



2010

FAIR LABOR ASSOCIATION INDEPENDENT EXTERNAL MONITORING REPORT

COMPANY: Tharanco
COUNTRY: Phillipines
FACTORY CODE: 5302591065I
MONITOR: Verite Southeast Asia
AUDIT DATE: December 15 – 16, 2010
PRODUCTS: Shirts
PROCESSES: Cutting, Sewing, Finishing,
Packing
NUMBER OF WORKERS: 3501

FLA Comment: *This report was submitted to the FLA and the FLA-affiliated company by the accredited independent external monitor. Tharanco Lifestyles, formerly participating as a Category B collegiate licensee, has ceased university-licensing business and, therefore, FLA affiliation. The FLA has encouraged the company to submit a corrective action plan and to continue remediation of the noncompliances raised in this report. As the FLA has not received an updated response from the company, the FLA is posting the IEM report in its current form.*



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*Denotes a Notable Feature

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. Also, all leave and bonuses shall be calculated correctly. (S)

Noncompliance

Explanation: Workers supplied through manpower cooperatives do not receive paid leave benefits from them. Under existing laws, workers with at least 1 year of service are entitled to 5 days of Service Incentive Leave (SIL). Likewise, these workers are not entitled to security of tenure. Under the same laws, contractual employees shall be entitled to all rights and privileges due a regular employee to include: a) safe and healthful working conditions; b) labor standards, such as SIL, rest days, overtime pay, holiday pay, 13th month pay, and separation pay; c) social security and welfare benefits; d) self-organization, collective bargaining and peaceful-concerted action; and e) security of tenure.

Sources: document review; worker and manpower cooperatives interviews

Legal References: Department of Labor and Employment DO NO. 18 – 02, Series of 2002 Rules Implementing Articles 106-109 of the Labor Code

Plan Of Action: This finding is not correct. Cooperative members who have been with the cooperative for at least 1 year are given 5 days SIL. [Factory name] conducts monthly audits of cooperative records to assure they are in compliance with the pay and benefit obligations for its members working at [Factory name].

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:



Wages, Benefits and Overtime Compensation: Accurate Calculation and Recording of Wage Compensation

WBOT.17 All payments to workers, including hourly wages, piecework, benefits, bonuses, and other incentives shall be calculated and recorded accurately. (S)

Noncompliance

Explanation: Regular and subcontracted workers reported that some overtime hours are not paid during regular pay cycles. This situation happens when workers extend OT work beyond that which they were previously authorized by their respective supervisors. The OT hours worked in excess of the authorized hours are verified and correspondingly paid without delay by the factory through separate payment vouchers outside of the regular pay cycle. Thus, these records of payment and worked time are neither reflected in workers' pay slips nor in payroll registers.

Sources: worker and management interviews

Plan Of Action: The OT pay is indeed reflected in pay slips and payroll registers. The company policy for filing OT work has a cut-off time to file of 4pm. Any adjustment in the OT work after 4pm must be conveyed to the Human Resources Department before 9am the following morning. If any adjustment is submitted after the payroll cycle cut off, the pay adjustment is given during the next payroll cycle; this is reflected in the pay slip and under the column of "other pay" in the payroll register. Attached sample of payroll with adjustment sent for review.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Forced Labor: Employment Terms/Voluntary Agreement

F.3 Employment terms shall be those to which the worker has voluntarily agreed, in as far as those terms do not fall below provisions of local laws, freely negotiated and valid collective bargaining agreements, or the FLA Code. (P)

Noncompliance

Explanation: Agreements with cooperative workers stipulate that there is no employer-employee relationship that exists between the cooperatives and their member-workers, regardless of the length of a worker's tenure/service with the factory or with cooperative. Some member-workers have been working at the factory for up to 4 contract cycles already, or equivalent to 2 years cumulatively, and remain contract workers. The factory is engaged in labor-only subcontracting with manpower cooperatives supplying the required workforce only during peak periods, as stated in the Service Agreement. However, most subcontracted workers work year-round although minimal downsizing is present during the low season, affecting only about a hundred workers from each manpower cooperative. Subcontracted workers' agreements with their respective cooperatives are not employment agreements, but agreements to render work services to the factory on behalf of the cooperatives. The agreements are valid for 6 months and are renewable upon mutual agreement of the contracting parties. Under existing labor laws, workers working for at least 6 months must achieve regular status.

Sources: review of agreements between manpower cooperatives and their member-workers; factory management, manpower cooperative representatives, and cooperative member-worker interviews

Legal References: Department Order #3 Series of 2001 of the Department of Labor and Employment Section 2; Relevant jurisprudence by the Supreme Court of the Philippines

Plan Of Action: [Factory name] has engaged the services of manpower cooperatives. Manpower cooperatives are organized under the Cooperative Development Law. Cooperative members are stakeholders in the cooperative. Members are deployed to render services for clients under agreed contracts for a specified duration. At the end of a contract with a particular client, the cooperative has the option to engage with other clients/companies needing their services under another contract. Cooperative members are not subject to the status conversion provisions of the Labor Code.

Deadline Date:

**Action
Taken:**

Plan No
Complete:

**Plan
Complete
Date:**

Forced Labor: Freedom of Movement

F.10 If factory entrances are locked or guarded to prevent non-employee access to the premises for security reasons, workers shall have free egress at all times. (S/P)

Noncompliance

Explanation: Factory employs security guards who patrol the factory's premises. 1 worker reported that a security guard admonished her for going to the HR Department frequently. Auditors were unable to review the scope of the security guards' responsibilities at the facility; however, according to management, security guards can also trigger a disciplinary action by reporting violations of company rules and regulations by workers.

Sources: worker and facility management interviews

**Plan Of
Action:** The security guards' responsibility is to secure the facility and its properties. They are given an orientation on the company's policies and procedures to help identify violations, for example, loitering, theft, bringing food into the production areas, etc. Their responsibility is mainly to report incidents. It is the HR Department's responsibility to issue a letter requesting any explanation of any potential violations and to conduct an investigation before issuing any disciplinary action to the alleged violator. The proper way of addressing workers is included during the briefing of security personnel before the start of their shift everyday. The company shall retrain security personnel on proper communication techniques, roles, and procedures; to avoid being misunderstood by workers, the importance of the security personnel will be emphasized. The company will also give workers an orientation, so they can understand security personnel's role in the facility. These trainings will be done for all new security personnel and all new workers at their orientation and will also be given annually to all security.

Deadline 08/01/2011

Date:

Action

Taken:

Plan No

Complete:

Plan

Complete

Date:

Freedom of Association: General Compliance Freedom of Association

FOA.1 Employers shall comply with all local laws, regulations and procedures concerning freedom of association and collective bargaining. (S)

Noncompliance

Explanation: The factory ceased hiring new workers directly in the middle of 2009. Instead, the factory engages the services of 2 manpower cooperatives to supply their labor requirements. However, although it is not explicitly stated, workers from these cooperatives are not allowed to join the union; they are also not allowed to form or join unions of their choosing. The current collective bargaining agreement (CBA) provides for the exclusion of subcontracted workers from the bargaining unit. Thus, the factory's use of subcontracted labor suppresses workers from the cooperatives' rights to freedom of association (FOA).

Sources: worker and union officer interviews

Legal Reference: Labor Code of the Philippines Art. 248 (c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization.

Plan Of Action: By definition, members of the manpower cooperatives are not workers hired by [Factory name]; they are also not subcontracted workers. [Factory name] does not have the ability to determine whether or not workers from the cooperatives can or cannot join unions.

Deadline

Date:

**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: Newly hired workers automatically become union members within 30 days of achieving regular status and do not have the freedom to choose whether to join the union or not. The union has a closed shop provision requiring compulsory membership of all regular workers. As prescribed in the CBA, workers may be separated from the company for refusing to join the union. However, union officers explain that they may tolerate non-participation in the union for as long as the workers pay the dues, not necessarily members' dues that are assessed. Therefore, newly hired workers are deprived of their right to join or not to join unions. In addition, the CBA excludes subcontracted workers from the bargaining unit.

Sources: CBA review, union officer interviews

Legal References: Labor Code of the Philippines Art. 249 (b) To cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied or to terminate an employee on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members. Labor Code of the Philippines Art. 248 (c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self organization.

Plan Of Action: A closed shop provision in a CBA is legal in the Philippines and accepted under international labor standards. The courts in the Philippines have held that a closed shop is a valid form of union security and this provision is not a restriction of the right of FOA guaranteed by the constitution.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Freedom of Association: Employer Interference/Favoritism

FOA.7 Employers shall not interfere with the right to freedom of association by favoring one workers' organization over another. (S)

Noncompliance

Explanation: Union officers reported that they hastily organized under the threat of another union being organized. The current officers registered the union with the Department of Labor and Employment on April 22, 2008. The factory duly recognized the union; 9 days afterwards, or, May 1, 2008, a CBA was signed with the factory. Voluntary union recognition is permitted under existing laws. However, the absence of a certification election, as admitted by union officers and the factory's legal counsel, provides insight into the autonomy of the union, and its failure to follow a genuine democratic process in organizing the union. Workers also reported that they were not aware of union elections taking place.

Sources: worker, factory management, and labor union officer interviews

Legal Reference: Labor Code of the Philippines Art. 231 Registry of unions and file of collective bargaining agreements.



**Plan Of
Action:**

When there is 1 union claiming majority representation, and there is no competing claim or reason to contest such claim, an employer can recognize the union as the sole bargaining agent for workers at the enterprise. The law does not require a representation election. Indeed, failure of an employer to accept the majority claim could be interpreted as an effort to avoid the obligation to negotiate a CBA. At the time of the CBA negotiation, [Factory name] was not aware of any other union claiming representation at the plant. Indeed, if 1 or more new unions now seek to contest the majority representation of the union that has been the bargaining agent under the existing CBA, they can follow the legal procedures to seek a representation election. [Factory name] should not and cannot interfere in such a process.

**Deadline
Date:**

**Action
Taken:**

Plan Complete: No

**Plan Complete
Date:**

Freedom of Association: Anti-Union Discrimination/Dismissal, Other Loss of Rights, and Blacklisting

FOA.12 Employer shall not engage in any act of anti-union discrimination, i.e. shall not make any employment decisions which negatively affect a worker, based wholly or in part on a workers' union membership or participation in union activity, including the formation of a union, previous employment in a unionized facility, participation in CB efforts or in a legal strike. Employment decisions include: hiring; termination; job security; job assignment; wages; bonuses; allowances; compensation and benefits; promotion; downgrading; transfer; (vocational) training; discipline; and assignment of work and conditions of work. The use of blacklists used to contravene the exercise of the right to FOA also constitutes anti-union discrimination. (S)

Noncompliance

Explanation: The CBA excludes subcontracted workers from the bargaining unit and the factory has ceased hiring new workers directly. Instead, the factory engages the services of 2 manpower cooperatives to supply their labor requirements. Workers from these cooperatives, though not explicitly stated in their service contracts, are not allowed to join the union and are also not allowed to form or join unions of their choosing. Thus, the factory's use of subcontracted labor suppresses the workers' rights to FOA.

Sources: workers, union officers, factory management, Civil Society Organization interviews

Legal Reference: Labor Code of the Philippines Art. 248 (c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self organization.

Plan Of Action: Please refer to FOA.1 explanation.

Deadline Date:

Action Taken:

Plan Complete: No

**Plan
Complete
Date:**

Freedom of Association: Right to Strike

FOA.15 Employers shall respect all laws, rules and procedures protecting the rights of workers to organize, bargain collectively, and participate in strikes consistent with ILO principles and jurisprudence. (S)

Noncompliance

Explanation: Article XIV of the CBA provides for no strike and no lockout during the life of the agreement. While the Department of Labor and Employment recognizes and supports the "No Strike" provision in any CBA, this runs contrary to existing laws. Moreover, it contravenes ILO Conventions, it being considered to be inalienable from the right to FOA.

Sources: worker interviews

Legal Reference: Labor Code of the Philippines Art. 263 (b) Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected. However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes. ILO Convention No. 87

**Plan Of
Action:** The No Strike No Lockout provision of the CBA was negotiated and agreed upon by management and the Union. The fact that the Department of Labor (DOLE) registered the CBA proves that there is nothing illegal about it. Provision of a No Strike No Lockout policy in a CBA is legal under Philippines law and international labor standards.

**Deadline
Date:**

**Action
Taken:**

Plan **No**
Complete:

Plan
Complete
Date:

Freedom of Association: Right to Collective Bargaining/Validity of Collective Bargaining Agreement

FOA.23 Collective bargaining agreements that have not been negotiated freely, voluntarily and in good faith shall be considered not applicable. Provisions in collective bargaining agreements that contradict national laws, rules and procedures or offer less protection to workers than provisions of the FLA Code shall also be considered not applicable. (S)

Uncorroborated Evidence of Noncompliance

Explanation: Union officers and the factory's legal counsel admitted to the absence of a certification election and ratification of the CBA. Workers reported that they were not aware of union elections taking place. The law provides for the ratification of the CBA by a majority of the bargaining unit, along with posting and proof of postings of the ratified CBA in the factory. Upon ratification, the union shall inform the Department of Labor and Employment of the existence of a ratified CBA and its intention to initiate bargaining with the factory. These steps alone require a lengthy process, thus giving rise to questions on how the CBA was negotiated.

Sources: union officer and management interviews

Legal References: Labor Code of the Philippines Art. 231 Registry of unions and file of Collective Bargaining Agreements; Labor Code of the Philippines Art. 241 Rights and Conditions of Membership

Plan Of Action: There is no requirement under the law to hold a certification election to recognize the majority representation claim of a union absent competing claims or other reason to contest the claim. There was only 1 union making a claim of majority representation. The CBA was negotiated freely and in good faith. As to the internal procedures for a union to ratify a negotiated CBA that is not for the employer to determine.

**Deadline
Date:**

**Action
Taken:**

Plan No
Complete:

**Plan
Complete
Date:**

Freedom of Association: Grievance Procedure

FOA.26 Employer shall have in place written grievance procedures that allow first an attempt to settle grievances directly between the worker and the immediate supervisor but that, where this is inappropriate or has failed, it is possible for the worker to have the grievance considered at one or more steps, depending on the nature of the grievance and the structure and size of the enterprise. Employers shall ensure that workers know the grievance procedures and applicable rules. (P)

Noncompliance

Explanation: The CBA provides for grievance procedures covering the bargaining unit, but regular workers reported being unaware of the grievance procedures.

Source: CBA review; worker, management and union officer interviews

**Plan Of
Action:** There is a grievance procedure provided in the CBA. Under the CBA, the company is obliged to shoulder the expenses for printing copies of the CBA that to be given to the workers. Workers have received their copies printed in the local language. The company will coordinate with the union and offer to coordinate on additional training on the grievance procedure for the workers.

Deadline 09/30/2011
Date:

**Action
Taken:**

Plan **No**
Complete:

Plan
Complete
Date:

Harassment or Abuse: Discipline/Progressive Discipline

H&A.2 Employers shall have a written system of progressive discipline (e.g., a system of maintaining discipline through the application of escalating disciplinary action moving, for instance, from verbal warnings to written warnings to suspension and finally to termination). Any exceptions to this system (e.g., immediate termination for gross misconduct, such as theft or assault) shall also be in writing and clearly communicated to workers. (P)

Noncompliance

Explanation: Subcontracted workers have low awareness and are not clear on the discipline rules and regulations that apply to them. Subcontracted workers, by agreement, must abide by the factory's rules and regulations. No disciplinary procedures from the manpower cooperatives were available for review. General rules and regulations are only communicated to member-workers during their membership orientation and during the factory orientation on their first reporting day.

Sources: worker, factory management, manpower cooperative representative interviews

Plan Of Action: The company will undertake with the cooperatives to provide an additional training for all their members on the applicable work rules and disciplinary procedures in the factory and related requirements under the contract with the cooperative.

Deadline Date: 08/31/2011

Action Taken:

Plan **No**
Complete:

Plan
Complete
Date:

Harassment or Abuse: Discipline/Review of Disciplinary Action

H&A.3 The disciplinary system shall include possibilities for workers to have disciplinary action imposed on them reviewed by someone at a higher managerial position than the manager who imposed the disciplinary action. In addition, such a system shall include the ability of a worker to appeal and/or question any disciplinary action against him or her and/or have a third party of his or her choice present when the disciplinary action is being imposed. (P)

Noncompliance

Explanation: Subcontracted workers are not aware of their rights to appeal disciplinary cases against them. Implementation of disciplinary action, as recommended by the factory, is the responsibility of the manpower cooperative. There were no written procedures on discipline from the manpower cooperatives available for review.

Sources: worker, factory management, manpower cooperative representative interviews

Plan Of Action: Please refer to the Company Plan of Action for H&A.2. [Factory name] will also work with the cooperative to make sure that any necessary written materials are available.

Deadline Date: 08/31/2011

Action Taken:

Plan Complete: No

Plan
Complete
Date:

Harassment or Abuse: Discipline/Fair and Non-Discriminatory Application

H&A.4 Employers shall apply disciplinary rules, procedures and practices in a fair and non-discriminatory manner to all workers. (S)

Noncompliance

Explanation: Workers are under the impression that discipline rules are not implemented uniformly. Subcontracted workers reported that the application of discipline is somewhat stricter on them compared to regular workers. Factory management reported that supervisors and managers are not trained on the proper administration of discipline rules, as they similarly undergo the same orientation as any other employee/worker during their first day of reporting.

Sources: worker interviews

Plan Of Action: The company has scheduled training for workers and workshops for managers, supervisors, and line leaders on the proper administration of discipline rules. This will be done annually going forward.

Deadline Date: 09/30/2011

Action Taken:

Plan Complete: No

Plan Complete Date:

Harassment or Abuse: Discipline/Written Disciplinary System

H&A.5 Employers shall maintain a system of written disciplinary rules, procedures and practices. Disciplinary rules, procedures and practices shall be clearly communicated to all workers. (P)

Noncompliance

Explanation: Factory has a matrix of disciplinary offenses and penalties that are used as the basis for disciplinary action against any erring employee; however, there were no written procedures on discipline available for review. Subcontracted workers are expected to follow the factory's rules and regulations in accordance with service agreement between the factory and the manpower cooperatives. Workers from the manpower cooperatives do not have copies of either the factory or the cooperatives' discipline rules and procedures. Workers are only oriented on these issues during their first reporting day at the factory.

Sources: review of service agreement between factory and manpower cooperatives; worker, factory management, manpower cooperative representative interviews

Plan Of Action: Workers from the cooperatives should have been given a copy of the factory disciplinary rules and procedures and an initial training. [Factory name] will coordinate with the manpower cooperative to make sure that both cooperatives' own rules and procedures and [Factory name's] rules and procedures have been provided to each worker. [Factory name] will undertake to review the orientation that workers from the cooperatives receive on the rules and procedures at the start of a contract period with the cooperative, to assure that it is effective and complete.

Deadline Date: 08/31/2011

Date:

Action

Taken:

Plan No

Complete:

Plan

Complete

Date:

Harassment or Abuse: Discipline/Training of Management

H&A.7 Employers shall ensure managers and supervisors are fully familiar with the factory disciplinary system and trained in applying appropriate disciplinary practices. (P)

Noncompliance

Explanation: Managers and supervisors are not trained on discipline rules and regulations, including on their administration. They undergo the same orientation on factory rules as other workers do.

Sources: factory management interviews

Plan Of Action: Please refer to the Company Plan of Action for H&A.4.

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)

Noncompliance

Explanation: Factory does not directly impose any monetary penalties to maintain discipline among its workforce. However, the factory implements a system of penalties on quality related defects on account of workers' poor workmanship or errors in production that correspondingly cause the factory to lose money. The factory calculates the cost of these defects, which translates into workers' suspension from work without pay. The factory has a matrix of penalties that indicate a range of costs and their respective number of suspension days without pay. Subcontracted workers are subjected to the same rules.

Sources: document review; worker and factory management interviews

Plan Of Action: [Factory name] does not impose any monetary fines for disciplinary violations. The amount of damages is just used related to a matrix of penalties to be imposed, such as the number of days of suspension. The penalty imposed is reasonable and commensurate to the amount of loss suffered by the company.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:



Harassment or Abuse: Discipline/Verbal Abuse

H&A.11 Employers shall not use any form of verbal violence, including screaming, yelling, or the use of threatening, demeaning, or insulting language, as a means to maintain labor discipline. (S)

Noncompliance

Explanation: There have been 2 recorded cases of verbal abuse in the past 12 months involving supervisors and regular workers. 1 case was resolved through arbitration in the Labor Courts, as the case was not resolved in the union's grievance proceedings. The other is still in the arbitration process. Both cases involved supervisors shouting and calling workers names and humiliating workers in front of their peers. Workers identified at least 3 supervisors who verbally abuse workers.

Sources: worker, factory management, and union officer interviews

Plan Of Action: In the grievance proceeding, there is a step-by-step procedure to resolve issues or complaints being raised by workers. Depending on the outcome of the proceeding, the issue is elevated to the next level if it remains unresolved. The grievance procedure is adopted in consultation and with the role of the union. The handling of conflicts will be included in the planned supervisors' training.

Deadline Date: 09/30/2011

Action Taken:

Plan Complete: No

Plan Complete Date:



Harassment or Abuse: Violence/Harassment/Abuse

H&A.13 Employers shall ensure that the workplace is free from any type of violence, harassment or abuse, be it physical, psychological, sexual, verbal, or otherwise. Employers shall refrain from any action – and shall take all appropriate action to ensure that all workers refrain from any action – that would result in an intimidating, hostile or offensive work environment for workers. (S)

Noncompliance

Explanation: Management acts upon cases of harassment and abuse as cases arise. There have been 2 recorded cases of verbal abuse in the past 12 months involving supervisors and regular workers. 1 case was resolved through arbitration in the Labor Courts, as the case was not resolved in the union's grievance proceedings. The other is still in the arbitration process. Both cases involved supervisors shouting and calling workers names and humiliating workers in front of their peers. Auditors found that there are no preventive measures taken by management in the form of trainings of line managers, supervisors, and workers on anti-harassment and abuse.

Sources: worker, factory management, and union officer interviews

Plan Of Action: Please refer to the Company Plan of Action in H&A.11.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Non-Discrimination: Protection and Accommodation of Pregnant Workers and New Mothers

D.9 Employers shall abide by all protective provisions in local laws and regulations benefiting pregnant workers and new mothers, including maternity leave/benefits, prohibitions regarding night work, temporary reassignments away from work that pose risk to the health of women and their children, temporary adjustment of working hours during and after pregnancy, and the provision of breast-feeding breaks and facilities. Where such legal protective provisions are lacking, employers to take reasonable measures to ensure the safety and health of pregnant women and their unborn children. Such measures shall be taken in a manner that shall not unreasonably affect the employment status, including wages and benefits of pregnant women. (P)

Notable Feature

Explanation: The factory maintains a facility for mothers to feed/breastfeed their newborn babies during certain hours of the day. The lactation room is located in the factory's in-house clinic. The factory also has a Population Development Program for all workers which is implemented in cooperation with the Department of Labor and Employment.

Sources: site tour; worker and management interviews

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: Workers, both regular and subcontracted, have little or no awareness of the company's code of conduct (COC). Workers are oriented on general factory rules and regulations on their first day of reporting to work.

Sources: worker, factory management, and manpower cooperatives' representative interviews

Plan Of Action: All workers receive a copy of the COC at their orientation. [Factory name] will include coverage on the COC in the forthcoming training program. This will be included in an annual training module for all workers, supervisors, and managers.

Deadline 09/30/2011

Date:

Action

Taken:

Plan No

Complete:

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: There is no secure and confidential communications channel established between Tharanco Lifestyles and facility workers. However, a confidential hotline is in place that workers can call or send an SMS regarding complaints, grievances, or acts of misconduct by any factory employee. Compliance personnel for proper action receive calls or messages. This channel is not extended to contractors and/or suppliers of the factory and does not provide callers' direct access to the company. Sources: compliance personnel interviews

Plan Of Action: [Factory name] will coordinate with Tharanco Lifestyles for them to provide a confidential hotline or communications channel where workers can directly communicate with them. This will be disseminated to workers accordingly.

Deadline 08/31/2011

Date:

Action

Taken:

Plan **No**
Complete:

Plan
Complete
Date:

Miscellaneous: Illegal Subcontracting

MISC.1 Illegal Subcontracting

Noncompliance

Explanation: Factory is engaged in labor-only subcontracting with manpower cooperatives supplying the required workforce only during peak periods, as stated in the service agreement. However, most subcontracted workers work year-round, although minimal downsizing is present during the low season, affecting only about a hundred workers only from each manpower cooperative. Subcontracted workers' agreements with their respective cooperatives are not employment agreements, but agreements to render work services to the factory in behalf of the cooperatives. The agreements are valid for 6 months and are renewable upon agreement of the contracting parties. Under existing labor laws, workers working for at least 6 months must achieve regular status.

Sources: review of agreements between manpower cooperatives and their member-workers; factory management, manpower cooperative representatives, and cooperative member-worker interview

Legal References: Department Order #3 Series of 2001 of the Department of Labor and Employment Section 2; relevant jurisprudence by the Supreme Court of the Philippines

Plan Of Action: [Factory name] is not engaged in any illegal labor subcontracting. [Factory name] has negotiated contracts for work with manpower cooperatives fully consistent with the law of the Philippines.

Deadline Date:

Action Taken:

Plan **No**
Complete:

Plan
Complete
Date:

Health and Safety: Worker Consultation

H&S.4 The health and safety policy shall be developed and implemented in consultation with workers or their representatives. (P)

Noncompliance

Explanation: Factory has an H&S Committee headed by 2 H&S officers. They reported that the H&S policy was developed without consultation or participation of workers, or worker-members of the committee.

Sources: H&S officer interviews

Plan Of Action: A special meeting by the H&S Committee was held April 29, 2011. The meeting's agenda was to review the existing H&S policy and get feedback/recommendations from members. Members include production workers (sewers, cutters, packers); WC; line leaders; supervisors; union officers; maintenance personnel, among others. As discussed in the meeting, changes in the policy include: authorizing H&S members to report violators of the policy; additional responsibilities of members; other procedures, such as handling of hazardous machinery and hazardous substances; scheduling of issuance and replacement of personal protective equipment (PPE); and identifying root causes of noncompliance to the H&S policy.

Deadline Date: 04/29/2011

Action Taken:

Plan **No**
Complete:

**Plan
Complete
Date:**

Health and Safety: Health and Safety Management System

H&S.5 The health and safety policy shall contain the framework for a comprehensive health and safety management system within which employers' responsibilities and workers' rights and duties, various responsibilities of designated personnel, procedures that enable workers to raise health and safety concerns and procedures for reporting death, injury, illness and other health and safety issues (for instance, near-miss accidents) are clear and regularly tested and reviewed. (P)

Noncompliance

Explanation: Factory has an H&S program, but there are no specific duties and responsibilities on H&S that are assigned to managers, supervisors, and workers. H&S officers reported that there are no: monitoring of H&S program implementation; feedback mechanism to measure its effectiveness; and annual reporting records for accidents and illnesses reported to the Department of Labor and Employment.

Sources: document review; H&S officer interviews

Plan Of Action: The company has a H&S policy where duties and responsibilities of members are indicated. A monthly meeting is conducted where concerns on H&S are discussed and addressed. An annual accident report is submitted to DOLE. The latest copy has been sent for review.

**Deadline
Date:**

**Action
Taken:**

Plan Complete: No

**Plan
Complete
Date:**

Health and Safety: Notification and Record Maintenance

H&S.7 Employers shall notify the relevant authorities of all illnesses and accidents as required by applicable laws. All illness, safety and accident reports shall be maintained on site for at least one year, or longer if required by law. (P)

Noncompliance

Explanation: There are no regular reporting records for accidents and illnesses sent to the Department of Labor and Employment.

Sources: document review; H&S officer interviews

Legal Reference: Department of Labor & Employment Occupational Safety and Health Standards Rule 1050 (Notification & Keeping of Records of Accidents &/or Occupational Illness)

**Plan Of
Action:** A copy of the annual report to DOLE has been sent for review.

**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: Factory does not have a permit to operate their boiler equipment as prescribed under Rule 1162 of the Occupational Safety & Health Standards of the DOLE. There is also no permit to operate fuel burning equipment and diesel generators from the Department of Natural Resources and Environment.

Sources: permit review, H&S officer interviews

Legal Reference: Rule 1162 of the Occupational Safety & Health Standards of the Department of Labor and Employment; Rule 19 of RA 8749 – Clean Air Act

Plan Of Action: Copies of the DOLE permits for the boiler equipment sent for review. Processing of permits with DENR is ongoing.

Deadline Date: 07/31/2011

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: Aisles are clearly marked, but some aisles were found partially blocked by textile materials. Some machines were also found to have parts protruding outwards toward the aisles. Cartons were stacked too high along the aisles leading towards the fabric warehouse.

Source: observation

Plan Of Action: H&S Committee members have been authorized to help monitor safety concerns, such as blockages. This was discussed with the concerned department; the blockage was removed.

Deadline Date: 06/01/2011

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: Access to the eye wash facility located at the Spot-Removing Section is difficult due to the narrowness of the path leading to it. The spot-removing station nearest the eye wash facility encroaches on the aisle leading to the eyewash.

Source: observation

Plan Of Action: Area has been cleared. Photo sent for review.

Deadline Date: 01/10/2011

Action Taken:

Plan Complete: No

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: Workers do not undergo training on the safe operation of machinery and equipment. There are no safety postings or warning signs in the working area of the hot-fusing machine.

Sources: observation, factory management interviews

Plan Of Action: Workers will be given proper training on the safe operations of their machines. Warning sign has been posted. Photo sent for review.

Deadline Date: 08/31/2011

Action Taken:

Plan Complete: No

Plan Complete Date:



Health and Safety: Proper Use of Machinery

H&S.19 Employers shall only use positive incentives (risk awareness training, demonstration of proper use, awards, bonuses, etc.) to ensure workers use machinery, equipment and tools properly and safely. Workers shall not suffer any negative consequences for refusing to work with machinery, equipment or tools that are not properly guarded or reasonably considered unsafe. (P)

Noncompliance

Explanation: Workers who are involved in accidents or injuries due to improper use of machinery and equipment will be subject to disciplinary action if the accident investigation points to the cause of the accident or injury being the fault of the worker.

Sources: worker and H&S officer interviews

Plan Of Action: Workers are only given disciplinary action for not using PPE (based on the company's COC). They are not disciplined because of the accident itself.

Deadline Date:

Action Taken:

Plan Complete: No

Plan Complete Date:

Health and Safety: Medical Facilities

H&S.21 Medical facilities shall be established and maintained in factories as required by applicable laws. Medical staff shall be fully licensed and recognized under applicable local rules and regulations. An appropriate number of medical staff shall be on duty during all working hours, including any type of overtime, as required under local law. An appropriate stock of medical supplies shall be maintained at all times. Medicines of which the expiration date has passed must be replaced immediately and disposed of in a safe manner. (P)

Notable Feature

Explanation: The facility maintains an in-house clinic with full-time nurses available during all work shifts. Manpower cooperatives provide their own nurses and are stationed in the same clinic. Medical doctors are available at certain periods every day to provide medical consultations. The factory provides first aiders on the shop floor a uniform to ease their identification in cases of need. The union operates a pharmacy inside the factory and offers affordable over-the-counter medicines to its members.

Sources: site tour; worker, union officer and management interviews

Health and Safety: Toilets

H&S.23 Employers shall establish the number of toilets required under applicable laws within reasonable distance of the workplace. (S)

Noncompliance

Explanation: The male and female toilets located between the knits and woven departments have shared common washing facilities. Separate gender access to toilets is present, but access to the washing facilities is situated inside and in between the toilet facilities. While there are separate entrances to the toilets, the shared washing facilities do not provide adequate privacy between the toilets. Moreover, workers often disregard the use of the proper access to these facilities, i.e., male employees use the entrance of the female facilities as a shortcut to their respective toilets and vice versa.

Sources: observation Legal Reference: Art. 132 of the Labor Code require employers to establish separate toilet rooms and lavatories for men and women and provide at least a dressing room for women.

Plan Of Action: Separate the entrance and washing area for male and female toilets.

Deadline Date:

Action Taken: The washing area and entrance have been totally separated for males and females. Photo sent for review.

Plan Complete: No

Plan Complete Date:

Health and Safety: Drinking Water

H&S.26 Safe and clean drinking water shall be freely available at all times, within reasonable distance of the workplace. Drinking water shall be of a reasonable temperature and the means to drink water (cups, etc.) must be safe and sanitary and available in an appropriate number. (S)

Noncompliance

Explanation: Auditors observed that several sewing lines had their own bottled water dispensers in 5-gallon containers that workers elect to have and pay by themselves. Cold drinking water is made available by the factory through at least 2 filtered drinking fountains centrally situated on every floor of the building and/or work area. 1 water fountain in the sewing section was not functioning at the time of the audit and was reportedly under repair. The dispensers are maintained by their provider and are subject to regular maintenance and filter changes.

Sources: observation; worker and management interviews

Plan Of Action:

Deadline Date:

Action Taken: Additional drinking fountains have been provided in the production area; from 6 units, we now have a total of 13. Maintenance team has assigned personnel to check the drinking fountains daily, so they can immediately address any problems.

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: Time records indicate Sunday and occasional holiday work throughout the 12-month review period. Random entries indicated that some workers worked 21 days consecutively without a single rest day.

Sources: time record review; worker and management interviews

Plan Of Action: Production planning to coordinate with sales in order to allocate orders with capacity. Production to add manpower and additional shifts when necessary.

Deadline Date:

Action Taken:

Plan Complete: No

**Plan
Complete
Date:**

Hours of Work: Annual Leave

HOW.14 Employers shall provide workers with paid annual leave as required under local laws, regulations and procedures. (S)

Noncompliance

Explanation: Workers supplied through the manpower cooperatives do not receive any paid leave benefits from the cooperatives. Under existing laws, workers who rendered at least 1 year of service are entitled to 5 days Service Incentive Leave. Under the same laws, contractual employees shall be entitled to all the rights and privileges due a regular employee to include the following: a) safe and healthful working conditions; b) labor standards, such as service incentive leave, rest days, overtime pay, holiday pay, 13th month pay, and separation pay; c) social security and welfare benefits; d) self-organization, collective bargaining and peaceful concerted action; and e) security of tenure.

Sources: document review; worker and manpower cooperative interviews

Legal Reference: Department of Labor and Employment DO NO. 18 – 02 Series of 2002, Rules Implementing Articles 106-109 of the Labor Code

**Plan Of
Action:** Refer to the Company Plan of Action for WBOT.5.

**Deadline
Date:**

**Action
Taken:**

**Plan
Complete:** No

**Plan
Complete
Date:**

Hours of Work: Annual Leave/Determination

HOW.15 Employers shall not impose any undue restrictions on workers' use of annual leave. The time at which annual leave is taken is determined by the employer in consultation with the worker, taking into account work requirements and the opportunities for rest and relaxation available to the worker. (S)

Noncompliance

Explanation: Regular workers are provided 10-18 days of sick and vacation leaves, depending on their years of service, which workers are able to use at times of need. However, a provision in the CBA states that factory management shall have the right to schedule and re-schedule employees' vacation. For cases of plant shutdowns for maintenance and other similar situations, earned-leave credits will be applied.

Sources: CBA review

**Plan Of
Action:** This provision is part of the negotiated CBA, and is otherwise valid and legal.

**Deadline
Date:**

Action Taken:

**Plan
Complete:** No

**Plan
Complete
Date:**

Hours of Work: Sick Leave

HOW.19 Employers shall provide workers with sick leave as required under local laws, regulations and procedures. (S)

Noncompliance

Explanation: Workers supplied through the manpower cooperatives do not receive any paid leave benefits from the cooperatives. Sick leave, if any, is paid and applied to social security benefits.

Sources: worker and manpower cooperatives' representative interviews

Legal Reference: Department of Labor and Employment DO NO. 18 – 02 Series of 2002, Rules Implementing Articles 106-109 of the Labor Code, Section 8

Plan Of Action: Refer to the Company Plan of Action for WBOT.5. Under the law, sick leave beyond the 5 Service Incentive Leave is applied to social security benefits.

Deadline

Date:

Action Taken:

Plan No

Complete:

Plan

Complete

Date:
