility has arranged an annual training plan as attached - including induction training, H&S, fire safety, supervisor training, safe operating, occupational health training, social insurance training, etc.

Induction training has been consolidated for all new workers four times a year.

They will hold four more trainings between now and the end of the year: October trainings: level 3 safety training and general safety training; November training: fire safety; December training: induction training.

The facility has been requested to send the training summaries after the October, November and December trainings.

Due: December 2016

FINDING NO.8

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Recruitment, Hiring & Personnel Development

Finding Explanation

1. Although the factory conducts periodic reviews of its policies and procedures, there is no revision history to demonstrate that a regular document review is performed.
2. The factory does not update the Compensation policies and procedures according to local law. For example, the Employee Handbook states that "The factory provides 3-day paid sick leave yearly. For those who take more than 3-day sick leave, the rest part will be paid based on 50% of the wage." However, the local law requires that workers be paid 60% or 70% of their wage depending on the length of sick leave. In practice, the factory provides 70% of the wage.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmarks ER.1.3, ER.29, ER.30.2, and ER.31.1)

COMPANY ACTION PLANS

Action Plan no 1.

Description

The facility has advised that Mr. Cho/Director is in charge of all policies and changes. Revised policies are attached.

MEC has requested the facility create a revision table to demonstrate regular reviews of the policies, who is responsible, which related department is affected by the change, etc.

FINDING NO.9

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Recruitment, Hiring & Personnel Development

Finding Explanation

1. The factory only sporadically communicates its policies and procedures to the general workforce for all Employment Functions. During orientation all new employees are informed of some of the factory's rules and practices, but there is no planned follow-up to communicate updates.
2. The worker integration component is missing from all Employment Functions. The factory has not established or implemented procedures to include workers' input/feedback on the creation, implementation, and revision of its policies and procedures. Therefore, workers are neither systematically integrated nor consulted in the decision-making process.

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmarks ER.1.3, ER.16.1, ER.25, ER.27.2, ER.29.1.1, ER.30.2, and ER.32.5; Compensation Benchmark C.17; Health, Safety & Environment Benchmark HSE.2)

COMPANY ACTION PLANS

Action Plan no 1.

Description

MEC has recommended the facility start to communicate all policies and procedures to the work force during the departmental morning meetings. MEC requested that workers sign an attendance record to confirm they receive each training.

The facility has agreed to communicate policies and procedures during the morning meetings. Please find two provided examples of factory provided trainings (on PPE, machine safety, etc.) and worker signatures.

The facility still requires adding a worker integration component into their Employment Functions. It has been requested that the facility established procedures to include workers' input and feedback on the creation, implementation, and revision of their policies and procedures. Pending action from the facility.

Due: November 30, 2016