



FAIR LABOR  
ASSOCIATION®

## INDEPENDENT EXTERNAL ASSESSMENT REPORT



COMPANIES: Kathmandu  
COUNTRY: China  
ASSESSMENT DATE: 09/02/20  
ASSESSOR: Openview  
PRODUCTS: Apparel  
NUMBER OF WORKERS: 73

## 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	7
Employment Relationship	4
Health, Safety, and Environment	2
Nondiscrimination	2

## Findings and Action Plans

### FINDING NO.1

#### IMMEDIATE ACTION REQUIRED

#### FINDING TYPE: Compensation

##### Finding Explanation

1. Ten workers are paid below the legal minimum wage. All of these workers were rehired after their retirement.
  - 1) Eight out of ten workers are paid by an hourly rate from CNY 10 (USD 1.5) to CNY 12 (USD 1.8) per hour, which is below the legal minimum wage of CNY 14.25 (USD 2.1) per hour since April 1, 2019.
  - 2) Two out of ten workers are paid by piece rate. After converting into the hourly rate (total piece rate divided by total working hours), both workers are paid from CNY 9.61 (USD 1.4) to CNY 14.05 (USD 2) per hour in the past 12 months, which is below the legal minimum wage of CNY 14.25 (USD 2.1) per hour since April 1, 2019. [C.2]
2. The factory does not pay workers sufficient overtime compensation as per legal requirement. All sewing workers (about 80% of total workforce) are paid by piece rate, and the rest 20% workers are paid by hourly rate.
  - 1) For the sewing workers, the factory does not compensate with the extra overtime premium rate. Sewing workers only receive a piece-rate wage.
  - 2) All hourly rate workers are not fully compensated for overtime hours. Their overtime hours on weekdays and rest days are paid at 100% of the regular hourly rate, which is not in line with legal requirement of 150% of the regular hourly rate for overtime hours on weekdays and 200% of the regular hourly rate for overtime hours on rest days. No overtime was arranged on statutory holidays in the past 12 months. [C.7.2]
3. The factory does not provide workers with paid annual leave, even though the factory officially has an annual leave policy.. [HOW.11]

##### Local Law or Code Requirement

The China Labor Law, Article 44; Regulations on Annual Leave for Employees, Article 2. FLA Workplace Code (Compensation Benchmarks C.2 and C.7; Hours of Work Benchmark HOW.11)

##### Recommendations for Immediate Action

1. <!--[endif]-->Pay workers at least the legal minimum wage.

2. <!--[endif]-->Pay workers sufficient overtime compensation as per legal requirement.

3. <!--[endif]-->Provide eligible workers with paid annual leave as per legal requirement.

## COMPANY ACTION PLANS

### Action Plan no 1.

#### Description

Insufficient overtime wages: the factory is working on the improvement plan.

Insufficient paid annual leave: the factory is working on the improvement plan.

#### Company Action Plan Update

Minimum wage

Minimum Wages for workers hired after they retired:

1. Local minimum wage laws do not apply to retired workers.
2. The supplier hired retired workers as a way of providing job opportunities.
3. The monthly wages of all retired workers are above 4500-6000RMB, which is above local minimum wage (2480RMB/month).
4. Except for hourly minimum wage, the retired workers enjoy same benefits as other workers.

Minimum wages to normal workers are paid above legal requirement on the audit day.

## IMMEDIATE ACTION REQUIRED

### FINDING TYPE: Compensation

#### Finding Explanation

1. The factory does not provide social insurance to all eligible workers. There are total 36 workers working in the factory, including 15 workers over the retirement age. The factory only provided 7 out of 21 eligible workers (33.3%) with five types of social insurances in the latest payment month of July 2020. [C.1]

2. The contribution base of the five types of social insurances is not in line with legal requirement. The factory contributes to work-related injury, medical, maternity, unemployment and pension insurances based on local minimum requirement of CNY 4,927 (USD 721) per month, which is not in line with legal requirement of contribution based on worker's average monthly wage of previous year. About 60% of workers' average monthly wages of previous year were higher than local minimum contribution base, ranging from CNY 5,000 (USD 732) to CNY 9,000 (USD 1,318). [C.10.1]

3. The factory does not contribute to the legally required Housing Provident Fund for 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 15. FLA Workplace Code (Compensation Benchmarks C.1 and C.10; Employment Relationship Benchmark ER.22)

#### Recommendations for Immediate Action

1. <!--[endif]-->Provide social insurance to all eligible workers.

2. <!--[endif]-->Contribute to social insurance based on worker's average monthly wage of previous year.

3. <!--[endif]-->Provide all workers with legally required Housing Provident Fund.

## COMPANY ACTION PLANS

### Action Plan no 1.

#### Description

1. Social Insurance: the factory will purchase commercial accidental injury insurance for all employees from January 2020.

2. Social Insurance Base: continuous improvement

3. Housing Fund: Continuous Improvement.

#### Company Action Plan Update

Social Insurance:

1. Social Insurance: 1).- The factory is currently unable to purchase social insurance for employees, but the factory will purchase commercial accidental injury insurance for all employees from January 2020, and will gradually increase the proportion of social insurance for employees

2).- When recruiting new employees, give priority to those who are willing to take out insurance, and train employees about the

benefits of accidental injury insurance

2. Social Insurance Base: continuous improvement

3. Housing Fund: Continuous Improvement.

## FINDING NO.3

### IMMEDIATE ACTION REQUIRED

#### FINDING TYPE: Hours of Work

##### Finding Explanation

1. Working hours from August 2019 to August 2020 cannot be accurately tracked, as the working hours are manually recorded with the total number of working hours, without the exact start or end time of a shift. Nor do workers sign on the manual time records daily to confirm their working hours. [ER.23]

2. Overtime hours exceed legal limit of three overtime hours per day and thirty-six overtime hours per month. Time records for the period from August 2019 to August 2020 indicate that the daily overtime for about 90% of workers exceeded three hours in about 50% of workdays in the reviewed period with a maximum up to five point five hours in July 2020, and the monthly overtime for 95% of workers exceeded 36 hours in all reviewed months with a maximum of 175 overtime hours in March 2020. [HOW.1.1]

3. Total working hours regularly exceed 60 hours in a week. Time records for the period from August 2019 to August 2020 indicate that the weekly working hours for about 90% of workers exceeded 60 in one to three weeks per month in all reviewed months, with a maximum of 92.5 hours in July 2020. [HOW.1.3]

4. Workers are not always provided with one day off for every seven-day work period. Time records for the period from August 2019 to August 2020 indicate that about 90% of workers worked more than six consecutive days for once to three times per month in all reviewed months, with a maximum of 41 consecutive days from June 15 to July 25, 2020. [HOW.2]

5. The factory sets production plan based on 71.5 to 75 hours per week (a total of six days per week with four point five overtime hours on each workday and nine to twelve point five overtime hours on Saturday). Factory management sets production targets and production system at a level that workers need to work 31.5 to 35 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 Benchmarks ER.23 and ER.24; Hours of Work Benchmarks HOW.1 and HOW.2)

##### Recommendations for Immediate Action

1. <!--[endif]-->Establish an effective system to record working hours. Maintain complete and accurate time records in all cases.

2. <!--[endif]-->Ensure overtime hours do not exceed legal limit of three hours per day and thirty-six hours per month.

3. Control total working hours do not exceed 60 in a week.

4. <!--[endif]-->Provide workers with at least one day off (24-consecutive hours of rest) for every seven-day work period.
5. Set production plan based on regular working hours. Adjust production targets so that workers do not need to work overtime to meet them.
6. <!--[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. Attendance system

The factory is working on the improvement plan to record detailed working time.

#### Company Action Plan Update

#### 2&3&4&5. Excessive working hours& production plan

Continuous Improvement. The factory will make a reasonable production plan to gradually reduce the overtime hours of employees, and the responsible person checks regularly to ensure that the overtime hours are gradually reduced

## FINDING NO.4

### SUSTAINABLE IMPROVEMENT REQUIRED

#### FINDING TYPE: Industrial Relations

##### Finding Explanation

1. The Collective Bargaining Agreement (CBA) does not provide any additional benefits to workers and simply restates the factory procedures and legal requirements. None of workers are provided with a copy of the CBA and none of the interviewed workers are aware of the CBA. [ER.16.2]

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 and FOA.10; Employment Relationship Benchmark ER.16)

##### Recommendations for Immediate Action

1. <!--[endif]-->Provide workers with a copy of the CBA.

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### COMPANY ACTION PLANS

Action Plan no 1.

##### Description

N/A

##### Company Action Plan Update

1. The factory has provided the copy of CBA to workers

2. N/A. Continuous Improvement

## FINDING NO.5

### IMMEDIATE ACTION REQUIRED

#### FINDING TYPE: Health & Safety

##### Finding Explanation

1. The factory does not have a centralized fire alarm in the 1-story production building. [HSE.5.1]
2. The factory has not recorded any work-related injuries including minor injury and near miss in the past 12 months. [HSE.3.1]

#### Local Law or Code Requirement

FLA Workplace Code (Health, Safety and Environment Benchmarks HSE.3 and HSE.5)

#### Recommendations for Immediate Action

1. <!--[endif]-->Install centralized fire alarm system in the factory.
2. <!--[endif]-->Track work-related injury including minor injury and near miss and maintain work-related injury records for at least 12 months.

### COMPANY ACTION PLANS

#### Action Plan no 1.

##### Description

N/A

##### Company Action Plan Update

1. a) The factory has arranged an electrician to connect all the fire alarms; 2) the factory has conducted relevant training to workers. See evidence 1.
2. The factory has created an injury record and will record all injury incidents going forwards. See evidence 2.