



FAIR LABOR
ASSOCIATION®

INDEPENDENT EXTERNAL ASSESSMENT REPORT



COMPANIES: TOMS Shoes
COUNTRY: China
ASSESSMENT DATE: 09/07/20
ASSESSOR: Openview
PRODUCTS: Footwear
NUMBER OF WORKERS: 930

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	1
Hours of Work	5
Employment Relationship	5
Health, Safety, and Environment	11
Nondiscrimination	2
Freedom of Association	2

Findings and Action Plans

FINDING NO.1

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Recruitment, Hiring & Personnel Development

Finding Explanation

1. The job posting for the injection position at the factory gate contains age and gender status as a condition of employment. Only male applicants under 40 years of age may apply for the position. However, about 10% of injection workers are over 45 years of age in current workforce. [ND.2.1]
2. The factory signs a one-year employment contract with new hires and another three-year employment contract for the subsequent three-year period. However, the factory does not sign open-ended employment contracts with eligible workers after two consecutive fixed-term employment contracts, as per the legal requirement. [ER.10.1]

Local Law or Code Requirement

The China Labor Law, Article 12; Labor Law of PRC (1995), Article 12. FLA Workplace Code (Nondiscrimination Benchmark ND.2; Employment Relationship Benchmark ER.10)

Recommendations for Immediate Action

1. <!--[endif]-->Remove age and gender requirements from the job postings. Employment decisions are to be made solely on the basis of a person's qualifications and abilities.
2. <!--[endif]-->Sign open-ended employment contracts with all eligible workers after two consecutive fixed-term employment contracts.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. The factory top management have required HR to remove age and gender requirement from the job advertisement.

The HR manager will provide related trainings about awareness of age and gender discrimination rules to all management teams and employees, which make sure they can understand and compliance with related customer's requirements.

2. The factory top management have required the HR to resign open-ended employment contracts with all eligible workers after two consecutive fixed-term employment contracts.

2. The HR manager have collected legal requirements about signing labor contract and will provide related trainings about awareness of the legal requirements for signing labor contracts to all management teams and employees, which make sure all employees understand and to be compliant with related legal requirements.

Company Action Plan Update

See the labor contract and the policy

FINDING NO.2

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Compensation

Finding Explanation

1. The factory does not take workers' external seniority (job experience prior to factory employment) into account when calculating annual leave, as required by law. [C.6]

2. The factory does not provide social insurance to all eligible workers. There are total 939 workers including 103 retired but re-recruited and 12 new hires in the factory. According to the social insurance receipt and name list for July 2020, none of the 824 eligible workers were provided with medical or maternity insurances. Only 296 of 824 eligible workers (35.9%) were provided with pension and unemployment insurances. All 824 eligible workers (100%) were provided with work-related injury insurance. As a supplement, the factory bought group accidental injury insurance for 103 retired but re-recruited workers, valid from July 7, 2020 to July 6, 2021 and has a maximum benefit amount of CNY 50,000 (USD 7,315) per worker. [C.1]

3. The contribution base for the three types of social insurance is not in line with the legal requirement. The factory contributes to work-related injury, unemployment and pension insurances based on the local minimum requirement of CNY 2,842 (USD 416) per month, which is not in line with the legal requirement of contributions based on workers' average monthly wages of previous year. About 70% of workers' average monthly wages for the previous year were higher than the local minimum contribution base, ranging from CNY 2,843 (USD 416) to CNY 6,000 (USD 878). [C.10.1]

4. The factory does not contribute to the legally required Housing Provident Fund for eligible workers. [ER.22.1]

Local Law or Code Requirement

Implementation Measures of Paid Annual Leave for Employees of Enterprises, Article 4; China Social Insurance Law, Article 72; Social Insurance Law of the PRC, Article 12 and Article 60; Regulations on Management of Housing Provident Fund, Article 15. FLA Workplace Code (Compensation Benchmarks C.1, C.6 and C.10; Employment Relationship Benchmark ER.22)

Recommendations for Immediate Action

1. <!--[endif]-->Calculate annual leave based on worker's cumulative working experience (working age).
2. <!--[endif]-->Provide all type of social insurance to all eligible workers.
3. <!--[endif]-->Contribute to social insurance based on the worker's average monthly wage of previous year.
4. <!--[endif]-->Provide all workers with the legally required Housing Provident Fund.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. The factory top management have required the HR team to calculate annual leave based on worker's cumulative working experience (working age).The HR manager have collected related requirements and will provide trainings of legal calculating annual leave rules for all management team and employees.

2 &3 . The factory will constantly improve social insurances percentage according to local law requirements, to ensure all eligible employees are entitled with all types of social insurance schemes and receive all of their statutory welfare to comply with the Law.

Because many employees were reluctant to be enrolled and contributed to all social insurances schemes, the factory will provide trainings to help them understand the importance and benefits of contributing toward all social insurance schemes.

HR/CSR Director will be responsible to provide related trainings for employees and management to well accept the deductions.

HR/CSR Director will monitor the improvement of factory.

4. The factory top management will make schemes and constantly improve to provide all workers with legally required Housing Provident Fund. The factory should provide trainings to management team and help them understand the importance of the legally required Housing Provident Fund for eligible workers.

FINDING NO.3

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Hours of Work

Finding Explanation

1. Worker interviews and time records for 42 sampled workers for the period from August 2019 to September 6, 2020 indicate that the monthly overtime hours workers exceeded 36 in all reviewed months. 37 of 42 workers worked more than 36 overtime hours per month in November and December 2019, 21 to 24 of 42 workers worked more than 36 overtime hours per month in other reviewed months, except January and February 2020. The maximum working hours was 82 hours in December 2019.[HOW.1.1]

2. Working hours exceeded 60 hours one week in the past 12 months. Time records for the period from August 2019 to September 6, 2020 and worker interviews indicate that about 80% of workers worked 66 hours in one week from December 2 to December 8, 2019. Per factory management, it was because of urgent orders and a power outage on December 11, 2019. [HOW.1.3]

3. Workers were not provided a rest day during one week in the past 12 months; time records for the period from August 2019 to September 6, 2020 and worker interviews indicate that about 80% of workers worked nine consecutive days from December 2 to December 10, 2019. Per factory management, it was because of urgent orders and a power outage on December 11, 2019. [HOW.2]

4. The factory sets its production plan based on 48 to 60 hours per week (two overtime hours per day in five workdays and eight to ten overtime hours on Saturday). Factory management sets production targets and the production system at a level that workers need to work eight to twenty overtime hours per week. [ER.24]

Local Law or Code Requirement

The China Labor Law, Article 38 and Article 41. FLA Workplace Code (Employment Relationship Benchmark ER.24; Hours of Work Benchmarks HOW.1 and HOW.2)

Recommendations for Immediate Action

1. <!--[endif]-->Ensure overtime hours do not exceed legal limit of 36 hours per month.
2. Ensure that weekly working hours do not exceed 60 hours.
3. <!--[endif]-->Provide workers with at least one day off (24-consecutive hours of rest) for every seven-day work period.
4. Set production plan based on regular working hours. Adjust production targets so that workers do not need to work overtime to meet them.
5. <!--[endif]-->Ensure that overtime is not included as a general practice into the factory's production planning. FLA affiliate Company's Sourcing and Social Compliance teams should:
 - 1) Implement FLA Principles of Fair Labor and Responsible Sourcing and
 - 2) Accordingly 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.

COMPANY ACTION PLANS

Action Plan no 1.

Description

- 1.HR dept will increase to hire more employees to decrease the overtime.
- 2.The production dept needs to execute the production schedule strictly and improve the production efficiency to ensure all employees to comply with overtime permitted by local law.
- 3.The HR dept needs to state working hours policy clearly in factory rules and post and documents in the factory bulletin boards, which ensure all employees and managements aware of the overtime working hours requirement clearly.
- 4.The HR dept will monitor and check the time card records for all employees to ensure employees overtime working hours can meet law requirements.
- 5.The sales dept will work with customers more closely to balance the order placement based on the actual production base

FINDING NO.4

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Industrial Relations

Finding Explanation

1. All five union committee members are department managers and supervisors. They are appointed by top factory management and the Federation of Trade Unions. [FOA.11]
2. 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 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, FOA.10]

Local Law or Code Requirement

FLA Workplace Code (Freedom of Association Benchmarks FOA.2, FOA.10 and FOA.11)

Recommendations for Immediate Action

1. Ensure all union committee members are freely elected by all workers.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. The chairman of the union committee who will monitor and make education trainings to make sure all union committee members are freely elected by all workers.

2. Factory will give extra incentives to encourage workers to participate in.

3. Factory will conduct election for new committee members.

FINDING NO.5

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Workplace Conduct & Discipline

Finding Explanation

1. Disciplinary procedures indicate that workers will be fined CNY 10 (USD 1.50) to CNY 180 (USD 26.40) for disciplinary actions taken in the factory such as warning, second warning, minor offense, or serious offense. In practice, the factory has not imposed monetary fines since 2016, however the factory has not revised the disciplinary procedures accordingly. [ER.27.1]

Local Law or Code Requirement

FLA Workplace Code (Employment Relationship Benchmark ER.27)

Recommendations for Immediate Action

1. <!--[endif]-->Remove the provision of monetary fines from the disciplinary procedures.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1.The HR team will revise the provision of monetary fines from Disciplinary Procedure immediately. The HR manager will check and follow it monthly.

Company Action Plan Update

please see update policy

FINDING NO.6

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Health & Safety

Finding Explanation

1. Approximately 20% of the exit signs in the production and dormitory buildings are not illuminated, while they should be illuminated at all times. [HSE.5.1, HSE.25.1]
2. 60% of the emergency exits in the production and dormitory buildings have sliding doors, instead of doors that open to the outside easily in case of emergency. [HSE.5.1, HSE.25.1]
3. The factory has not centralized the fire alarms in the dormitory buildings. In addition, all the fire alarms in both production and

dormitory buildings have no backup battery power. [HSE.5.1, HSE.25.1]

4. The factory provides rubber gloves to workers for the brush coating process because of the hazardous exposure to chemicals. However, about 20% of workers who work in this process were not wearing rubber gloves during working hours. [HSE.8]

5. The factory has not installed needle guards on about 10% of high-speed sewing machines. [HSE.14.1]

6. The factory places the drinking water facilities in the assembly section, where hazardous chemicals are used. Water facilities carry risk of chemical exposure in their current location. [HSE.23.1.2]

Local Law or Code Requirement

The Code of Design on Building Fire Protection and Prevention (GB50016-2014), Article 6.4.11, Article 10.1.6 and Article 10.3.5; The Law of the China on Work Safety, Article 42; The Regulation for Punching Safety Management, Article 8; The Hygienic standards for the Design of Industrial Enterprises, Article 7.3.2. FLA Workplace Code (Health, Safety and Environment Benchmarks HSE.5, HSE.8, HSE.14, HSE.23.and HSE.25)

Recommendations for Immediate Action

1. <!--[endif]-->Conduct proper maintenance of exit signs to ensure functionality.
2. <!--[endif]-->Ensure emergency exit doors open outward in the direction of evacuation.
3. <!--[endif]-->Install centralized fire alarm system in the dormitory buildings and install backup battery for all fire alarms.
4. <!--[endif]-->Train and supervise workers to use personal protective equipment (PPE) consistently during working hours.
5. <!--[endif]-->Install needle guards on all high-speed sewing machines.
6. <!--[endif]-->Relocate the drinking water facilities to a clean and safe area with no chemical exposure.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. factory will conduct proper maintenance for exit signs to ensure functionality, the AD director will conduct the weekly inspection.

2. factory will install a lock on the rolling doors to make sure the door keep open during the working time.

3. The AD dept will Install centralized fire alarm system in the dormitory buildings and install backup battery for all fire alarms.

Factory CSR team will put this issue into internal audit list, together with security department to pay high attention on this issue and make sure all fire equipment running normally before all correction finished.

4. The production manager will provide training to help workers understand the chemical damage / the necessity of wearing PPE and supervise workers to use personal protective equipment (PPE)consistently during working hours.

HR will issue incentive bonus to the workers who wear PPF correctly on work to encourage workers to follow the requirement.

5. The factory will provide needle protection goggles to sewing workers to well protect workers.

The production manager will check the PPE wearing the monitor strictly.

6. Relocate the drinking water facilities to a clean and safe area with no chemical exposure. The AD director will check and make sure the safe environment of drinking water facilities.

Company Action Plan Update

1. factory has conducted proper maintenance for exit signs to ensure functionality.

2. Installed the lock on the rolling door, see attached photo

3. see the attachment

5. Noodle guard

FINDING NO.7

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Health & Safety

Finding Explanation

1. The factory does not provide a pre-employment, on the job, or post-employment occupational health examination to all workers with hazardous exposure to chemicals, dust and noise. The factory provided pre-employment occupational health examinations to 40 workers and on the job occupational health examinations to 46 workers in September 2019. The occupational hazard factor testing report from October 2019 indicates that the factory should provide occupational health examinations to 200 workers. [HSE.1]

2. The factory added one connecting bridge to the third floor on each of the two U-shaped buildings in 2014. However, the factory has not obtained additional testing reports of building quality, the inspection report, or the acceptance of the completed construction project since the construction of the connecting bridges. [HSE.4]

3. The factory mainly produces footwear and is classified as high-risk. The factory conducted three Simultaneities Assessments for Occupational Health of Construction Projects and a Control Effectiveness Assessment when the construction was completed in 2011. However, the factory does not conduct occupational health assessments every three years as per legal requirement. [HSE.4]

4. The inspection reports for all four elevators expired in July 2020. The factory hired an authorized institution to conduct the inspection in August 2020 and the reports are expected to be issued in October 2020. [HSE.4]

5. The factory has not conducted inspections of the lightning protection systems in both the production and dormitory buildings on an annual basis. The last inspection was conducted on July 1, 2018. [HSE.13]

Local Law or Code Requirement

The PRC Law of Prevention and Control of Occupational Diseases, Article 35; The Construction Law of the People's Republic of China, Article 61; Provisions on the Supervision and Administration of Occupational Health at Work Sites, Article 20; The Special Appliance Quality Safety Monitoring Regulation, Article 28; Technical Specifications for Inspection of Lightning Protection System in Building, Article 6. FLA Workplace Code (Health, Safety and Environment Benchmarks HSE.1, HSE.4 and HSE.13)

Recommendations for Immediate Action

1. <!--[endif]-->Provide occupational health examinations, including pre-employment, on the job, and post employment examinations for all eligible workers.
2. <!--[endif]-->Obtain additional testing reports on building quality and the report on inspection and acceptance of completed construction project for the connecting bridges.
3. <!--[endif]-->Conduct occupational health assessments every three years as per legal requirement.
4. <!--[endif]-->Conduct inspection of elevators on an annual basis. Arrange the inspection in advance, to obtain the inspection report before the expiration date.
5. <!--[endif]-->Conduct annual inspection of the lightning protection system and maintain inspection report.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. HR will provide training to workers to help them understand the importance of health examination due to the specialty of work.

HR will organize occupational health examination to all eligible workers with hazardous exposure to chemicals on pre-job, on-job and post job in Oct, 2020. (HSE1)

- 2.The AD director will invite a local third party company to conduct inspection and will get additional testing reports of building quality and the report on inspection and acceptance of completed construction project for the connecting bridges.

3. Factory will arrange the occupational health assessments as per legal requirements.

4. The AD director will arrange the inspection for the elevators to obtain the inspection report.

5. Admin department will arrange the annual inspection for the lightning protection system and maintain inspection report.

Company Action Plan Update

1. HR has organized Occupational health examination to all eligible workers. please see attached photo for the post-employment workers as an example.

4. Factory has obtained the inspection report for the elevators, please see attached photo.

5. please see the lightning inspection report