



2009

FAIR LABOR ASSOCIATION INDEPENDENT EXTERNAL MONITORING REPORT

COMPANY: Ocean Sky International
Limited

COUNTRY: Cambodia

FACTORY CODE: 960012148H

MONITOR: Kenan Institute

AUDIT DATE: July 22-24, 2009

PRODUCTS: Polo Shirts, T-Shirts

PROCESSES: Shirt Making

NUMBER OF WORKERS: 2406



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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: The review of employment contracts disclosed that the workers have resigned from the facility. They then return to reapply for the job and change the employment contract from an unfixed duration contract (UDC) to a fixed duration contract (FDC for 6 months). With the result of this, the workers lose the seniority bonus, annual leave, maternity benefit.

Plan Of Action: We have taken steps to further verify with the factory on the grounds of establishing that the reasons of the above ranged from: Workers' original intent was to return to their home province. These workers subsequently changed their minds and decided greener pastures were elsewhere. But they returned shortly after having tried at other factories.

The applications of resigned workers who wish to rejoin the factory are considered new applications; therefore, a new employment contract is offered. As it is a new binding employment contract, it would reflect the same terms and conditions as of a new employed worker.

Deadline Date: 10/12/2009

Action Taken:

Plan Complete:

Plan Complete Date:



Wages, Benefits and Overtime Compensation: Overtime Compensation Awareness

WBOT.11 Workers shall be informed, orally and in writing, about overtime compensation rates prior to undertaking overtime. (P)

Noncompliance

Explanation: A review of training documents revealed that the orientation program, which includes the wage calculation and benefit system, was introduced. New workers received training on this system.

However, 90% of interviewed workers did not know how to calculate their OT rate. They ask someone who knows or who may do it for them or they just compare each other's to see whether their salary is the same. In addition, no wage calculation method was posted on the prominent boards in order to remind workers of the wage calculation method/system.

Plan Of Action: The factory will educate workers on the computation of overtime compensation rates.

Deadline Date: 10/12/2009

Action Taken: The factory now provides training on wage and overtime computation during the induction program for all newly recruited workers. These workers are also being tested on their understanding after the induction program. A payroll training record has been sent to FLA for review.

Plan Complete:

Plan Complete Date:

Wages, Benefits and Overtime Compensation: Posting Notices

WBOT.23 All notices that are legally required to be posted in the factory work areas shall be posted. All legally required documents, such as copies of legal code or law, shall be kept at the factory and available for inspection. (P)

Noncompliance

Explanation: During the walkthrough of the facility floor, it was observed that the minimum wage law was not posted at the prominent board/workplace area to inform the workers.

Labor Law of Cambodia Article 109: Minimum wages established by virtue of this law must be permanently posted in the workplace and in payment and recruitment offices.

Plan Of Action: The factory will post copies of legal code or law for workers to view.

Deadline Date: 10/12/2009

Action Taken: The factory has posted copies of the legal code and laws on the notice board located near the staircase leading to the factory production area. Corresponding document/photo has been sent to FLA for review.

Plan Complete:

Plan Complete Date:

Forced Labor: General Compliance Forced Labor

F.1 Employers shall comply with all local laws, regulations and procedures concerning the prohibition of forced labor. (S)

Noncompliance

Explanation: During the record review, the termination file of 1 of the workers disclosed that this worker worked for the factory from 2005-2009 (3 years). The factory gave the worker a Fixed Duration Contract (FDC) 7 times over the period of 2 years; thus, it shall be considered and turned to be Unfixed Duration Contract (UDC) worker.

However in July 24, 2009 (the day of auditing) the worker was terminated due to the end of the FDC. The process of termination and severance pay of the contract was not followed as per the Labor Law Articles 74, 75, 89, 91 and 166 his contract is now of UDC. Thus, if the company terminates a UDC worker, it must follow the legal stipulations.

Plan Of Action: Please refer to the letter from Ministry of Labor on the Clarification of Fixed Duration Contract (the letter has been sent to FLA for review). From the letter, it is stated clearly that although the total duration of the renewals exceeds 2 years, a Fixed Duration Contract having been renewed many times continues to remain so as long as each contract does not exceed 2 years by itself.

ILO has acknowledged the Ministry of Labor's stand on this matter as well. But to avoid such issues happening again, the factory will further educate workers by creating awareness to this law during the workers' orientation program.

Deadline Date: 10/12/2009

Action Taken:

Plan Complete:

Plan Complete Date:



Forced Labor: Personal Worker Identification and Other Documents

F.15 Workers shall retain possession or control of their passports, identity papers, travel documents or any other personal legal documents. Employers shall not retain any such documents to restrict workers' access to them for any reason whatsoever, including in order to ensure that workers shall remain in employment in the factory. (S) Employers may obtain copies of original documents for record-keeping purposes.

Noncompliance

Explanation: The review of the termination of work file revealed that some files still retained the worker employment cards. The management stated that the HR department did not return the original employment cards to those employees when they left the company. The management noted that this was a mistake.

Plan Of Action: The factory shall ensure that it keeps copies of original documents for record keeping purposes. The factory will seek to contact the ex-employees and return the employment cards, and also record the details down of attempts, should the factory fail to reach them.

Deadline Date: 10/12/2009

Action Taken:

Plan Complete:

Plan Complete Date:

Forced Labor: Other - Forced Labor

Other

Noncompliance

Explanation: During the review of worker contracts, it was disclosed that some records have gotten the renewal of the Fixed Duration Contract (FDC) for over 2 years.

This is in violation of the Labor Law Article 67, which states that: A labor contract signed with consent for a specific duration must contain a precise finishing date. The labor contract signed with consent for a specific duration cannot be for a period longer than 2 years. It can be renewed 1 or more times, as long as the renewal does not surpass the maximum duration of 2 years. Any violation of this rule leads the contract to become a labor contract of undetermined duration.

Plan Of Action: Please refer to the letter from Ministry of Labor on the Clarification of Fixed Duration Contract. From the letter, it is stated clearly that although the total duration of the renewals exceeds 2 years, a Fixed Duration Contract having been renewed many times continues to remain so as long as each contract does not exceed 2 years by itself. ILO has acknowledged the Ministry of Labor's stand on this matter as well. To avoid such issues happening again, the factory will further educate workers by creating awareness to this law during the workers' orientation program.

Deadline Date: 10/12/2009

Action Taken:

Plan Complete:

Plan Complete Date:

Freedom of Association: Employer Interference/Constitution, Elections, Administration, Activities and Programs

FOA.5 Employers shall not interfere with the right of workers to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs. (S)

Noncompliance

Explanation: During the review of worker contracts, it was discovered that in Article 10 as stipulated in factory Internal Rule and Regulations, that grounds for termination of contract include serious misconduct by worker-employee as stated in Article 83 of Kingdom of Cambodia Labor Law, which includes gambling, cheating, stealing, fighting, instigating or participating in striking, in demonstration, commission of a criminal act punishable by law and slotting cards for other. Upon such serious misconduct, this contract will be terminated with immediate effect.

Thus, the monitor indicated that the company rule/Article 10 which was referring to the Labor Law Article 83 has been added up over. Furthermore, the misconduct of instigating or participating in striking, in demonstration could be considered/indicated that the facility is going against the rights of the worker and interfering the worker according to the Freedom of Association (FOA) principles.

Article 83: The following are considered to be serious offenses:

A. On the part of the employer:

1. The use of fraudulent measures to entice a worker into signing a contract under conditions to which he would not otherwise have agreed, if he had realized it;
2. Refusal to pay all or part of the wages;
3. Repeated late payment of wages;
4. Abusive language, threat, violence or assault;
5. Failure to provide sufficient work to a piece-worker;
6. Failure to implement labor health and safety measures in the workplace as required by existing laws.

B. On the part of the worker:

1. Stealing, misappropriation, embezzlement;
2. Fraudulent acts committed at the time of signing (presentation of false documentation) or during employment (sabotage, refusal to comply with the terms of the employment contract, divulging professional confidentiality);
3. Serious infractions of disciplinary, safety and health regulations;
4. Threat, abusive language or assault against the employer or other workers;
5. Inciting other workers to commit serious offences;
6. Political propaganda, activities or demonstrations in the establishment.



Plan Of Action: The factory will furnish a separate soft copy of the Internal Rules and Regulations sent to the Ministry of Labor for endorsement, and shall follow up with the final approved copy once the factory receives it. To be sent to FLA for review.

Deadline Date: 10/12/2009

Action Taken:

Plan Complete:

Plan Complete Date:

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

Other

Noncompliance

Explanation: During the factory walkthrough, it was discovered that no information for the worker representatives (shop stewards) was posted to inform the workers of the prominent legal requirements.

Article 296: The employer must, within 8 days following the elections, make an official report on the results of the elections of shop stewards to the Labor Inspector's Office. Furthermore, the employer must post another copy of the official report in the establishment for information.

Plan Of Action: The factory will post the worker representative information for workers to view. The factory will ensure that within 8 days following the elections, there is an official report on the results of the elections of shop stewards sent to the Labor Inspector's Office. Factory will also post a copy of the official report in the establishment for information.



Deadline Date: 10/12/2009

Action Taken: Factory has posted the worker representative information on the notice board near the staircase leading to the factory entrance which is more strategic and is easily accessible by all our workers. Corresponding document/photo has been sent to FLA for review.

Plan Complete:

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: The review of the termination records of 2009 disclosed that workers were dismissed for poor performance and such criteria were not mentioned in the company regulations regarding the disciplinary rule.

The reason of this (poor performance) could be considered unfair treatment to workers.

Plan Of Action: We have a system in place where we track the performance of each worker and his/her efficiency rate, applying that to the broader measures under ILO-endorsed GSD (Geometric Standard Deviation) method of analyzing processes, thereby establishing accurately standard minute values of work. Such data will be monitored under the performance criteria. There may certainly be other reasons for termination under serious misconduct. We scrutinize each termination request internally to ensure it is valid. Should there be concerns, the worker representative, as well as unions, will certainly bring it to our attention and we have always been open for further discussion.

Deadline Date: 10/12/2009

**Action
Taken:**

**Plan
Complete:**

**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: The training records revealed that the facility has provided the Code of Conduct (CoC) training/orientation, law and regulations for the workers. In addition, the local language posting of the brand's CoC has been posted at an accessible place. Nevertheless, the workers are not aware or able to demonstrate an understanding of the law and regulation of the CoC elements.

**Plan Of
Action:** We will continue to educate our workers on company CoC on a regular basis by providing refresher sessions.

**Deadline
Date:** 10/12/2009

**Action
Taken:** We have provided training on company CoC to workers on October 26, 2009. Corresponding documents/ training records have been sent to FLA for review.

**Plan
Complete:**

**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. During the walkthrough on the work floor, it was observed that there was no emergency lighting at stairwell exit door #3.
2. During the visual inspection it was found that a number of fire extinguishers were missing the operation instructions posted nearby; this was particularly noticeable in the fabric inspection section.

**Plan Of
Action:** The factory will ensure that all our fire safety equipment is well maintained.

**Deadline
Date:** 10/12/2009

**Action
Taken:** The factory has installed emergency lights at the staircase and also attached operation instructions onto the fire extinguishers. Corresponding document/photo has been sent to FLA for review.

**Plan
Complete:**

**Plan
Complete
Date:**

Health and Safety: Chemical Management and Training

H&S.13 All chemicals and hazardous substances shall be properly labeled and stored in accordance with applicable laws. Labels shall be placed in the local language and the language(s) spoken by workers, if different from the local language. Workers shall receive training, appropriate to their job responsibilities, concerning the hazards, risks and the safe use of chemicals and other hazardous substances. (S)

Noncompliance

Explanation: During the walkthrough of the work floor, it was observed that was no secondary containment to support the lubricant oil containers in the mechanical room.

Plan Of Action: The factory will build a chemical storage unit in the mechanic department and will ensure that all labels are in the local language and in English. The factory will conduct training on the proper handling and on the associated risks and hazards of using chemicals and other hazardous substances in December 2009.

Deadline Date: 10/12/2009

Action Taken: The factory has built a chemical storage area to hold the chemicals and hazardous substances. MSDS and other safety labels are posted for workers' information. Corresponding document/photo has been sent to FLA for review.

Plan Complete:

Plan Complete Date:

Health and Safety: Material Safety Data Sheets/Worker Access and Awareness

H&S.14 Material Safety Data Sheets (MSDS) for all chemicals used in the factory must be available at the usage and storage sites of the chemicals, in the local language and the language(s) spoken by workers, if different from the local language. Workers shall have free access to MSDS. (P)

Noncompliance

Explanation: During the visual inspection, it was found that no MSDS or emergency signs were posted in the area where lubricant oil was kept in the mechanical room.

Plan Of Action: The factory will ensure that all MSDS are posted in English and kept for workers' reference and understanding in the mechanical room.

Deadline Date: 10/12/2009

Action Taken: The factory has posted the MSDS in English and kept it for workers' reference in the mechanical room. Corresponding document/photo has been sent to FLA for review.

Plan 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 observed that in the finishing area (packing section), 2 electric cables were not sufficiently insulated at the trail and not provided with proper protection.

Plan Of Action: The factory will repair the electric cables and ensure that all production machinery, equipment and tools are regularly maintained and properly guarded. The factory does provide training to newly recruited workers in the proper use and safe operation of machinery, equipment and tools.

Deadline Date: 10/12/2009

Action Taken: The factory has repaired the electric cables with proper protection in its finishing area (packing area). Corresponding document/photo has been sent to FLA for review. The factory has displayed/posted PPE on the individual section notice board so as to encourage workers to put on PPE for their own safety. Corresponding document/photo has been sent to FLA for review.

Plan Complete:

Plan Complete Date:

Health and Safety: Bodily Strain

H&S.20 Workstations, including seating and standing arrangements and reach required to obtain tools, shall be designed and set-up in such a manner as to minimize bodily strains. Employers shall train workers in proper lifting techniques and items such as belts shall be provided. (S)

Noncompliance

Explanation: 1. During the inspection of workstation design, it was found that floor mats and chairs were not provided to workers in the ironing section. Workers had to stand while working on a regular basis.

2. It was also observed that the chairs provided to the workers in the production line did not have a backseat; they were not properly designed for ergonomic concerns.

Plan Of Action: 1. The factory will provide floor mats to workers.

2. The factory will consider the suggestion of providing chairs with backrests.

Deadline

Date:

Action Taken: The factory has provided floor mats to workers.

Plan

Complete:

Plan

Complete

Date:
