



2011

FAIR LABOR ASSOCIATION INDEPENDENT EXTERNAL MONITORING REPORT

COMPANY: Sun Mountain Sports
COUNTRY: China
FACTORY CODE: 12600151289J
MONITOR: Social Compliance Service Asia
Ltd.
AUDIT DATE: July 19, 2011
PRODUCTS: Apparel
PROCESSES: Cutting, Sewing, Finishing,
Packing
NUMBER OF WORKERS: 404

FLA Comment: This report was submitted with a corresponding corrective action plan to the FLA and was reviewed by FLA staff. In an effort to improve the effectiveness of remediation, the FLA has provided feedback and recommendations to the company, however the recommendations have not been agreed or incorporated by the company. The report is posted in its current state and is considered finalized. Updates on the progress of the corrective action will be posted when received by the company.



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Wages, Benefits and Overtime Compensation: Holidays, Leave, Legal Benefits and Bonuses

WBOT.5 Employers shall provide all legally mandated holidays, leave, benefits and bonuses, such as official holidays, annual leave, sick leave, severance payments and 13th month payments, to all eligible workers within legally defined time periods. In addition, all leave and bonuses shall be calculated correctly. (S)

Noncompliance

Explanation: 1) It was noted that the factory did not provide paid annual leave to workers who worked more than one year in the factory.

2) It was noted that the factory did not provide paid sick leave to workers.

3) As per factory policies, it was noted that factory would only pay 75% of the normal wage to workers during maternity leave if the workers worked less than one year in the factory.

4) As per the factory provided social insurance receipt of June 2011, the factory purchased injury social insurance for 403 out of 403 employees, medical insurance for 399 out of 403 employees, unemployment and pension insurance for 112 out of 403 employees, and maternity insurance for 181 out of 403 employees. No other commercial insurance was provided to workers. Factory stated workers were not willing to participate in pension and unemployment insurance because they wanted to avoid paying the insurance fee. The related agreement between the employees and the factory was provided for review.

Sources: document review, worker interviews and management interviews

Legal References: (1) Article 2 of the Regulations on Annual Leave for Employees (2) Article 59 of Opinions on Matters of Carrying out Labor Law of the People's Republic of China of LMI [1995] No. 309. (3) Article 62 of the Labor Law of the PRC (4) Article 19, 20, 29, 39 and 49 of social insurance Law of PRC

Plan Of Action: 1) Our workers have always been paid their annual leave, but it was under a different name and not obvious to the auditors. We have renamed the related entry to clarify this.

2) Going forward, sick leave will be provided to workers in accordance with the local laws.

3) Going forward, we will provide maternity leave wages to workers in accordance with the local laws.

4) This is the choice of the individual employee, which we will respect. No plan of action needed.

Deadline Date: 11/19/2011

Action Taken:

Plan Complete: No

Plan Complete Date:

Wages, Benefits and Overtime Compensation: Minimum Wage

WBOT.2 Employers shall pay workers at least the legal minimum wage or the prevailing industry wage, whichever is higher. (S)

Noncompliance

Explanation: It was noted that there was no system or practice to guarantee all workers earn the local minimum wage in the factory and it was noted that some of the workers' wages fall below the minimum wages, for example, there was a worker in the sewing section that was paid RMB1.7 per hour in April 2011, which was below the local minimum wage of RMB6.32 per hour.

Sources: document review, worker interviews and management interviews

Legal Reference: Article 48 of the Labour Law of the People's Republic of China

Plan Of Action: This is due to an agreement we have with new workers, in order to promote enthusiasm/efficiency. Upon reaching the 3rd month of employment, a lump sum payment will be made to the employee to compensate for the difference. We will set up the minimum wage policy before the end of this year.

Deadline Date: 12/30/2011

Action Taken:

Plan **No**
Complete:

Plan
Complete
Date:

Wages, Benefits and Overtime Compensation: Premium/Overtime Compensation

WBOT.10 The factory shall comply with all applicable laws, regulations and procedures governing the payment of premium rates for work on holidays, rest days, and overtime. (S)

Noncompliance

Explanation: It was noted that there was no system or practice to guarantee all workers would receive sufficient overtime compensation which was not less than 150% and 200% of the normal wages for weekday overtime and rest day overtime, respectively. For example, there was a sewing worker who was paid RMB130.7 for 39 hours of weekday overtime and 71.5 hours rest day overtime in April 2011 instead of at least RMB575.12 as per the legal requirement.

Sources: time and payment records review, worker interviews and management interview

Legal Reference: Article 44 of PRC Labor Law

Plan Of Action: We will set up the minimum wage policy before the end of this year.

Deadline Date: 12/30/2011

Action Taken:

Plan **No**
Complete:

Plan
Complete
Date:

Freedom of Association: Right to Freely Associate

FOA.2 Workers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The right to freedom of association begins at the time that a worker seeks employment, and continues through the course of employment, including eventual termination of employment, and is applicable as well to unemployed and retired workers. (S)

Noncompliance

Explanation: [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 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 does stipulate 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 of consulting 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.](#)

Plan Of Action: Cannot respond as no findings are provided.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Harassment or Abuse: Discipline/Monetary Fines and Penalties

H&A.8 Employers shall not use monetary fines and penalties as a means to maintain labor discipline, including for poor performance or for violating company rules, regulations, and policies. (S)

Uncorroborated Evidence of Noncompliance

Explanation: It was noted that monetary fines were imposed on employees, which were included in factory rules and notices, for example, workers would be fined RMB10-500 if they violated the factory rules and policies, however, no actual cases of monetary fines were noted and reported during the audit.

Sources: document review, worker interviews and management interviews

Legal Reference: Article 50 of the Labor Law of the People's Republic of China Possible

Plan Of Action: This has been corrected immediately and the related policies have been removed.

Deadline Date: 10/24/2011

Action Taken:

Plan Complete: No

Plan Complete Date:

Child Labor: Proof of Age Documentation

CL.3 Employers shall collect and maintain all documentation necessary to confirm and verify date of birth of all workers, such as birth certificates. In addition, the employers shall take reasonable measures to ensure such documentation is complete and accurate. (P)

Noncompliance

Explanation: It was noted that the factory could not provide a proof of age document and a labor contract for at least one worker (#100092) for review.

Sources: document review, worker interviews and management interviews

Legal Reference: Article 10 of the Law of the People's Republic of China on Employment Contract; Article 7 of China Labor Contract Regulation

Plan Of Action: This is an issue that we overlooked and we will strictly enforce our hiring policy in the future. We have put into our factory rules that the person cannot be hired if his photo on his ID card is not clear. We have also completed a full check after the audit to make sure there is no child labor.

Deadline Date: 10/24/2011

Action Taken:

Plan Complete: No

Plan Complete Date:

Child Labor: Employment of Young Workers

CL.6 Employers shall comply with all relevant laws that apply to young workers (i.e., those between the minimum working age and the age of 18) including regulations relating to hiring, working conditions, types of work, hours of work, proof of age documentation, and overtime. (P)

Noncompliance

Explanation: There is at least one young worker (#100092) who was born on November 26, 1993 and hired on February 25, 2010. However, no medical check was provided as stipulated by law and there was no proper registration with the local authority either.

Sources: document review, worker interviews and management interviews

Legal Reference: Article 6 and Article 9 of Circular of the Ministry of Labor on Issuing the Provision on Special Protection for Juvenile Workers of LMI [1994] No. 498

Plan Of Action: A physical examination for the young employee has been arranged.

Deadline Date: 10/24/2011

Action Taken:

Plan Complete: No

Plan Complete Date:

Health and Safety: Permits and Certificates

H&S.8 The employer shall at all times be in possession of all legally required and valid permits and certificates related to health and safety issues, such as those related to the purchase and storage of chemicals, fire safety inspections, inspection of machinery, and (chemical) waste disposal. (P)

Noncompliance

Explanation: It was noted that the factory had a fire permit that did not cover one block of the 2-story building that was attached to the security room.

Sources: factory tour, document review and management interviews

Legal Reference: Article 13 of Fire Prevention Law of the People's Republic of China

Plan Of Action: The 2-story building is neither a production facility, office, nor a warehouse. Workers cannot access it. No action plan needed.

Deadline Date: 10/24/2011

Action Taken:

Plan Complete: No

Plan Complete Date:

Health and Safety: Evacuation Requirements and Procedure

H&S.9 All applicable legally required or recommended elements of safe evacuation (such as posting of evacuation plans, the installation and maintenance of an employee alarm and emergency lighting systems, ensuring aisles/exits are not blocked and that workers are not blocked within their workstations, employee education, evacuation procedures, etc.) shall be complied with. Workers shall be trained in evacuation procedures. Alarm systems shall be regularly tested and evacuation drills shall be undertaken at least annually. (S)

Noncompliance

Explanation: It was noted that the factory only conducted one fire drill in a year, and the latest fire drill was conducted in December 2010.

Sources: document review, worker interviews and management interviews

Legal Reference: Article 40 of Fire Prevention Regulation for Government offices, Organizations and Enterprises Possible

Plan Of Action: A fire drill was held in March 2011 as well. A record of this has been sent to FLA for review. The recent 2 fire drills were held on June 18th and August 27th, and next fire drill will be held in December.

Deadline Date: 12/30/2011

Action Taken:

Plan Complete: No

Plan Complete Date:

Health and Safety: Safety Equipment and First Aid Training

H&S.10 All safety and medical equipment (such as fire fighting equipment, first aid kits, etc.) shall be available in sufficient numbers throughout the factory, maintained and stocked as prescribed and easily accessible to workers. A sufficient number of workers shall be trained in first aid and fire fighting techniques. (S)

Noncompliance

Explanation: 1) It was noted that at least 2 fire extinguishers were blocked by sundries; for example, the fire extinguishers in the material warehouse in 1/F of the production building were blocked by materials.

2) It was noted that there were no first aid supplies stocked in the first aid kits in the workshop or the dormitory.

3) It was noted that the factory could not provide the first aiders' training certificate for review.

4) It was noted that the factory did not install the fire sprinkler system.

Sources: factory walkthrough, document review, worker interviews and management interviews

Legal Reference: (1) Article 28 of Fire Prevention Law of the People's Republic of China (2) Article 23 of Law of the People's Republic of China on Prevention and Control of Occupational Diseases. (3) Article 87 of Factory Safety and Health Rules (4) Article 8.5.1 of Code of Design on Building Fire Protection and Prevention (Extract)

Plan Of Action:

1) Goods have been removed and managers have been made aware of the issue.

2) All medical supplies have been removed from all the first aid kits across the factory, and centrally stored inside the first aid room. This is because some workers are allergic to certain medical items. The empty first aid kits have been removed.

3) Evidence has been sent to FLA for review

4) Our factory was built and received approval from the fire department in 2002. The certificate has been sent to FLA for review. The installment of the fire sprinkler system will be finished in March 2012.

Deadline Date: 03/30/2012

Action Taken:

Plan **No**
Complete:

Plan
Complete
Date:

Health and Safety: Ventilation/Electrical/Facility Installation and Maintenance

H&S.17 All necessary ventilation, plumbing, electrical, noise and lighting services shall be installed and maintained to conform to applicable laws and in such a manner as to prevent or minimize hazardous conditions to workers in the facility. (S)

Noncompliance

Explanation: It was noted that goods in the workshop blocked at least 3 electrical control boxes.

Sources: factory tour, worker interviews and management interviews

Legal Reference: Article 6.5 of the General Guide for Safety of Electric User of PRC
Possible

Plan Of Action: Goods have been removed and managers have been made aware of the issue. We will arrange for supervisors to take responsibility for this issue, and they will be on patrol daily.

Deadline Date: 12/30/2011

Action Taken:

Plan **No**
Complete:

Plan
Complete
Date:

Health and Safety: Machinery Maintenance and Worker Training

H&S.18 All production machinery, equipment and tools shall be regularly maintained and properly guarded. Workers shall receive training in the proper use and safe operation of machinery, equipment and tools they use. Employers shall ensure safety instructions are either displayed/posted near all machinery or are readily accessible to the workers. (S)

Noncompliance

Explanation: It was noted that at least 3 auto-sewing machines were not equipped with a protective needle shield.

Sources: factory tour, worker interviews and management interviews

Legal Reference: Article 6.1.6 of Code of Design of Manufacturing Equipment Safety and Hygiene of PRC

Plan Of Action: This has been rectified and safety devices have been installed.

Deadline Date: 11/18/2011

Action Taken:

Plan Complete: No

Plan Complete Date:

Hours of Work: General Compliance Hours of Work

HOW.1 Employers shall comply with all local laws, regulations and procedures concerning hours of work, public holidays and leave. (S)

Noncompliance

Explanation: 1) It was noted that workers' daily overtime hours exceeded 3 hours a day, and weekly working hours exceeded 60 hours in most of the months from July 2010 to June 2011, including in July 2010, August 2010, September 2010, October 2010, November 2010, April 2011, June 2011, etc. For example, workers in the finishing section worked overtime till 23:00 with 4.5 hours of night overtime on May 3, 2011, and worker weekly working hours exceeded 60 hours and went up to 84 hours from June 13, 2011 to June 19, 2011.

Sources: document review, worker interviews and management interviews

Legal Reference: (1) Article 41 of the Labor Law of the PRC

Plan Of Action: Apollo has adjusted the daily work hours so that they are 10 hours per day and 6 days per week.

Deadline Date: 11/19/2011

Action Taken:

Plan Complete: No

Plan Complete Date:

Hours of Work: Rest Day

HOW.2 Workers shall be entitled to at least one day off in every seven-day period. If workers must work on a rest day, an alternative day off must be provided within that same seven-day period or immediately following the seven-day period. (P)

Noncompliance

Explanation: It was noted that most of the workers were not guaranteed a rest day on the seventh day in most of the months from July 2010 to June 2011. For example, one worker worked a consecutive 24 days from April 6, 2011 to April 29, 2011.

Sources: time records and production related records, worker interviews and management interviews

Legal Reference: Article 38 of the Labour Law of the People's Republic of China Possible

Plan Of Action: Apollo has adjusted daily work hours so that they are 10 hours per day and 6 days per week.

Deadline Date: 11/19/2011

Action Taken:

Plan Complete: No

Plan Complete Date:

Hours of Work: Overtime/Reduced Mandated Overtime

HOW.8 The employer shall demonstrate a commitment to reduce overtime and to enact a voluntary overtime system, including for overtime mandated to meet extraordinary business circumstances. (P)

Noncompliance

Explanation: It was noted that workers were required to use their leave when they did not participate in overtime work.

Sources: document review, worker interviews and management interviews

Legal Reference: Article 31 of Law of the People's Republic of China on Employment Contracts

Plan Of Action: This procedure is no longer in use.

Deadline Date: 10/24/2011

Action Taken:

Plan Complete: No

Plan Complete Date:
