



FAIR LABOR
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INDEPENDENT EXTERNAL ASSESSMENT REPORT



COMPANIES: New Era Cap Co., Inc
COUNTRY: China
ASSESSMENT DATE: 08/18/20
ASSESSOR: Openview
PRODUCTS: Other
NUMBER OF WORKERS: 445

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	2
Health, Safety, and Environment	6
Nondiscrimination	1

Findings and Action Plans

FINDING NO.1

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Compensation

Finding Explanation

The factory does not take a worker's external seniority (previous job experience prior to factory employment) into account when calculating annual leave, as required by law. [C.6, HOW.11]

There is a total of 425 workers in the factory, including 75 retired but re-recruited workers, and 14 newly hired workers. The factory provides social insurance to all 336 eligible workers. However, the contribution base of the five types of social insurances is not in line with the legal requirement. The factory contributes to work-related injury, medical, maternity, unemployment and pension insurances based on the local minimum requirement of CNY 3,368 (USD 489) per month, which is not in line with the legal requirement of contribution based on a worker's average monthly wage of the previous year. About 70% of workers' average monthly wages of the previous year were higher than the local minimum contribution base, ranging from CNY 3,369 (USD 489) to CNY 5,600 (USD 813). [C.10.1] 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. Social Insurance Law of the PRC, Article 12 and Article 60; Regulations on Management of Housing Provident Fund, Article 15. FLA Workplace Code (Hours of Work HOW.11; Employment Relationship Benchmark ER.22; Compensation Benchmark C.6 and C.10, Hours of Work HOW.11)

Recommendations for Immediate Action

1. Calculate annual leave based on worker's cumulative working experience (working age).
2. <!--[endif]-->Contribute to social insurance based on worker's average monthly wage of the previous year.

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

FINDING NO.2

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Hours of Work

Finding Explanation

The factory sets a production plan based on 48 to 58 working hours per week, which is one to three overtime hours per day on up to five workdays and eight overtime hours on Saturday. Factory management sets the production targets and production system at a level that workers need to work eight to eighteen overtime hours per week. [ER.24]

Overtime hours exceed the legal limit of three hours per day and 36 hours per month. Time records for the period from July 2019 to August 17, 2020 and worker interviews indicate that the daily overtime hours for about 10% of workers exceeded three hours on one to six workdays per month in May, June and August 2020 and September 2019 with a maximum of four hours on one sample day of August 10, 2020. The monthly overtime hours for almost all workers exceeded 36 hours in all reviewed months except January and February 2020, with a maximum of 81 hours in November 2019. [HOW.1.1, HOW.8.1]

Total working hours exceed 60 hours per week. Time records for the period from July 2019 to August 17, 2020 and worker interviews indicate that the weekly working hours for about 15% of workers exceeded 60 hours in one to two weeks per month in July and August 2020. About 10% of workers' weekly working hours were up to 76 hours in the week from August 10 to 16, 2020. [HOW.1.3, HOW.8.3]

Workers are not provided with one day off in every seven-day work period. Time records for the period from July 2019 to August 17, 2020 and worker interviews indicate that about 15% of workers worked more than seven consecutive days once per month in July and August 2020. About 10% of workers worked a maximum of 23 consecutive days from July 26 to August 17, 2020. [HOW.2]

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.1.1, HOW.1.3, HOW.2, HOW.8.1, HOW.8.3)

Recommendations for Immediate Action

1. <!--[endif]-->Set the production plan based on regular working hours. Adjust production targets so that workers do not need to work overtime to meet them.
2. <!--[endif]-->Ensure that daily overtime hours do not exceed the legal limit of three hours per day and 36 hours per month.
3. <!--[endif]-->Control total working hours so that they do not exceed 60 hours per week.
4. <!--[endif]-->Provide workers with at least one day off (24-consecutive hours of rest) for every seven-day work period.

FINDING NO.3

SUSTAINABLE IMPROVEMENT REQUIRED

FINDING TYPE: Industrial Relations

Finding Explanation

1. 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 Benchmark FOA.2, FOA.10)

Recommendations for Immediate Action

Nil

FINDING NO.4

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Health & Safety

Finding Explanation

There is a canteen and kitchen in the factory. However, the risk assessment does not cover food risk or food safety. [HSE.1]

The transmission belts on all three button-sewing machines are not fully enclosed by their pulley guards in the sampling workshop on the 1st floor of Building A. In addition, the factory does not translate all caution signs posted on sewing machines from English and Korean into the local language of Chinese on the 2nd floor of Building 1. [HSE.14.1]

The canteen staff places ready-to-eat food next to raw meat in the kitchen. The factory also does not keep the food sample as per the legal requirement. [HSE.22.1]

The factory has not conducted an occupational disease hazard test on an annual basis. The latest test was conducted on December 10, 2017. [HSE.1]

The factory has not provided an on-site occupational health examination on an annual basis to workers with hazardous exposure to noise in the embroidery workshop. The latest on-site occupational health examination was conducted on January 20, 2018. In addition, the factory does not provide a pre-job or post-job occupational health examination to eligible workers. One embroidery worker joined the factory, and three embroidery workers resigned in 2020. None of them were provided with a pre-job or post-job occupational health examination. [HSE.1]

The factory has not centralized three fire alarms installed in one 2-story dormitory building, and two out of three fire alarms are not equipped with a backup battery. [HSE.5.1]

Local Law or Code Requirement

The Code of Design of Manufacturing Equipment Safety and Hygiene, Article 6.1.6; Measures for the Supervision and Administration of Food Safety in Catering Services (2010), Article 16 (6); The Food Safety Operation Specifications for Catering Service, Article 7.9.2; The China Law of Prevention and Control of Occupational Diseases, Article 20 and Article 35; The Code of Design on Building Fire Protection and Prevention GB50016-2014, Article 10.1.6. FLA Workplace Code (Health, Safety and Environment Benchmarks HSE.1, HSE.5, HSE.14 and HSE.22)

Recommendations for Immediate Action

1. <!--[endif]-->Conduct risk assessment on food to ensure food safety.

2. <!--[endif]-->Fully enclose the transmission belts on the button-sewing machines with pulley guards. Translate all caution signs posted on sewing machines into Chinese.
3. <!--[endif]-->Separate ready-to-eat food from raw meat and keep food sample for at least 48 hours as per the legal requirement.
4. <!--[endif]-->Conduct an annual occupational disease hazard test and obtain the test report.
5. <!--[endif]-->Provide a pre-job, on-site and post-job occupational health examination to all workers with hazardous exposure to noise as per the legal requirement.
6. <!--[endif]-->Install centralized fire alarm system with backup battery in dormitory building.