



FAIR LABOR
ASSOCIATION®

INDEPENDENT EXTERNAL ASSESSMENT REPORT



COMPANIES: Tommy Bahama Group

COUNTRY: China

ASSESSMENT DATE: 09/03/20

ASSESSOR: Openview

PRODUCTS: Apparel

NUMBER OF WORKERS: 350

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	4
Health, Safety, and Environment	6
Nondiscrimination	2

Findings and Action Plans

FINDING NO.1

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Recruitment, Hiring & Personnel Development

Finding Explanation

The job application forms include questions regarding marital status and native place, which may lead to discrimination during the recruitment process. [ND.2.1]

The factory does not sign employment contract of indefinite duration (permanent contracts) with eligible workers after two consecutive fixed-term employment contracts. [ER.10.1]

Local Law or Code Requirement

The China Labor Law, Article 12; The China Labor Contract Law, Article 14. FLA Workplace Code (Non-discrimination Benchmark ND.2; Employment Relationship Benchmark ER.10)

Recommendations for Immediate Action

1. <!--[endif]-->Remove questions regarding marital status and native place from the job application forms. Employment decisions are to be made solely on the basis of a person's qualifications and abilities.
2. <!--[endif]-->Sign employment contracts of indefinite duration (permanent contracts) with all eligible workers after two consecutive fixed-term employment contracts.

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. The company will delete the marital status and place of residence in the application form according to the requirements of the FLA workplace.
2. The company will sign a non-fixed-term contract for the employee who signs the labor contract for the third time as required.
3. The factory will comply with the anti-discrimination policy in accordance with the requirements of the FLA workplace and conduct an anti-discrimination self-assessment (including possible discrimination in the recruitment process)
4. The personnel of the personnel department will check the labor contracts of all employees to ensure that the employees who have worked for more than 10 years and signed the labor contract for the third time sign a contract with no fixed term.

FINDING NO.2

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Compensation

Finding Explanation

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]

The factory does not provide social insurance to all eligible workers. There are total 115 workers working in the factory, including 15 workers over the retirement age. Only 60 out of 100 eligible workers (60%) were provided with medical insurance, 59 out of 100 eligible workers (59%) were provided with work-related injury and pension insurances, and 58 out of 100 eligible workers (58%) were provided with unemployment and maternity insurances in the latest payment month of September 2020. In addition, the factory bought commercial accidental injury insurance for 76 workers, with a valid period from April 24, 2020 to April 24, 2021. [C.1, C.10.1]

The factory contributes to medical insurance based on worker's average monthly wage of previous year, which is in line with legal requirement. However, the factory contributes to the other four types of social insurances (work-related injury, maternity, unemployment and pension insurances) based on local minimum requirement of CNY 3,376 (USD 493) per month, which is lower than the average monthly wage for about 95% of workers, ranging from CNY 3,500 (USD 511) to CNY 4,000 (USD 584). [C.10.1]

The factory does not contribute to the Housing Provident Fund for any workers. [ER.22.1]

Local Law or Code Requirement

The China Labor Law, Article 72; 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 (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 social insurance to all eligible workers.
3. <!--[endif]-->Contribute to social insurance based on worker's average monthly wage of previous year.

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

COMPANY ACTION PLANS

Action Plan no 1.

Description

Annual leave

1. The factory has formulated documents stipulating that the cumulative working hours of workers include cumulative work experience
2. The factory will calculate the cumulative working years of workers in the annual leave calculation in the future.

Social insurance

1. Since social insurance needs to be borne by individuals, many employees are unwilling to purchase it, but the factory will purchase commercial insurance for employees who do not purchase social insurance.
2. Promote the importance of knowledge of social insurance to employees and increase their participation rate

Medical insurance basis

1. The average salary of factory employees last year was RMB 3500-4000 , which exceeded the average salary of local employees last year RMB3375 .
2. The factory will pay social insurance premiums based on the average monthly salary of employees in the previous year in accordance with relevant laws and regulations.

Housing Provident Fund

1. The factory will go to relevant departments to learn about housing provident fund matters as required.
2. The factory will discuss with the management and employee representatives on whether the current situation of the factory can apply for housing provident fund for employees.

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Hours of Work

Finding Explanation

Overtime hours exceed legal limit of 36 hours per month. Time records for the period from August 2019 to August 2020 indicate that the monthly overtime for 95% of workers exceeded 36 hours in all reviewed months except February 2020, with a maximum of 68 overtime hours in June 2020. [HOW.1.1]

The factory sets production plan based on 58 to 60 hours per week (a total of six days per week with two overtime hours on each workday and eight to ten overtime hours on Saturday). Factory management sets production targets and production system at a level that workers need to work 18 to 20 overtime hours per week. [ER.24]

Local Law or Code Requirement

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

Recommendations for Immediate Action

1. <!--[endif]-->Ensure overtime hours do not exceed legal limit of 36 hours per month.

2. Set production plan based on regular working hours. Adjust production targets so that workers do not need to work overtime to meet them.

3. <!--[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. According to the production plan, adjust the production target to control the employees' overtime
2. Regularly hold production meetings with the production department to improve production efficiency to control employees' overtime hours
3. Regularly hold meetings with the technical department to see if the production process can be improved and production efficiency can be improved to control the overtime hours of employees

FINDING NO.4

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 Benchmarks FOA.2 and FOA.10)

COMPANY ACTION PLANS

Action Plan no 1.

Description

1. The company will not interfere with and restrict the right of workers to associate freely, nor will they be punished or discriminated against because of their participation in a trade union, such as refusing to hire, threatening to expel, restricting promotion, restricting wage increases, restricting overtime or arranging excessive overtime , Or transfer to a post with poor working conditions as a punishment.
2. When the freedom of association and collective bargaining rights are restricted by law, the company also tries to assist all employees to obtain independent, free association and negotiation rights through similar channels.
3. The company will ensure that such employee representatives are not discriminated against and can maintain contact with the employees they represent at the workplace.

Company Action Plan Update

1. The factory has set up employee representatives. Workers who have opinions can report to the company or the labor department to improve labor relations.

FINDING NO.5

IMMEDIATE ACTION REQUIRED

FINDING TYPE: Health & Safety

Finding Explanation

The fire alarms are not centralized and do not have backup battery in one flat building used as cutting section . [HSE.5.1]
The factory does not coordinates the fire safety concerns/risks or conducts joint fire evacuation drill with the company that is renting the third floor of the production building from the factory. [HSE.5.1]
The factory has never conducted an inspection for one air tank, which was manufactured in 2009 and has exceeded the recommended service life of seven years. In addition, the factory has never conducted inspection for the safety valves and pressure gauges used on the air tank or inspection for two electrical boilers. [HSE.14.1]
The factory has not obtained the report on inspection and acceptance of completed construction project for the flat building used as cutting section, which was constructed after July 2001 with a construction area of about 250 square meters. [HSE.4]
The factory mainly produces garments, which is classified as general-risk-level. However, the factory has not conducted legally required the "Three Simultaneities Assessment" for occupational health, either when construction completed in old building in 2012 or when moved to current location in 2018. [HSE.4]

Local Law or Code Requirement

Code for design of automatic fire alarm system (GB50116-2013), Article 10.1.1; Special Appliance Quality Safety Monitoring Regulation, Article 28; The Construction Law of the People's Republic of China, Article 61; Law of the People's Republic of China on the Prevention and Control of Occupational Diseases, Article 18. FLA Workplace Code (Health, Safety and Environment Benchmarks HSE.4, HSE.5.1 and HSE.14.1)

Recommendations for Immediate Action

- . Install centralize fire alarm system with backup battery in one flat building used as cutting section.
- . Coordinate the fire safety concerns/risks and conduct joint fire evacuation drill with the company sharing the same production building.
- 3. Conduct annual inspection for the electrical boilers, air tank as well as the safety valves and pressure gauges used on the air tank by a qualified company. Obtain the valid inspection report.
- 4. Obtain the report on inspection and acceptance of completed construction project for the flat building used as cutting workshop.
- 5. Conduct Current Occupational Hazards Assessment by a qualified company and obtain the assessment report.

COMPANY ACTION PLANS

Action Plan no 1.

Description

Fire alarm:

1. The factory has installed a backup power supply for alarm bells as required.
2. The internal staff of the factory inspect and maintain the alarm bell backup electrical box every month.
3. The factory signs a maintenance contract with a qualified unit, and the third-party qualified unit maintains and maintains the alarm system of the factory every month.

Fire drill:

1. The factory has conducted a joint fire drill with the third floor company on October 17, 2020
2. The factory will regularly communicate with the shared plant (the company on the third floor) on fire protection meetings as required, and discuss and resolve the fire hazards/risks found during the investigation and prevent them from occurring.
3. The factory will conduct a fire drill at least once a year with the shared factory building (the company on the third floor)

Air Tank:

1. After discussion by the factory management, the expired gas storage tank has been applied for scrapping and removed and removed
2. If the factory needs to use gas storage tanks, the pressure gauge and safety valve will be inspected according to the requirements of special equipment
3. The electric boiler used in the factory is 29L, and it is not necessary to inspect it after consulting the management department. "Special Equipment Safety Supervision Regulations Article 99"

Report on inspection and acceptance of completed construction project

1. Have requested the landlord for the completion acceptance report of the cutting workshop

Occupational hazard assessment report

1. The factory has signed an occupational hazard assessment report with a third party, and waits for it to arrange a time for the occupational hazard assessment at the factory.
2. The factory will consult relevant departments on whether a legal three-simultaneity assessment is required based on the evaluation made by a third party.

Company Action Plan Update

Fire alarm:

1. The factory has installed a backup power supply for alarm bells as required.

Fire drill:

1. The factory has conducted a joint fire drill with the third floor company on October 17, 2020

Air Tank:

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