



2010

FAIR LABOR ASSOCIATION INDEPENDENT EXTERNAL MONITORING REPORT

COMPANY: Esquel
COUNTRY: China
FACTORY CODE: 8900151042I
MONITOR: Openview Service Limited
AUDIT DATE: October 19, 2010
PRODUCTS: Garments
PROCESSES: Cutting, Washing, Sewing,
Inspection, Ironing, Drying
NUMBER OF WORKERS: 1750



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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: [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.](#)

[Monitor's Note: 60% of production workers were members of the trade union.](#)

Plan Of Action: [All Trade Unions in China are under ACFTU by China Law. The factory's Trade Union also needs to operate following Chinese laws.](#)

Deadline Date: [10/22/2010](#)



Supplier CAP: All Trade Unions in China are under ACFTU by Chinese Law. The factory's Trade Union is operating according to the China Laws.

Supplier CAP Date: 10/22/2010

Action Taken: As mandated by the Chinese Laws, all Trade Unions in China are regulated under ACFTU and the factory's Trade Union needs to operate according to the Chinese Laws. The factory has a trade union made up of representatives elected by its members. A free election is held every five years as per law requirement. The trade union holds regular meetings to discuss concerned issues and meetings are documented. Members of the factory management have been elected as representatives, thus, concerning issues discussed are also known to the factory management and actions will be taken when necessary.

Any information related to worker is communicated by means of notices. There is a dedicated corner for the union to post its notices in the canteen. Apart from the trade union, the factory has established a robust grievance system by providing the channels of suggestion box, hotline, social media networking, regular committee meeting and regular employees-management communication sessions, to ensure transparent and effective communication with the general workforce.

Plan Complete: Yes

Plan Complete Date: 10/22/2010

Non-Discrimination: Recruitment and Employment Practices (Job Advertisements, Job Descriptions, Evaluation Policies)

D.3 Recruitment and employment policies and practices, including job advertisements, job descriptions, and performance/job evaluation policies and practices shall be free from any type of discriminatory bias. (S)

Noncompliance

Explanation: Through review of recruitment advertisement posted beside the factory gate, it was noted that the factory would only hire female candidates for the positions of inspection and warehouse assistant. This violates Article 12 of China Labour Law and Article 20 of Provisions on Employment Services and Employment Management.

Plan Of Action: HR department has reviewed and revised the recruitment advertisement to ensure that the language used will not be considered as discrimination.

Deadline Date: 10/22/2010

Supplier CAP: HR department had reviewed and revised the recruitment advertisement accordingly. Factory ensures that the language used will not be considered as discrimination in all recruitment advertisement.

Supplier CAP Date: 10/22/2010

Action Taken: The recruitment advertisement had been reviewed and revised. HR department ensure the language used in all recruitment advertisement will not be considered as discrimination.

Plan Complete: Yes

Plan Complete Date: 10/22/2010

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: Factory tour noticed that there were no emergency lights and fire exit signs above one of the two exits in boiler room, and one exit on the 1st floor of production building A. And the lighting exit signs above one exit in the washing workshop, one exit in raw material warehouse and one exit in the canteen were deactivated. This violates Article 11.3.1 and 11.3.4 of Code of Fire Safety on Building Design (GB50016-2006).

Plan Of Action: Factory has installed new emergency lights and fire exit signs at the appropriate places.

Deadline Date: 11/30/2010

Supplier CAP: Factory had installed new emergency lights and fire exit signs at the appropriate places. Further more, factory EHS team conducts regular inspection to monitor all the fire equipment are in place and in good condition.

Responsible Person:

Supplier CAP Date: 11/30/2010

Action Taken: Factory has installed new emergency lights and fire exit signs at the appropriate places noted and fixed the emergency lights in the corresponding areas. Furthermore, the factory EHS team will conduct inspections more frequently to monitor all the fire equipment's to ensure that they are in place and in good conditions. The inspections are documented and any concerned issues will be discussed in the bi-monthly EHS committee meeting.

Plan Complete: Yes

Plan Complete Date: 11/30/2010

Health and Safety: Personal Protective Equipment

H&S.11 Workers shall be provided with effective and all necessary personal protective equipment (such as gloves, eye protection, hearing protection, respiratory protection, etc.) to prevent unsafe exposure (such as inhalation or contact with solvent vapors, noise, dust, etc.) to health and safety hazards, including medical waste. (S)

Noncompliance

Explanation: No workers in the washing workshop were wearing waterproof boots, rubber gloves or aprons. This violates Article 20 of Law of the People's Republic of China on Prevention and Control of Occupational Diseases and Article 37 of Law of the People's Republic of China on Production Safety.

Plan Of Action: All workers in the washing workshop have been reminded to use the PPE correctly.

Deadline Date: 10/20/2010



Supplier CAP: All workers working in the washing workshop wear waterproof boots, rubber gloves and aprons properly. The factory EHS team conducts regular inspection to ensure all workers working in posts with occupational hazards use PPE properly.

Supplier CAP Date: 10/20/2010

Action Taken: All workers working in the washing workshop are required to wear waterproof boots, rubber gloves and aprons properly. They are given training on the use and the importance of PPEs before working in the washing workshop. Factory EHS team conducts regular inspections to ensure that all workers exposing to potential occupational hazards use PPEs properly. A warning system is in place to deter workers from improper use of PPEs and supervisors monitor workers in the workshop, reminding workers on the spot in case of any missing PPEs/ misuse of PPEs. Supervisors also conduct regular meetings with their workers to ensure the proper use of PPEs. The factory will continuously strengthen the training and the supervision to ensure all relevant workers are wearing PPEs properly.

Plan Complete: Yes

Plan Complete Date: 10/20/2010

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: Visual inspection found that most chemicals stored and used in the washing workshop were not clearly marked. This violates Article 12 of the Regulations on Safety in Workplaces Where Chemicals Are Used.

Plan Of Action: At the time of the audit, the chemical storage area was under refurbishment and some of the labels on the containers might have come off. The factory will ensure that the related labels are posted on the containers at all times.

Deadline Date: 10/20/2010

Supplier CAP: At the time of the audit, the chemical storage area was under refurbishment and some of the labels on the containers might have come off. The factory will ensure that the related labels are posted on the containers at all times.

Supplier CAP Date: 10/20/2010

Action Taken: At the time of the audit, the chemical storage area was under refurbishment and some of the labels on the containers might have come off. The factory had posted the related labels on the containers properly. The factory will ensure that all chemical containers are labeled properly at all times.

In the future if any similar incidence, we will clearly emphasize to the contractors to make sure all the MSDS have to be posted on site even though it's during the refurbishment period. The regular EHS inspection conducted by the factory's EHS team covers all areas, including chemical safety. Any issues found will be corrected immediately, documented for future reference and discussed in the regular EHS committee meeting. In order to protect workers handling chemicals, appropriate PPEs and regular training covering the safety precautions, label and MSDS knowledge, potential hazards are provided to workers.

Plan Complete: Yes

Plan Complete Date: 10/20/2010

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: Through factory tour, it was noted that there was no Materials Safety Data Sheet (MSDS) posted on site for chemical usage and storage in the washing workshop. This violates Article 27 of Regulations on Safety in Workplaces Where Chemicals Are Used.

Plan Of Action: At the time of the audit, the chemical storage area was under refurbishment and some of the MSDS were not yet posted. The factory will ensure that the related MSDS are posted on site at the chemical storage area at all times.

Deadline Date: 10/20/2010

Supplier CAP: At the time of the audit, the chemical storage area was under refurbishment and some of the MSDS were not yet posted. The factory will ensure that the related MSDS are posted on site at the chemical storage area at all times.

Supplier CAP Date: 10/20/2010



Action Taken: At the time of the audit, the chemical storage area was under refurbishment and some of the MSDS were not yet posted. The factory had posted the relevant MSDS on site for chemical usage and storage in the washing workshop. The factory will ensure that the related MSDS are posted on site at the chemical storage area at all times.

In the future if any similar incidence, we will clearly emphasize to the contractors to make sure all the MSDS have to be posted on site even though it's during the refurbishment period. The regular EHS inspection conducted by the factory's EHS team covers all areas, including chemical safety. Any issues found will be corrected immediately, documented for future reference and discussed in the regular EHS committee meeting. In order to protect workers handling chemicals, appropriate PPEs and regular training covering the safety precautions, label and MSDS knowledge, potential hazards are provided to workers.

Plan Complete: Yes

Plan Complete Date: 10/20/2010

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: On-site observation found that all double-needle sewing machines in the factory were not equipped with needles guards and workers removed the needle guards of 5% single-needle sewing machines. This violates Article 6.1.6 of Code of Design of Manufacturing Equipment Safety and Hygiene.

Plan Of Action: The factory will ensure that all sewing machines are equipped with needle guards and workers are reminded of the importance of using the needle guards for safety reasons.

Deadline Date: 10/20/2010

Supplier CAP: The factory will ensure that all sewing machines are equipped with needle guards and workers are reminded of the importance of using the needle guards for safety reasons.

Supplier CAP Date: 10/20/2010

Action Taken: All double-needle sewing machines in the factory had been equipped with needles guards and workers used the needle guards of single-needle sewing machines properly. Factory ensures that all sewing machines are equipped with needle guards and workers are reminded of the importance of using the needle guards for safety reasons.

Plan Complete: Yes

Plan Complete Date: 10/20/2010

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 review of the provided time records from October 2009 to October 2010, and the information gathered from worker and management interviews, it was noted that 70% workers worked more than 60 hours up to 73.5 as the maximum per week in peak season, such as in the months of October 2009, January 2010, the period from April to August 2010.

Plan Of Action: Due to peak production months, some excessive over-time was carried out in the factory. The factory will continue to try and control the working hours within 60 hours per week and to provide all workers one day off in seven.

Deadline Date: 10/01/2011

Supplier CAP: Due to peak production months, some excessive over-time was carried out in the factory. Factory production department has been working closely with the Production Planning Control department to balance the loading. To solve the labor shortage issue, factory has been taking different effective measures (e.g., various worker programs) on hiring and retaining workers. The factory will continue to try and control the working hours within 60 hours per week and to provide all workers one day off in seven.

Supplier CAP Date: 10/01/2011

Action Taken: Due to peak production months, some excessive over-time was carried out in the factory. Factory production department has been working closely with the Production Planning Control department to balance the loading. To solve the labor shortage issue, factory has been taking different effective measures (e.g., various worker programs) on hiring and retaining workers. The factory ensures that all OT is voluntary, accurately recorded and paid appropriately according to local laws. And factory will continuously work with the related departments to control the weekly working hours within 60 hours and provide one day off in 7 for workers.



Given the complexity of the working hour issue, we address it internally through different levels in our corporation and externally with our customers. In the headquarters level, we will continue to do our best to avoid work in excess of 60 hours by working closely with Production, Planning and Control, communicating clearly and timely with customers, and running efficient operations at the factory level.

We have and continue to expand into newly acquired factories to accommodate additional growth. In the factory level, working hours are monitored on the regular basis and potential “excessive OT reports” are submitted to HQ for review. The factory is in the process of implementing a new HR system, which enables workers to apply leave and arrange OT through an online kiosk in the production floor. In another effort to control working hours, once the weekly working hours exceeds 60, there will be a reminder popping up in the screen when the employees wish to apply for further OT.

It's important to note here that a warning system is in place, however the root cause of problems with working hours is an extremely complex topic which involves customer forecasting, operational issues, supplier challenges, and many other supply chain matters.

We are continuing to try to address these as best we can internally and together with our customers and suppliers. While we will do our best to avoid OT, we will always gather employees' consent in advance and be sure they are paid in accordance with the premium rate or more. We will attempt to ensure no Sunday work going forward. In the rare cases when this might happen, we will do our best to provide workers with a compensatory day off the following week.

Plan Yes
Complete:

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: Based on the review of time records from October 2009 to October 2010, and the information gathered from worker and management interviews, it was noted that workers could not be guaranteed to have at least one day off per seven. For example: 80% workers worked from June 14 to 26, 2010 consecutively. This violates Article 38 of China Labor Law.

Plan Of Action: Due to peak production months, some excessive over-time was carried out in the factory. The factory will continue to try and control the working hours within 60 hours per week and to provide all workers one day off in seven.

Deadline Date: 10/01/2011

Supplier CAP: Due to peak production months, some excessive over-time was carried out in the factory. Factory production department has been working closely with the Production Planning Control department to balance the loading. To solve the labor shortage issue, factory has been taking different effective measures (e.g., various worker programs) on hiring and retaining workers. The factory will continue to try and control the working hours within 60 hours per week and to provide all workers one day off in seven.

Supplier CAP Date: 10/01/2011

Action Taken: Due to peak production months, some excessive over-time was carried out in the factory. Factory production department has been working closely with the Production Planning Control department to balance the loading. To solve the labor shortage issue, factory has been taking different effective measures (e.g., various worker programs) on hiring and retaining workers. Factory ensures all OT is voluntary, accurately recorded and paid appropriately according to local laws. And factory will continuously work with the related departments to control the weekly working hours within 60 hours and provide one day off in 7 for workers.



Given the complexity of the working hour issue, we address it internally through different levels in our corporation and externally with our customers. In the headquarters level, we will continue to do our best to avoid work in excess of 60 hours by working closely with Production, Planning and Control, communicating clearly and timely with customers, and running efficient operations at the factory level.

We have and continue to expand into newly acquired factories to accommodate additional growth. In the factory level, working hours are monitored on the regular basis and potential “excessive OT reports” are submitted to HQ for review. The factory is in the process of implementing a new HR system that enables workers to apply leave and arrange OT through an online kiosk in the production floor. In another effort to control working hours, once the weekly working hours exceeds 60, there will be a reminder popping up in the screen when the employees wish to apply for further OT.

It's important to note here that a warning system is in place, however the root cause of problems with working hours is an extremely complex topic which involves customer forecasting, operational issues, supplier challenges, and many other supply chain matters. We are continuing to try to address these as best we can internally and together with our customers and suppliers. While we will do our best to avoid OT, we will always gather employees' consent in advance and be sure they are paid in accordance with the premium rate or more. We will attempt to ensure no Sunday work going forward. In the rare cases when this might happen, we will do our best to provide workers with a compensatory day off the following week.

Plan Yes
Complete:

Plan 10/01/2011
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)

Noncompliance

Explanation: The factory applied for comprehensive working time system. Based on review of the provided time records, and the information gathered from worker and management interviews, it was noted that 80% workers' overtime exceeded the limit of comprehensive working time system in the year of 2010 (over the of period January 1 to October 18, 2010). The system requires that overtime should not beyond 432 hours from January to December 2010. The maximum number of hours observed was 847 hours for a worker from the sewing section. This violates Article 65 of the Instruction on the Implementation of the China Labor Law.

Plan Of Action: Due to peak production months, some excessive over-time was carried out in the factory. The factory will continue to try and control the working hours within 60 hours per week and to provide all workers one day off in seven.

Deadline Date: 10/01/2011

Supplier CAP: Due to peak production months, some excessive over-time was carried out in the factory. Factory production department has been working closely with the Production Planning Control department to balance the loading. To solve the labor shortage issue, factory has been taking different effective measures (e.g., various worker programs) on hiring and retaining workers. The factory will continue to try and control the working hours within 60 hours per week and to provide all workers one day off in seven.

Supplier 10/01/2011
CAP Date:

Action Taken: Given the complexity of the working hour issue, we address it internally through different levels in our corporation and externally with our customers. In the headquarters level, we will continue to do our best to avoid work in excess of 60 hours by working closely with Production, Planning and Control, communicating clearly and timely with customers, and running efficient operations at the factory level. We have and continue to expand into newly acquired factories to accommodate additional growth. In the factory level, working hours are monitored on the regular basis and potential “excessive OT reports” are submitted to HQ for review.

The factory is in the process of implementing a new HR system that enables workers to apply leave and arrange OT through an online kiosk in the production floor. In another effort to control working hours, once the weekly working hours exceeds 60, there will be a reminder popping up in the screen when the employees wish to apply for further OT. It's important to note here that a warning system is in place, however the root cause of problems with working hours is an extremely complex topic which involves customer forecasting, operational issues, supplier challenges, and many other supply chain matters.

We are continuing to try to address these as best we can internally and together with our customers and suppliers. While we will do our best to avoid OT, we will always gather employees' consent in advance and be sure they are paid in accordance with the premium rate or more. We will attempt to ensure no Sunday work going forward. In the rare cases when this might happen, we will do our best to provide workers with a compensatory day off the following week.

Plan Complete: Yes

Plan Complete Date: 10/01/2011
