



2008

FAIR LABOR ASSOCIATION INDEPENDENT EXTERNAL MONITORING REPORT

COMPANY: Under Armour
COUNTRY: China
FACTORY CODE: 430015969G
MONITOR: ALGI
AUDIT DATE: November 13 – 14, 2008
PRODUCTS: Hats, Scarves, Gloves
PROCESSES: Yarn Spinning, Knitting,
Sewing, Ironing, Packing
NUMBER OF WORKERS: 306



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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: Noncompliance: 112 employees are enrolled in all 5 kinds of social insurance; 194 migrant employees are all enrolled in comprehensive social insurance for migrant employees which only covers work injury, medical and pension insurances. In Shanghai, migrant workers can only be enrolled in comprehensive social insurance.

Law: Art. 72 of PRC Labor Law (Chapter 9 Social Security and Benefit): Management and employees must participate in social insurance programs. Art.73 PRC Labor Law: Workers shall be provided with social insurance benefits under the following circumstances: (a) retirement, (b) illness, (c) disability caused by work-related injury or occupational disease, (d) unemployment and (e) childbearing. Art. 73 of PRC Labor Law (Chapter 9 Social Insurance and Welfare): Social insurance contribution shall be fulfilled in full and in time.

Uncorroborated evidence of noncompliance: Since inconsistencies were found between time records and worker interviews, it cannot be verified whether piece rate workers are provided with paid legal holidays.

Law: Art. 2 of Measures on Having a holiday for National Annual Leaves and Memorial Days: 1) New Year 1-day holiday (January 1), 2) Spring Festival 3-day holiday (lunar New Year's Eve, first 2 days of lunar January), 3) Tomb Sweeping Day 1-day holiday (lunar Tomb-Sweeping Day), 4) Labor Day 1-day holiday (May 1), 5) Dragon Boat Festival 1-day holiday (lunar Dragon Boat Festival), 6) Mid-Autumn Festival 1-day holiday (lunar Mid-Autumn Festival) , 7) National Day 3-day holiday (October 1, 2, 3).

Plan Of Action: Factory should provide all employees with all social insurance coverage/benefits to which they are entitled legally, i.e., 1) pension, 2) medical, 3) industrial injury, 4) unemployment and 5) maternity (See Articles 72 and 73 of Labor Law of the People's Republic of China). Also, factory should provide workers with social insurance benefits under the following circumstances: (a) retirement, (b) illness, (c) disability caused by work-related injury or occupational disease, (d) unemployment and (e) childbearing. Confirm factory provides all workers, including piece rate workers, with paid holidays/leave to which they are legally entitled. Factory should itemize and record any leave, and its accrual, and document each worker's use of paid leave in their personnel file. Factory should conduct documented educational sessions about leave with workers.



Deadline Date: 05/18/2009

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)

Uncorroborated Evidence of Noncompliance

Explanation: As per time record review, one Saturday in October one worker from sewing department worked 1 hour, other workers from piping and warehouse departments worked 5 and 6.5 hours. Auditors found these workers and interviewed them individually. None said they had asked for leave that day and that if Saturday OT was arranged, they usually worked 8 or 11 hours. Since inconsistencies found between time records and worker interviews, could not be verified if workers were paid above minimum wage.

Law: Art. 48 of PRC Labor Law (Chapter 5 Wages and Salaries): Employer shall pay workers wages no lower than government established minimum. Article 12 of Regulation for Minimum Wage: Providing that an employee had worked normally, the payment he could get should be no less than minimum wage except for the following items: (a) OT payment, (b) special allowance for middle shift, night shift, working under high temperature, low temperature, mine or toxic environment and (c) other benefit regulated by law and regulations.



Plan Of Action: Factory should ensure workers paid no less than correct minimum regular hourly rates for each hour they work (please see Article 48 of Labor Law of the People's Republic of China). Factory should review its payment, work and attendance/time records for Sewing, Piping and Warehouse Sections for Saturdays in October 2008. Based upon review, factory must take any necessary corrective action concerning past practice, such as reimbursing workers for any past underpayments and documenting any such payments in any affected workers' pay slips and personnel files.

Deadline Date: 02/12/2009

Action Taken:

Plan Complete: No

Plan Complete Date:



Wages, Benefits and Overtime Compensation: Payment for All Hours Worked

WBOT.7 Workers shall be paid for all hours worked in a workweek. Calculation of hours worked must include all time that the employer allows or requires the worker to work. (S)

Uncorroborated Evidence of Noncompliance

Explanation: As per time record review, one Saturday in October one worker from sewing department worked 1 hour, other workers from piping and warehouse departments worked 5 and 6.5 hours. Auditors found these workers and interviewed them individually. None said they had asked for leave that day and that if Saturday OT was arranged, they usually worked 8 or 11 hours. Since inconsistencies found between time records and worker interviews, could not be verified if workers were paid above minimum wage.

Plan Of Action: Factory should ensure workers paid no less than correct minimum regular hourly rates for each hour they work (please see Article 48 of Labor Law of the People’s Republic of China). Factory should review its payment, work and attendance/time records for Sewing, Piping and Warehouse Sections for Saturdays in October 2008. Based upon review, factory must take any necessary corrective action concerning past practice, such as reimbursing workers for any past underpayments and documenting any such payments in any affected workers’ pay slips and personnel files.

Deadline Date: 02/12/2009

Action Taken:

Plan Complete: No

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)

Uncorroborated Evidence of Noncompliance

Explanation: As per time record review, one Saturday in October one worker from sewing department worked 1 hour, other workers from piping and warehouse departments worked 5 and 6.5 hours. Auditors found these workers and interviewed them individually. None said they had asked for leave that day and that if Saturday OT was arranged, they usually worked 8 or 11 hours. Since inconsistencies found between time records and worker interviews, could not be verified whether overtime compensation was accurately paid or not.

Law: Art. 44.1 of PRC Labor Law: Employer shall pay workers no less than 150% of their regular wages if they are required to work overtime. Art. 44. 2 of PRC Labor Law: Payment of wages to laborers should be no less than 200% of normal wage if the employees are required to work on a day of rest and no deferred rest can be taken. Art. 44.3 of PRC Labor Law: Payment to workers should be no less than 300% of normal wage if they are required to work during a legal holiday.

Plan Of Action: Factory should ensure workers paid no less than the correct overtime rates for all overtime worked (i.e., 150% of basic hourly rate for extra work performed on normal workday, 200% for work performed on day off and 300% for work performed on legal holiday), including piece rate workers, regardless of type of piece they are working on and current level of production demand (See Article 44.1 of Labor Law of the People's Republic of China). Specifically, factory should review payroll records from October 2008. Factory also should: (a) review its past attendance records, time records and payroll records, (b) reimburse workers for any past underpayments and (c) document any such payments in workers' pay slips and in affected workers' personnel files.

Deadline Date: 02/12/2009

Action Taken:

Plan Complete: No

**Plan
Complete
Date:**

Forced/Compulsory Labor: Other - Forced Labor

Other

Noncompliance

Explanation: Facility does not have a written policy on prohibition of Forced Labor.

Plan Of Action: Factory should: 1) develop written policies on issues such as Forced Labor, Child Labor, Non-Discrimination and Freedom of Association and 2) conduct documented educational sessions with workers about its policies. Documentation should be kept in each worker's personnel file and include: (a) list of topics covered, (b) worker's signature and (c) signature of a factory representative.

Deadline Date: 03/30/2009

Action Taken:

Plan Complete: No

**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: Workers have no right to freely associate. As per worker interview, workers have no knowledge of their right to freely associate. Audited factory is a unionized factory established in 2001. Trade union leader is factory management. As per document review, 2nd union branch election was held November 23, 2006. However, no evidence showed union leader was elected democratically or that union represented workers. Factory also appointed a Health and Safety Committee (composed of both factory management and workers) in charge of factory health and safety issues.

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 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.

Law: Art. 7 of PRC Labor Law: Laborers have the right to participate in and organize trade unions. Unions represent and safeguard the legal interests of workers and proceed with activities independently.



Plan Of Action: Factory should: 1) develop written policies on issues such as, Forced Labor, Child Labor, Non-Discrimination and Freedom of Association and 2) conduct documented educational sessions with workers about its policies. Documentation should be kept in each worker's personnel file and include: (a) list of topics covered, (b) workers' signature and (c) signature of a factory representative. Please confirm that the factory has in place established and legally compliant procedures to ensure democratic (confidential vote, not by appointment) election of its Union's leadership. Please confirm that going forward, records evidencing that the above procedures were followed, the voting process employed, and the outcome of any future elections, will be kept in the factory. Factory must ensure the Union represents factory's workers as well as its management.

Deadline Date: 05/18/2009

Action Taken:

Plan Complete: No

Plan Complete Date:



Freedom of Association: Other - Freedom of Association and Collective Bargaining

Other

Noncompliance

Explanation: Factory has not established a policy on freedom of association.

Plan Of Action: Factory should: 1) develop written policies on issues such as, Forced Labor, Child Labor, Non-Discrimination and Freedom of Association and 2) conduct documented educational sessions with workers about its policies. Documentation should be kept in each worker's personnel file and include: (a) list of topics covered, (b) worker's signature and (c) signature of a factory representative.

Deadline Date: 03/30/2009

Action Taken:

Plan Complete: No

Plan Complete Date:



Child Labor: Other - Child Labor

Other

Noncompliance

Explanation: Facility does not have a written policy on prohibition of Child Labor.

Plan Of Action: Factory should: 1) develop written policies on issues such as, Forced Labor, Child Labor, Non-Discrimination and Freedom of Association and 2) conduct documented educational sessions with workers about its policies. Documentation should be kept in each worker's personnel file and include: (a) list of topics covered, (b) worker's signature and (c) signature of a factory representative.

Deadline Date: 03/30/2009

Action Taken:

Plan Complete: No

Plan Complete Date:

Non-Discrimination: Other - Non-Discrimination

Other

Noncompliance

Explanation: Factory has not established a written policy on non-discrimination.

Plan Of Action: Factory should: 1) develop written policies on issues such as, Forced Labor, Child Labor, Non-Discrimination and Freedom of Association and 2) conduct documented educational sessions with workers about its policies. Documentation should be kept in each worker's personnel file and include: (a) list of topics covered, (b) workers' signature and (c) signature of a factory representative.

Deadline Date: 03/30/2009

Action Taken:

Plan Complete: No

Plan Complete Date:



Code Awareness:

GEN.2 Ensure that all Company factories as well as contractors and suppliers inform their employees about the workplace standards orally and through the posting of standards in a prominent place (in the local languages spoken by employees and managers) and undertake other efforts to educate employees about the standards on a regular basis.

Noncompliance

Explanation: Under Armour failed to provide training on Code elements to both factory management and workers in the factory.

Plan Of Action: Factory should prominently post Under Armour Code of Conduct posters in the factory in language(s) workers understand. Additionally, factory should ensure that Code of Conduct is posted in places where workers feel comfortable reading it. Finally, factory should conduct documented educational meetings with its employees about its workplace standards and the Under Armour Code of Conduct.

Deadline Date: 02/28/2009

Action Taken:

Plan Complete: No

Plan Complete Date:

Code Awareness:

GEN.3 Develop a secure communications channel, in a manner appropriate to the culture and situation, to enable Company employees and employees of contractors and suppliers to report to the Company on noncompliance with the workplace standards, with security that they shall not be punished or prejudiced for doing so.

Noncompliance

Explanation: Under Armour failed to develop a secure communication channel in the factory to enable its workers to report to it on noncompliance.

Plan Of Action: Factory should: 1) develop written procedures for employees to securely and confidentially bring work-related issues and complaints to management’s attention, 2) install locked suggestion box in private location, 3) schedule regular, direct meetings, between top management and its workers without supervisors being present or involved in meetings, 4) maintain log in which records receipt of workers’ complaints/grievances and indicates how they were resolved, 5) ensure that grievance procedures provide protection of a worker’s privacy where needed, 6) ensure that grievance procedures provide protection of a worker against possible retribution and 7) inform workers about new grievance procedures verbally and in writing. This should be documented.

Deadline Date: 02/28/2009

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)

Uncorroborated Evidence of Noncompliance

Explanation: As per time record review, one Saturday in October one worker from sewing department worked 1 hour, other workers from piping and warehouse departments worked 5 and 6.5 hours. Auditors found these workers and interviewed them individually. None said they had asked for leave that day and that if Saturday OT was arranged, they usually worked 8 or 11 hours. Since inconsistencies were found between time records and worker interviews, it could not be verified whether workers had at least 1 day off in every 7-day period.

Law: Art. 38 of PRC Labor Law: Employer shall guarantee that its laborers have at least one day off per week. Reply to Questions on Working Hours, Art.9: (a) Employer shall negotiate with Union and employees on how to implement system of comprehensive calculated working hours and (b) taking manual work regulated as third level or higher, laborers shall not work consecutively exceeding 11 hours a day and at least have a day off a week.

Plan Of Action: Except under extraordinary business circumstances, factory should ensure that workers receive at least 1 day off in every 7-day period (see Article 38 of the Labor Law of the People's Republic of China). Factory should implement adequate systems and controls (hire more workers or add shifts) in order to ensure compliance with this standard.

Deadline Date: 02/12/2009

Action Taken:

Plan Complete: No

Plan Complete Date:



Hours of Work: Time Recording System

HOW.6 Time worked by all workers, regardless of compensation system, shall be fully documented by time cards or other accurate and reliable recording systems such as electronic swipe cards. Employers are prohibited from maintaining multiple time-keeping systems and/or false records for any fraudulent reason, such as to falsely demonstrate working hours. Time records maintained shall be authentic and accurate. (P)

Uncorroborated Evidence of Noncompliance

Explanation: As per time record review, one Saturday in October one worker from sewing department worked 1 hour, other workers from piping and warehouse departments worked 5 and 6.5 hours. Auditors found these workers and interviewed them individually. None said they had asked for leave that day and that if Saturday OT was arranged, they usually worked 8 or 11 hours. Since inconsistencies were found between time records and worker interviews, it could not be verified whether time records maintained by the factory were authentic and accurate.

Plan Of Action: Factory must keep transparent and accurate employee payment, time and work records, including overtime hours for piece rate workers. All work performed, including, but not limited to, work performed on Saturdays, Sundays and holidays must be: 1) reflected in time records and 2) workers must be compensated for such time worked at required regular and overtime rates. Factory should review its payment, work and attendance/time records for all Saturdays, Sundays and holidays. Based upon its review, factory must take any necessary corrective action concerning past practice, such as reimbursing workers for any past underpayments, and documenting any such payments in any affected workers' pay slips and personnel files.

Deadline Date: 02/12/2009

Action Taken:

Plan Complete: No

Plan Complete Date:

Hours of Work: Overtime/Calculation Over Period Longer Than One Week

HOW.10. Employers are allowed to calculate normal hours of work as an average over a period of longer than one week where local laws, regulations and procedures provide for such a possibility but only when all formal and procedural requirements attached to such calculation (for instance, obtaining official permission from the relevant authorities or limits to the period during which such calculations can be made) are met. The basis for such calculation shall, however, remain at all times the lesser of 48 hours per week or legal limits on hours of work in the country of manufacture or, where such legal limits do not exist, the regular work week in such country. (S)

Uncorroborated Evidence of Noncompliance

Explanation: As per time record review, one Saturday in October one worker from sewing department worked 1 hour, other workers from piping and warehouse departments worked 5 and 6.5 hours. Auditors found these workers and interviewed them individually. None said they had asked for leave that day and that if Saturday OT was arranged, they usually worked 8 or 11 hours. Since inconsistencies were found between time records and worker interviews, it could not be verified whether workers' daily overtime exceeded 3 hours. Weekly working hours exceeded 60 hours; quarterly overtime exceeded 108 hours.

Law: Reply to Questions on Working Hours, Art.5: Providing that the system of comprehensively calculated working hours is executed, in period of comprehensively calculated working hours, actual working hours could exceed 8 hours (or 40 hours) on a specific day (or week). But total actual working hours shall be no more than total normal working hours regulated by law. Excess part shall be regarded as overtime and paid according to Art.44.1 of PRC Labor Law. If employee asked to work legal holidays, overtime payment should be paid as regulated by Art.44.3 of PRC Labor Law. Besides, average hours of overtime each month shall be no more than 36 hours. Art. 41 of PRC Labor Law (Chapter 4 Working Hours, Rest Days and Holidays): Employees should not be allowed to work more than 3 overtime hours a day and 36 overtime hours a month.

Plan Of Action: Except under extraordinary business circumstances, factory must ensure that total work hours do not exceed 60 hours per worker per week. Factory should implement adequate systems and controls (hire more workers or add shifts) in order to ensure compliance with this standard. Overtime must be limited to 3 hours per worker per day and 36 hours per worker per month (please see Article 41 of the Labor Law of the People’s Republic of China). Factory should implement adequate systems and controls (hire more workers or add shifts) in order to ensure compliance with this standard. Factory must implement systems and controls adequate to ensure full compliance with the terms (of any validly obtained and approved) Comprehensive Calculated Working Time System. Specifically, it must ensure that under Comprehensive-Calculated Work Hour System, actual working hours do not exceed maximum permitted number of regular and overtime hours per week, month, quarter, or year (please see Article 65 of the Instruction on the Implementation of the China Labor Law). Factory should implement adequate systems and controls (hire more workers or add shifts) in order to ensure compliance with this standard.

Deadline Date: 02/12/2009

Action Taken:

Plan Complete: No

Plan Complete Date:
