



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
HONG SENG KNITTING LTD. (THAILAND)  
FINDINGS, RECOMMENDATIONS AND STATUS**

**January 23, 2013**

## A. Introduction

This report details the WRC's findings, recommendations and remedial work concerning reported threats of unlawful dismissal on account of pregnancy made against Burmese migrant workers at Hong Seng Knitting's Bangkok facility. Hong Seng Knitting is a subsidiary of Hong Seng Group, a Thai apparel manufacturing conglomerate that owns several factories in the country.

According to disclosure data provided to WRC affiliate universities, Hong Seng Knitting produces collegiate licensed apparel for Russell Corporation. In addition, Hong Seng Knitting produces non-collegiate garments for Nike and for the children's apparel firm, Carter's, Inc. Hong Seng Knitting is required to comply, therefore, with the codes of conduct of these companies, and, in the case of Russell, the universities whose licensed apparel is produced there as well.

Hong Seng Knitting employs roughly a thousand workers, of whom approximately 250 are migrant workers from Burma. Thailand has a large population of migrant workers, of which the majority has come from three of its neighboring countries: Burma, Laos and Cambodia. Estimates of the total number of migrant workers in Thailand vary, but most sources put the figure between 2.5 and 4 million.<sup>1</sup>

Migrant workers in Thailand often have precarious living conditions and are vulnerable to abuse by authorities and employers.<sup>2</sup> Because these workers are keenly aware of their marginal status in Thai society, they generally are reluctant to voice concerns about workplace abuses.

In early August, three female Burmese migrant workers employed at Hong Seng Knitting submitted a complaint to the WRC alleging that the company intended to dismiss them on account of their being pregnant. Pursuant to the WRC's investigative protocols, the WRC's research into the factory's labor practices focused on this allegation. This report should not be taken to state conclusions – whether findings of compliance or of non-compliance – in other areas not discussed in this report.

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<sup>1</sup> See, War on Want, *Restricted Rights: Migrant Women Workers in Thailand, Cambodia and Malaysia*, (2012), page 6 (citing 2010 figures of 2.5 million migrant workers from Thailand's Office of National Security Council); United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011: Thailand, page 54 (stating estimate of up to 2.9 million migrant workers); and National Health Commission Office of Thailand, "The Number of Migrant Workers in Thailand Reaches 4 Million," <http://en.nationalhealth.or.th/node/294>.

<sup>2</sup> See, Human Rights Watch, *From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand* (2010); War on Want, *supra*, n. 1.

Based on its findings concerning these allegations, the WRC issued recommendations to Hong Seng Knitting for corrective action. As we report below, Hong Seng Knitting's management responded positively to these recommendations and took immediate steps to address the allegations.

## **B. Methodology**

The findings outlined in this report are based on the following sources of evidence:

- Offsite interviews with Hong Seng Knitting workers;
- Email communication with Hong Seng Knitting management;
- Communication with Nike compliance staff;
- Review of documents provided by the company; and
- Review of relevant Thai laws and international labor standards.

## **C. Findings, Recommendations and Status**

### *1. Discriminatory Threat to Dismiss Pregnant Workers*

On August 6, 2012, Hong Seng Knitting's human resources officer summoned three female Burmese migrant workers to a meeting in the company's offices at the end of their working day. All three workers were pregnant.

The HR officer informed the three workers that they were being dismissed, effective August 21, 2012, for having failed to meet their production quotas. The workers, all of whom already had been employed at the company for more than three months, responded that although, as Thai labor law requires, they had not been working overtime during their pregnancies,<sup>3</sup> their work performance was otherwise as normal.

According to the three workers, the HR officer repeated that they would have to sign a resignation letter on August 21, 2012, and that, unless they did so, the company would not provide them with the written forms documenting the completion of their employment ("Annex Form 9") that, as foreign workers, they would need to secure future employment.<sup>4</sup>

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<sup>3</sup> See, Labor Protection Act, § 39/1 (rev. 2008) ("[A]n employer shall be prohibited to require a female employee who is pregnant to work between 10.00 p.m. and 06.00 a.m., to work overtime or to work on holidays.").

<sup>4</sup> See, Office of Foreign Workers Administration, Ministerial Regulation re: Application for and issuing of work permits and declaring employment of foreign workers, § 24 (2011) ("[F]oreigner work permit grantees wishing to apply for making amendments to or adding of employers shall apply using Annex Form 9 annexed to this Ministerial Regulation, including the work permit and documents outlined in Clause 20.").

Later, when one of the workers asked her line leader (i.e., foreperson) whether she was being dismissed because of her pregnancy, the line leader denied this and reiterated the company's position that the termination was on account of the worker's failure to reach her production target. When further queried by the three pregnant workers, however, neither the line leader nor any of the company's managers whom they asked would explain to what production targets they actually were referring.

Moreover, the three workers had not received any prior disciplinary warnings indicating that their work was unsatisfactory. Therefore, the WRC concluded, the allegation that the workers were being terminated for failure to reach production targets was merely a pretext for dismissing them on account of pregnancy, a violation of Thai labor law and international labor and human rights standards.<sup>5</sup>

## *2. Failure to Provide Reasonable Work Accommodation for Pregnant Workers*

According to these workers, the factory did not provide reasonable accommodation in work assignments for the pregnant workers, but instead required them to continue working at their sewing machines during their pregnancies. Thai Labor law prohibits pregnant workers from using any vibrating machinery.<sup>6</sup>

### Recommendations:

On August 18, 2012 the WRC contacted Hong Seng Knitting's management and recommended that the company take corrective action so that the three workers would not be terminated on August 21. The WRC further recommended that Hong Seng revise the company's policies and practices concerning migrant workers and employee pregnancy to ensure that such violations would not recur. The WRC also recommended that Hong Seng should ensure that the employees were offered work that was healthy, safe and legally permissible for them to perform during their pregnancies.

The WRC also contacted Nike locally and in the US to seek their assistance to correct these labor rights violations. Nike responded quickly by contacting Hong Seng Knitting and urging the company to take corrective action.

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<sup>5</sup> See, Labor Protection Act § 43 (rev. 2008), (“[A]n employer shall not terminate the employment of a female employee on the grounds of her pregnancy.”); United Nation's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), § 11, 2 (“[I]n order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status”).

<sup>6</sup> See, Labor Protection Act (rev. 2008), § 39: “[A]n employer shall be prohibited to require a female employee who is pregnant to perform any of the following work --- to work involving vibrating machinery or engine.”

Remediation Status:

Shortly after the WRC's initial communication with the factory's management concerning the three pregnant workers, the WRC was informed that the three subsequently had been told that they would not be dismissed and that they, instead, would be transferred to work assignments that were suitable for pregnant workers.

Two days later, on August 20, 2012, the factory's management contacted the WRC and attributed the problem to miscommunication between the three Burmese workers and their Thai supervisor. The factory management explained that the factory's usual practice was to have its line leaders conduct initial evaluations of employees that were then completed by its HR staff. The management claimed that the company evaluated employees based on work quality, knowledge, skills, responsibility, work ethic, and safety practices, and not on the basis of whether or not they were pregnant.

The WRC responded to the company on August 21, 2012, noting that if this was Hong Seng's policy, it had evidently not been followed in this case. The WRC further recommended, therefore, that the company should ensure that all of its managers were aware of the company's policy regarding nondiscrimination on account of pregnancy in employee evaluations as per the company's recent representations to the WRC.

On August 22, 2012, WRC received a further response from the factory indicating that all three pregnant workers were still working at Hong Seng Knitting. The management also informed the WRC that the company would set up three programs to improve communication between workers and management: First, the company would provide Thai language courses to its Burmese workers; second, it would retrain its supervisors and HR staff in how to evaluate workers; and third, it would inform both its Thai and its Burmese workers who were or became pregnant concerning provisions of Thai labor law and social security benefits applicable to them.

Management later provided the WRC with photographic evidence of the Thai language classes and explained they were held every Saturday evening from 5:30 to 7:30 free of charge for the Burmese workers. Follow up interviews carried out on November 11, 2012, also confirmed that the factory had begun to provide Thai language courses to Burmese employees.

The factory's management also sent to the WRC a copy of the company's policies regarding employee pregnancy, which had been revised in October 2012. The document describes clearly the respective duties of members of the company's management, including human resources staff, labor trainers and safety officers, in ensuring that pregnant workers will be informed of their rights, and given appropriate work assignments. The management also provided photographic evidence showing that pregnant workers were carrying out tasks such as cutting labels, packing or sitting at the service center counter, where thread and extra

needles are provided. The workers confirmed that pregnant workers were now being assigned lighter duties not involving vibrating machinery such as cutting labels and packing finished goods.

The pregnant workers also confirmed that they had been enrolled in Thailand's Social Security Fund and were having contributions to the fund deducted from their pay. As a result, these workers would receive social security cards within three months<sup>7</sup> and would be legally entitled to social security benefits related to pregnancy and maternity seven months after their enrollment,<sup>8</sup> including maternity related work leave allowance and other benefits as prescribed in the law.<sup>9</sup>

Finally, the factory's management also provided a copy of the evaluation guidelines used to evaluate probationary workers on their 60th and 90th days at work. The 60th day evaluation, according to management, was added to give workers who receive a poor initial evaluation a chance to improve their performance before their final assessment on the 90th day of their employment. These guidelines were revised in October 2012 and do not contain language relating to pregnancy.

In sum, due to the intervention of the WRC and Nike, the impending dismissals of the three pregnant migrant workers were prevented and the factory management acted decisively on taking steps to prevent further violations of this kind and improving conditions for its Burmese migrant workers.

The WRC will continue to monitor this issue and may conduct a full assessment of conditions at the factory if further information warrants such action.

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<sup>7</sup> See, Social Security Act, § 36 (“[W]hen the employer has submitted the information as prescribed in §34, the Social Security Office will issue the registration document to the employer, and the social security card to the employee in accordance with the principles and methods prescribed in the Ministerial notification.”); and, Social Security Office, *Registration of the Insured* ¶ 1 (“[T]he insured will receive the [social security] card, after having registered and paid contributions for three months.”).

<sup>8</sup> See, Social Security Act, § 65 (“[T]he insured person shall be entitled to maternity benefits for herself or for the spouse or for the women who cohabits publicly as husband and wife with the insured person according to the regulations prescribed by the Secretary – General, in case the insured person has no wife. In this regard the insured person must have paid contribution for not less than seven months, during the period of fifteen months before the date of receiving medical services. The insured person shall be entitled to receive maternity benefits for not more than two time of child delivery.”).

<sup>9</sup> See, Social Security Act, § 66 (“[M]aternity benefits shall consist of: (1) medical examination and child bearing expenses; (2) medical treatment expense; (3) medicine and medical supplies expenses; (4) confinement expense; (5) lodging, meals and treatment expenses in hospital; (6) new – born baby nursing and treatment expenses; (7) cost of ambulance or transportation for patient; (8) other necessary expenses. The above mentioned expenses shall be in accordance with the rules and rates prescribed by the Medical Committee, with the approval of the Committee. The insured person who has to take work-leave for child delivery, shall be entitled to receive work-leave allowance for child delivery according to the prescribed criteria under § 67.”).