2010

Fair Labor Association
Independent External Monitoring Report

COMPANY: Nike, Inc.
COUNTRY: China
FACTORY CODE: 0700151249I
MONITOR: Openview Service, Ltd.
AUDIT DATE: December 1 – 2, 2010
PRODUCTS: Sporting Backpacks, Golf Bags, Travelling Bags, Luggage
PROCESSES: Cutting, Sewing, Assembly, Inspection, Packing
NUMBER OF WORKERS: 2750

FLA Comment: This report was submitted to the FLA and the FLA affiliated company by the accredited independent external monitor. Despite deadline reminders and extensions for submission of a corrective action plan, the FLA has not received a plan to address the noncompliances raised in the report. Therefore, the report is posted in its current state and will be updated once a corrective action plan has been submitted to and reviewed by the FLA.

For an explanation on how to read this report, please visit the FLA website here.

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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: In total, there were 2,750 workers in the factory. Among them only 2,680 were covered by work-related injury insurance; 2,679 were covered by medical insurance; 1,246 were covered by both pension and unemployment insurance as the social insurance receipt of November 2010 indicated.

It violates Article 73 of the China Labor Law.

Plan Of Action:

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

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Wages, Benefits and Overtime Compensation: Training and Probation Wage

WBOT.3 Where probation or training wages are legally allowed, no worker shall be paid a probation or training wage for more than three months cumulatively. (S)

Noncompliance

Explanation: It was observed that the probation period attached to the 3-year fixed terms contract was 6 months in the employment contract, although most workers passed probation in less than 3 months in practice. Workers in probation period could not have the performance bonus, RMB40 per month.

It is in line with the local law in China, but against the FLA benchmark.

Plan Of Action:

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

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Forced Labor: Freedom in Employment

F.2 All workers shall have the right to enter into and to terminate their employment freely. (P)

Noncompliance

Explanation: Resignation application forms and factory rules indicated that workers could not resign without the approval of 5 different persons including line foreman, supervisor, section controller, administration officer and administration supervisor. 80% of interviewed workers reported that it was difficult to resign from the factory.

It violates Article 37 of China Labor Contract Law.

Plan Of Action:

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

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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: There was a trade union under the All China Federation of Trade Unions (ACFTU) established on January 1, 1999 in the factory. Around 80% of the employees are members. All members selected union representatives by voting and union representatives selected chairman. Chairman of trade union was production manager of factory. Around 50% of union representatives were foremen or supervisors and others were general production workers.

FLA Comment: The Chinese constitution guarantees Freedom of Association (FOA); 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 FOA, 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. However, the government has introduced new regulations that could improve the functioning of the labor relations mechanisms. The Amended Trade Union Act of Oct. 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. Trade unions also have an enhanced role in dispute resolution. In Dec. 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:

Deadline Date:

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: 1. Through documents review and management interview, it was confirmed that factory could not provide the Building Structure Safety Certificate for the following buildings: two 4-story production buildings, one 4-story warehouse building, one 5-story R&D building, one 5-story office building and one 5-story workers' dormitory building.

2. Documents review and management interview confirmed that factory could not provide the Fire Safety Inspection Certificate for the following buildings: one 3-story warehouse building, one 5-story management dormitory and one 5-story office building.

3. Documents review identified that the inspection certificate for 1 forklift was expired in July 2010.

It violates Article 61 of the China Construction Law, Article 13 of the China Fire Prevention Law and Article 28 of Safety Monitoring Regulation of Special Equipment.

Plan Of Action:

Deadline Date:

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: 1. Factory walkthrough noticed that materials and sundries were stored on the stairs leading from the 3rd floor to the rooftop in production building 5.

2. Based on visual inspection, it was found that 1 of 2 exits in finished goods warehouse was locked during working time.

It violates Article 7.4.1 of the Code for Design of Building Fire Protection and Prevention (GB50016-2006) and Article 28 of the China Fire Prevention Law.

Plan Of Action:

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

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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: Visual observation revealed that the warning on 20% of sewing machines was in English instead of in local language; 80% of sewing machines had no warning.

It violates Article 28 of the Law of the People's Republic of China on Work Safety.

Plan Of Action:

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

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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: Based on the review of time records from November 2009 to November 2010, most workers worked less than 60 hours per week in most cases; however, it was not guaranteed. In the 4 weeks in January 2010, around 90% of workers' weekly working time exceeded 60 hours, from 63 to 66 hours.

Plan Of Action:

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

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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: Based on the review of time records from November 2009 to November 2010, and confirmation from workers and management interview, most workers were provided at least 1 day off in 7, but it was not guaranteed in May and June 2010. For example, bout 30% of workers in production lines worked from May 3 - 13, 2010 and from May 31 - June 10, 2010; 11 consecutive days without 1 day off.

It violates Article 38 of the China Labor Law.

Plan Of Action:

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

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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)

Noncompliance

Explanation: Factory had applied for comprehensive working time system, valid from January 1 - June 30, 2010 and from July 1 - December 31, 2010, respectively. Based on the review of time records from November 2009 to November 2010, it was noted that about 90% of workers' overtime exceeded the 216 hour limit from January 1 - June 3, 2010, up to 492 hours. 90% workers' overtime exceeded the 216 hour limit from July 1 - November 30, 2010, up to 417 hours.

It violates Article 65 of the Instruction on the Implementation of the China Labor Law.

Plan Of Action:

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date: