



FAIR LABOR
ASSOCIATION®

INDEPENDENT EXTERNAL ASSESSMENT REPORT



COMPANIES: Tervis Tumbler
COUNTRY: China
ASSESSMENT DATE: 08/19/20
ASSESSOR: Openview
PRODUCTS: Other
NUMBER OF WORKERS: 584

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	2
Employment Relationship	2
Health, Safety, and Environment	7
Nondiscrimination	3

Findings and Action Plans

FINDING NO.1

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Compensation

Finding Explanation

1. The factory does not provide social insurance to all eligible workers. There are total 600 workers including five retired but re-recruited workers and two new hires (hired in July 2020) in the factory. According to the social insurance receipt for July 2020, 160 out of 593 eligible workers (27%) were provided with pension, unemployment, medical and maternity insurances, and 336 out of 593 eligible workers (57%) were provided with work-related injury insurance. As a supplement, the factory has bought group accidental injury insurance for the rest of 264 workers, which is valid from September 23, 2019 to September 22, 2020 and has a maximum benefit amount of CNY 100,000 (USD 14,399) per worker. [C.1]
2. According to the compensation procedure and worker and management 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, HOW.11]
3. The contribution base of the five types of social insurance is not in line with legal requirement. The factory contributes to work-related injury, medical, maternity, unemployment and pension insurance based on the local minimum requirement of CNY 3,330 (USD 485) per month, which is not in line with legal requirement of contribution based on worker's average monthly wage of the previous year. About 3% of workers' average monthly wages of previous year were higher than local minimum contribution base, ranging from CNY 3,862 (USD 563) to CNY 4,827 (USD 703). [C.10.1]
4. The factory does not contribute to the Housing Provident Fund for eligible workers. [ER.22.1]

Local Law or Code Requirement

The China Labor Law, Article 72; The Implementation Measures for Employee Paid Annual Leave, 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 (Compensation Benchmarks C.1, C.6 and C.10; Employment Relationship Benchmark ER.22; Hours of Work Benchmark HOW.11)

Recommendations for Immediate Action

1. Provide social insurance to all eligible workers.

2. Calculate annual leave based on worker's cumulative working experience (working age).
3. Contribute to social insurance based on worker's average monthly wage of the previous year.
4. Provide all workers with legally required Housing Provident Fund.

FINDING NO.2

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Hours of Work

Finding Explanation

1. Overtime hours exceed the legal limit of 36 hours per month. Time records for the period from July 2019 to July 2020 and worker interviews indicate that the monthly overtime hours for about 80% of workers exceeded 36 in all reviewed months except January, February and March 2020, with a maximum of 58 overtime hours in November 2019. [HOW.1.1, HOW.8]
2. The factory production plan is based on 48 to 52 hours per week. Factory management sets production targets and the production system at a level that workers need to work 8 to 12 overtime hours per week. [ER.24]

Local Law or Code Requirement

The China Labor Law, Article 41; FLA Workplace Code (Hours of Work Benchmark HOW.1, HOW.8; Employment Relationship Benchmark ER.24)

Recommendations for Immediate Action

1. Ensure overtime hours do not exceed legal limit of 36 hours per month.
2. Set the production plan based on regular working hours. Adjust production targets so that workers do not need to work overtime to meet them.

FINDING NO.3

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)

FINDING NO.4

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Health & Safety

Finding Explanation

1. The factory does not centralize the fire alarms in production and dormitory buildings. [HSE.5.1]
2. The factory does not install anti-toppling over devices on two argon gas cylinders in the welding workshop. [HSE.14.1]
3. The factory provides masks and rubber gloves to workers doing product cleaning jobs. However, one cleaning worker is not wearing the provided masks or rubber gloves while in contact with banana oil. [HSE.8]
4. Three out of three food service workers are not wearing hairnets, gloves or aprons while preparing and serving food. [HSE.22.1]
5. The factory has never conducted the inspection for the lightning protection system in both production and dormitory buildings. [HSE.13]
6. The factory has provided the on-job occupational health examination to 54 out of 200 workers with hazardous exposure to noise and chemicals, while never provided the pre-job or post-job occupational health examination to those eligible workers. [HSE.1]

Local Law or Code Requirement

The Code for Design of Automatic Fire Alarm System (GB50116-2013), Article 4.8.5; Regulation on Safety Supervision of Gas Cylinders (2000), Article 79; The Law of the China on Work Safety, Article 42; China Law on Food Safety, Article 33; Technical Specifications for Inspection of Lightning Protection System in Building, Article 6; The PRC Law of Prevention and Control of Occupational Diseases, Article 35; FLA Workplace Code (Health, Safety and Environment Benchmarks HSE.1, HSE.5, HSE.8, HSE.13, HSE.14 and HSE.22)

Recommendations for Immediate Action

1. Install the centralized fire alarm system in the factory.
2. Install anti toppling over devices on argon gas cylinders in the welding workshop.
3. Train and supervise all workers to use personal protective equipment (PPE) consistently during working hours.
4. Strengthen training and supervise food service workers to wear hairnets, gloves and aprons while preparing and servicing food.
5. Conduct the annual inspection on the lightning protection system and maintain inspection reports.
6. Provide pre-job, on-job and post-job occupational health examination to all workers with hazardous exposure to noise and chemicals.