

WORKER RIGHTS CONSORTIUM ASSESSMENT CAN MAN GARMENT (VIETNAM)

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I. Introduction and Executive Summary

A. Background Information

This report presents the findings and recommendations of an assessment conducted by the Worker Rights Consortium (“WRC”) on behalf of the California Health Benefit Exchange / Covered California (“Covered California”) of labor and employment practices at Can Man Garment Co. Ltd. (“Can Man”), a factory located in Ho Chi Minh City, Vietnam, and the distribution of an innovative “living wage supplement” paid to the factory’s employees for their work sewing protective cloth face masks (“masks”) for Covered California.

The masks were distributed by Covered California, free of charge, to its 1.5 million healthcare coverage subscribers across the state, as a public health and promotional measure during the Covid-19 pandemic in early 2021. The WRC conducted this assessment between November 2020 and March 2021 at the request of Covered California, which had contracted with the Oakland, California-based company, Aiden Health, Inc. (“Aiden”) to supply the masks, which Aiden, in turn, contracted to be manufactured at the Can Man factory.

Covered California retained the WRC to work with Aiden to distribute the living wage supplement to the factory’s workers and to independently assess Can Man’s compliance with labor and employment standards that Covered California required to be included in the mask supply contract between Aiden and Covered California’s buyer, Duncan Channon—standards which committed Aiden to ensure that Can Man comply with Vietnamese labor and employment laws and also respect applicable international labor rights.¹ The WRC’s assessment of the factory included offsite and onsite interviews with more than 150 workers as well as two in-person inspections of the facility, the first in November 2020 and the second in March 2021.

B. Distribution to Workers of Covered California’s Living Wage Supplement

The WRC worked with Aiden between November 2020 and June 2021 to coordinate and monitor the transfer and distribution to nearly 500 workers of the supplement to workers’ wages that was provided by Covered California to ensure that workers received a living wage while producing Covered California’s masks. This supplement, which totaled US\$419,413²—the equivalent of 10

¹ Vietnam has ratified 20 Conventions of the ILO, of which 17 concern labor rights and working conditions (the remaining three address government employment policy and labor ministry administration). Five of these 17 are the ILO’s “Fundamental Conventions:” Conventions 29 ([Forced Labour](#)), 138 ([Minimum Age](#)), 182 ([Worst Forms of Child Labour](#)), 100 ([Equal Remuneration](#)), and 111 ([Discrimination \(Employment and Occupation\)](#)). The remaining 12 are “Technical Conventions:” Conventions 6 ([Night Work of Young Persons \(Industry\)](#)), 14 ([Weekly Rest \(Industry\)](#)), 27 ([Marking of Weight \(Packages Transported by Vessels\)](#)), 45 ([Underground Work \(Women\)](#)), 80 ([Final Articles Revision](#)), 116 ([Final Articles Revision](#)), 120 ([Hygiene \(Commerce and Offices\)](#)), 123 ([Minimum Age \(Underground Work\)](#)), 124 ([Medical Examination of Young Persons \(Underground Work\)](#)), 155 ([Occupational Safety and Health](#)), 187 ([Promotional Framework for Occupational Safety and Health](#)), and [Maritime Labour Convention, 2006 \(MLC, 2006\)](#). As an ILO member state, Vietnam is also obligated under the ILO Declaration on Fundamental Principles and Rights at Work (1998) to comply with all “Fundamental Conventions”, which additionally include Conventions 87 ([Freedom of Association and Protection of the Right to Organize](#)) and 98 ([Right to Organize and Collective Bargaining](#)), even though it has not ratified these conventions.

² Aiden Health Covered California Mask Purchase Agreement, Section 9 (“Employment Standards”), (October 22, 2020) (on file with WRC).

cents per mask—was distributed to 483 individual workers in amounts that ranged from US\$341 to US\$1,038 per employee (equal to roughly 1.5 months’ to five months’ regular wages), depending on the length of time the employees worked at the factory when the masks were being produced.

On average, as a result of this supplement, each of the factory’s workers received, in addition to their regular wages from the factory, an extra US\$868—the equivalent of slightly more than four months’ legal minimum wages. As discussed in this report, an analysis conducted by the WRC verified that the supplement provided by Covered California ensured that the total compensation employees received during the roughly one-month period during which the masks were produced at the factory provided the 483 workers and their families with an actual living wage.

Glaring discrepancies are often seen between the claims made by many major brands that they are making progress toward providing living wages for the workers who make their products—or even that they are providing them already³—and these same brands’ repeated failures to guarantee that workers in their supply chain receive even legal minimum wages,⁴ much less a true living wage. Given this reality, the achievement by Covered California of a living wage for the workers at Can Man during the period its masks were made at the factory is a significant accomplishment.

Moreover, the fact that a living wage was provided to the workers by Covered California, despite the management of the Can Man factory (like many other garment factory managers) having failed, themselves—as discussed in this report—to comply with local minimum wage laws, only makes this accomplishment even more significant. Though limited to a single factory, over only a very limited period, Covered California’s provision of this supplement is a demonstration of the potential for buyers that are willing to pay a modest premium on the prices of their products to have a substantial positive impact on the wages, and lives, of the workers in global supply chains who make them.

C. Findings concerning Working Conditions

As detailed in Section IV of this report, the WRC’s assessment of Can Man found extensive violations by the factory of Vietnamese labor law, relevant international labor conventions, and, by extension, the contractual requirements mandated by Covered California. These violations, while significant and wide-ranging, are not uncommon among factories in Vietnam’s export garment manufacturing sector.

The WRC found these violations in the following areas of the factory’s labor and employment practices:⁵

³ Worker Rights Consortium, “The False Promise of Corporate Living Wage Commitments,” June 1, 2019, <https://www.workersrights.org/commentary/the-false-promise-of-corporate-living-wage-commitments/>.

⁴ Annie Kelly, “‘Worst fashion wage theft’: workers go hungry as Indian suppliers to top UK brands refuse to pay minimum wage,” *Guardian*, December 16, 2021, <https://www.theguardian.com/global-development/2021/dec/16/worst-fashion-wage-theft-workers-go-hungry-as-indian-suppliers-to-top-uk-brands-refuse-to-pay-minimum-wage>.

⁵ The fact that the WRC’s investigation, as reported in this document, did not yield findings of violations in certain areas of the factory’s labor practices should not be construed as a certification of the factory’s overall compliance

1. Wages, Working Hours, and Benefits

- **Mandatory and Excessive Overtime.** Can Man violated Vietnamese law by requiring workers to perform mandatory overtime, including hours above the legal maximum set by Vietnamese law.
- **Non-provision of legally required short rest breaks.** While the factory gave workers a midday meal break, Can Man failed to provide workers with two legally mandated short rest breaks—one in the morning and one in the afternoon.
- **Subminimum Wages.** Can Man did not comply with Vietnam's legal minimum wage standard and does not pay the minimum legal premium for overtime work. The majority of workers at the factory were found to be paid less than the legal minimum wage for their hours worked.
- **Nonpayment of Social Insurance, Medical Insurance, and Unemployment Insurance Contributions.** Can Man did not pay legally required social insurance, medical insurance, and unemployment insurance contributions for 95 percent of its workforce. This unlawful omission rendered these workers unable to access or accrue paid sick leave benefits, unemployment insurance benefits, paid maternity benefits, and retirement benefits provided to other workers through the Vietnamese social security system.
- **Punitive Wage Deductions.** Can Man unlawfully deducted workers' entire monthly attendance bonus whenever workers take more than three days of sick leave or annual leave in a month, even if this leave has already been approved and even though workers have a legal right to such leave, thus punishing workers for using leave to which they have a statutory right.
- **Non-provision of Childcare Allowance.** Can Man did not provide workers with young children with a childcare allowance that is required to be paid under Vietnamese law.

2. Terms of Employment

- **Illegal Use of Short-Term Contracts.** Can Man employed workers unlawfully on successive short-term employment contracts.
- **Failure to Provide Workers with Copies of Employment Contracts.** Workers unlawfully were not provided with a copy of their employment contracts.

with respect to its practices in those areas. Also note that, although this assessment included an overall safety and health inspection, due to travel restrictions imposed by the Covid-19 pandemic, this inspection was not carried out by a certified industrial hygienist. Nor did the investigation include specialized fire, electrical, or structural safety inspections by engineers in those fields and so also should not be considered to denote the factory's compliance with respect to issues where only such specialists can provide such a certification.

3. Underage Workers

- **Employment of Underage Workers under Illegal Conditions.** Can Man employed a small number of workers below 18 years of age, without complying with legally required protections for such employees, in particular, restrictions on their working hours.

4. Statutory Paid Time Off

- **Sick Leave and Annual Leave.** As noted, Can Man deducted employees' entire attendance bonus, whenever workers take more than three days of statutory sick leave or annual leave in a month, even if this leave had already been approved, effectively restricting workers from accessing paid time off to which they are legally entitled. The company's failure to enroll workers in or make contributions to the country's social insurance program also effectively denied workers access to sick leave, which is paid via this government program.
- **Failure to Provide Paid Holidays for Lunar New Year.** In 2021, Can Man failed to provide workers with pay for the five days off employees received for the Tết Lunar New Year, in violation of Vietnamese law.

5. Occupational Safety and Health

The WRC found numerous health and safety violations at Can Man, which included, but were not limited to:

- **Fire Safety Hazards.** Workers at the Can Man factory faced numerous serious fire safety hazards from obstructions and other unsafe conditions concerning the building's emergency exit routes.
- **Machinery and Equipment Hazards.** Machinery at the factory lacked basic protective measures such as guarding and was not properly maintained for workers' safety, and the factory failed to provide personal protective equipment to help workers using machinery avoid injuries.
- **Ergonomic Hazards.** The factory required employees to work in seating and standing positions without basic equipment to protect them from musculoskeletal injuries.

6. Freedom of Association

- **Failure to Transfer Union Dues.** Can Man did not transfer workers' union dues, which it collects, to the local labor organization as required by law.

- **Failure to Implement Provisions in the Collective Bargaining Agreement (“CBA”).**
The company failed to provide workers with certain allowances stipulated in the factory’s collective bargaining agreement.⁶

The violations identified above, as well as the methodology by which the WRC reached these findings, are discussed in further detail in the body of this report. For each violation that the WRC found, this report also discusses the recommendations that the WRC provided to Can Man for remedying the violations and the extent to which these were adopted and implemented by the factory.

D. Factory Response to Findings and Current Status

The WRC provided Covered California, Aiden, and Can Man a draft version of this report in December 2020. Can Man responded by providing a corrective action plan (CAP), which it finalized in late January 2021. As described in this report, the final CAP provided by Can Man still fell short of full remediation of many of the violations identified by the WRC.

In response to the WRC’s findings and extensive engagement by the WRC and Aiden, the factory did make significant improvements to some aspects of its labor practices, particularly in the areas of payment of legal minimum wages (including payment of substantial back pay for past noncompliance) and remediation of fire hazards (including, notably, installation of a sprinkler system, an important safety measure which is uncommon in garment factories in the region).

Unfortunately, a follow up inspection and other assessment work conducted by the WRC in March 2021 revealed that, in several areas, Can Man had failed to implement a number of the other measures that it had committed to in its CAP—measures which, as noted above, already fell short of full remediation in many areas. As a result, despite some significant improvements related to wages, fire safety, and working hours, many of the labor and employment practices at Can Man at the end of this assessment still did not comply with Vietnamese labor law, relevant international labor conventions, and, by extension, the contractual requirements mandated by Covered California.

E. Obstacles to Assessment: Management Falsification of Size of Workforce

The WRC regrettably also found during the assessment, that Can Man had provided false and inconsistent information concerning the number of workers employed at the factory, a practice that, while not a violation of a specific labor or employment law, was fraudulent conduct that had significant implications for assessing and ensuring the factory’s compliance with labor standards. Over the course of the WRC’s inspection of the factory, Can Man provided documents that

⁶ In addition, the WRC’s assessment of Can Man also identified two other issues that, while they did not violate legal or contractual standards to which the factory is subject, are mentioned because they were inconsistent with prevailing industry conditions or basic standards of responsible business practice. These were: (1) the lunch allowance that the company provided to employees was below prevailing industry standards in the area; and (2) the factory failed to provide workers with written wage statements, which made it difficult for employees to determine how their wages were being calculated and whether the company was properly paying them.

showed significantly different numbers of workers employed at the facility, numbers which were, in turn, far different than the number of workers that the WRC observed being present at the factory.

A list of the total workers at the factory that the company initially supplied to the WRC showed the plant having 245 employees. On the first day of the WRC's inspection of the factory, the company claimed that the plant operates two shifts, and that around 190 workers were present during the day shift, a number that the WRC visually confirmed. However, shortly after the end of the day shift, when all workers had left the premises, the company turned off all lights, clearly indicating that no night shift was going to begin, raising the question of whether such a night shift and its purported additional employees actually exist.

Moreover, the initial payroll document supplied by the company, which turned out to have falsified wage figures, had 391 workers listed—more than twice the number the WRC observed at the factory. After the inspection, Can Man provided the WRC the factory's October 2020 and March 2020 payroll documents (with genuine wage figures); however, only 122 workers and 113 workers, respectively, were listed—significantly *fewer* than the WRC observed in November 2020.

Can Man also supplied the WRC with a list of 25 temporary workers who were employed at the factory at the time of the November 2020 inspection, which would bring the total number of workers at the factory at the time to 147. However, this is still a significantly smaller number of workers than the 190 workers whom WRC observed at the factory. As a result of the inconsistent and false information provided by Can Man, the WRC was not able to definitively determine the exact number of workers who were involved in the production of masks for Covered California, or where the workers observed at the factory, beyond the total of 147 appearing on the company's payroll list and its list of temporary employees, normally were employed.

Between mid-December 2020 and late January 2021—after the WRC had shared with Can Man, Aiden, and Covered California a preliminary version of this report, which raised the issue of the falsification of the size of the workforce—Can Man provided yet more lists of the temporary and permanent employees who had worked at the factory while the masks supplied to Covered California were being manufactured. However, there continued to be substantial inconsistencies between these lists and the employee lists that the factory had previously provided in October and November.

Ultimately, based on a combination of independent assessment of the documentation provided by the company, in-person worksite observations, and interviews with factory workers, the WRC finalized a list of 551 workers, including both temporary and permanent employees, who were determined to be eligible to receive the bonus provided by Covered California, by virtue of their having worked at the factory and/or worked on Covered California's order during the period when California's face masks were being produced. The multiple forms of false and inconsistent information provided by Can Man, however, made it impossible to determine with total certainty whether every worker who was eligible to receive the bonus was included on this list nor whether every worker who received the bonus was among those actually eligible to do so.

Nevertheless, the WRC was able to confirm that nearly all of the workers who were eligible did receive the bonus and that nearly all of the workers who received the bonus were eligible.

II. Methodology

The WRC initiated its assessment of Can Man in November 2020. The WRC's findings and recommendations with respect to Can Man are based on the following sources:

- In-depth interviews with 28 current Can Man production employees, which were conducted in November 2020, both onsite and at locations away from the factory chosen by the employees, and follow up interviews with more than 130 workers between December 2020 and April 2021;
- Interviews with Can Man managers, which were conducted on the factory premises, and follow up communication with Can Man managers via email;
- An initial physical inspection of the factory conducted November 18–19, 2020, and a follow up inspection conducted on March 30, 2021;
- A review of relevant company records; and
- A review of relevant Vietnamese labor laws and international labor standards.

III. Distribution to Workers of Covered California Living Wage Supplement

A. Background Information

Under the contract between Aiden, and Covered California's buying agent, Duncan Channon, Covered California committed to pay US\$419,413⁷ to bring the incomes of the workers at Can Man, during the period when Covered California's masks were produced, to a level adequate to provide a true "living wage". Consistent with views of other international labor rights experts, the WRC considers a living wage to be a level of compensation that is sufficient to provide an employee working a full time schedule with wages that, exclusive of any payments that are contingent on performing extra work (i.e., production bonuses) or extra hours (overtime), meet, for an average-sized family, the minimum living expenses needed for a decent and secure standard of living.⁸

Between November 2020 and June 2021, the WRC worked with Aiden to coordinate and monitor the transfer and distribution to nearly 500 workers of the living wage supplement committed by Covered California. This supplement was distributed to individual workers in amounts that ranged from US\$341 to US\$1,038 per employee (roughly 1.5 months' to five months' regular wages), depending on the length of time the employees had worked at the factory when the masks were being produced. For the employees who worked full time at the factory during most or all of the one-month period when Covered California's masks were being produced, the living wage bonus that was distributed to them amounted to roughly three to five months' of regular salary per worker.

⁷ Aiden Health Covered California Mask Purchase Agreement, Section 9 ("Employment Standards").

⁸ Worker Rights Consortium, "Global Wage Trends for Apparel Workers, 2001–2011", *Center for American Progress*, July 2013, <https://cdn.americanprogress.org/wp-content/uploads/2013/07/RealWageStudy-3.pdf>.

B. Living Wage Verification

Research conducted by the WRC verified that Covered California's provision of the wage supplement ensured that during the period when Covered California's masks were manufactured all employees working at the factory received a verifiable living wage. A 2013 study conducted by the WRC for the Center for American Progress calculated that in 2011 a living wage for the average garment worker and her family, in the Ho Chi Minh City (HCMC) region, where the Can Man factory is located, was VND 7,844,895.84 per month.⁹ Since 2011, consumer price inflation in Vietnam has increased by 42 percent, which would bring the monthly salary required for the same living wage in 2020 to VND 11,141,070 (US\$486).¹⁰

As discussed in Section IV.B of this report, the WRC determined that, during the period when Can Man produced masks for Covered California, due to the factory's failure to comply with the legal minimum wage, the majority of the factory's full time workers received wages from the factory of only roughly VND 3,450,430 (US\$148) per month. Therefore, a supplement to workers' wages of at least VND 7,690,640 (US\$338) per worker was required to guarantee these workers a living wage for this period. The minimum living wage supplement that employees at the factory received, even if they only worked a fraction of the period when Covered California's masks were produced there, VND 7,749,000 (US\$341), exceeded this minimum figure.

Moreover, the factory's full time employees, who worked during the entire period when the masks were produced at the factory received a living wage supplement that was far above this—VND 22,598,000 to 24,198,000 (US\$964 to US\$1,038). Taking into account payments to both the factory's full time workers and its temporary employees, on average, each of the 483 workers who benefited from the living wage supplement received US\$868, the equivalent of slightly more than four months' legal minimum wages.

C. Distribution of Living Wage Supplement

The living wage supplement that Covered California provided for Can Man's workers was distributed to the factory's employees through two rounds of payments. In early February 2021 through early March 2021, 441 employees who had worked on a full time basis during the entire period when Covered California's masks were produced each received VND 15,498,000 (US\$661).

Forty-two other workers at the factory, who had worked on Covered California's mask order for no more than a one-week period received VND 7,749,000 (US\$330). Sixty-eight other workers, whose names were on the list of persons eligible to receive the living wage supplement, could not be contacted.

In August 2021, because these 68 workers had still not been located, the remaining portion of the funds provided by Covered California for the living wage supplement was distributed by Aiden and the WRC to the factory's other workers. Between August 12 and 24, 2021, 167 of the

⁹ Worker Rights Consortium, "Global Wage Trends for Apparel Workers, 2001–2011".

¹⁰ World Bank, "Consumer Price Index: Vietnam",

<https://data.worldbank.org/indicator/FP.CPI.TOTL?end=2020&locations=VN&start=1996&view=chart>

factory's workers received a second distribution of VND 7,100,000 to 8,700,000 (US\$303 to US\$371) per worker, completing the disbursement of the funds provided for the living wage supplement by Covered California.

IV. Findings of Labor Rights Violations, Recommendations for Corrective Actions, and Status of Remediation

The subsections below detail the findings of the WRC with respect to working conditions and labor practices at Can Man that violate Vietnamese labor laws, relevant international labor standards, and, by extension, Covered California's labor and employment standards. For each violation that the WRC found, the report also discusses the recommendations that the WRC provided to Can Man for remedying the violations and the extent to which these were adopted and implemented by the factory.

A. Working Hours

The WRC found that production workers at Can Man work a single eight-hour shift, from 7:30 a.m. to 4:30 p.m., six days per week, with a one-hour unpaid lunch break between 12:00 p.m. and 1:00 p.m. In addition to working these regular hours, employees were required to perform at least one hour of overtime per day, from 4:30 p.m. to 5:30 p.m., and, during some periods of the year, are required to work more overtime hours than this. The WRC found that the amount of overtime worked by employees often exceeded the limits set by Vietnamese law and, moreover, contrary to the law's requirements, was not performed on a voluntary basis.

1. Excessive Overtime

Findings

Vietnamese law limits the number of overtime hours allowed to a maximum of 12 hours per week, 30 hours per month, or 300 hours per year.¹¹ A review of company payroll documents in November 2020 showed that during several months, in the earlier part of that year, including March, September, and October, many Can Man workers performed overtime beyond the legal monthly limits with some workers performing up to 69 hours of overtime in one month. In such cases, Can Man failed to comply with the law regarding the number of overtime hours employees worked per month, which, in some cases, were more than double the legal limit.

Recommendations

The WRC recommended that, in order to comply with Vietnamese law, Can Man should review its production scheduling or hire additional employees to ensure that workers were not required to work overtime hours in excess of legal limits.

¹¹ Labor Code (Vietnam), Article 106 (2b) ("Ensuring that the number of overtime working hours of the employee does not exceed 50% of the normal working hours in 01 day; in case of applying regulation on weekly work, the total normal working hours plus overtime working hours shall not exceed 12 hours in 01 week; overtime working hour shall not exceed 30 hours per month and 200 hours in 01 year, except for some special cases as regulated by the Government, the total number of overtime working hours shall not exceed 300 hours in 01 year;").

Status

The WRC found that Can Man still had employees perform excessive overtime in January 2021, with some workers having performed more than 50 hours of overtime in that month. In February 2021, workers reportedly did not do overtime as there were fewer orders. However, it was unclear at best if, when orders increased in the future, the factory would ensure that workers did not perform overtime beyond the maximum legal limits.

2. Involuntary Overtime

Findings

Vietnamese law requires that all overtime, defined as work beyond eight hours in a single day, must be voluntary.¹² The WRC found that employees at Can Man worked a regular eight-hour shift, from 7:30 a.m. to 4:30 p.m., inclusive of a one-hour lunch break. Accordingly, all additional time employees work must be considered overtime.

Can Man's company regulations, however, stated that the factory's regular working day started at 7:30 a.m. and ended at 5:30 p.m., for a total of nine working hours, thereby including one hour of overtime. Moreover, the WRC found that workers' employment contracts also stated that their regular working day started at 7:30 a.m. and ended at 5:30 p.m., indicating that this daily one hour of overtime was compulsory.

As a result of these practices, performing this daily hour of overtime was not actually voluntary for employees but, instead, a standard requirement of their employment. Under Vietnam's labor law, any form of such compulsory overtime is illegal. Therefore, by extension, Can Man's practices in this area also violated Covered California's labor standards.

Recommendations

The WRC recommended that, in order to comply with Vietnamese law, Can Man should strengthen its overtime policy and practices to ensure that all overtime is voluntary. Specifically, the WRC recommended that Can Man ensure that all overtime is performed voluntarily by:

- Revising the factory's employment contracts and internal work rules to clearly spell out that the regular workday ends at 4:30 p.m.;
- Formulating a clear written policy that all overtime is voluntary;
- Communicating with workers to ensure that they understand this policy, by both sharing it in writing with all workers and having it read aloud to all workers by their supervisors and/or via the factory's public address system; and
- Instructing supervisors to refrain from compelling employees to perform overtime in order to complete production targets. The company should develop clear disciplinary procedures for any supervisor who requires workers to perform involuntary overtime.

¹² Labor Code, Article 106 (2a) ("The employer has the right to request an employee to work overtime when all of the following conditions are met: a) Obtaining the employee's consent;").

Status

Can Man revised its internal work rules, which now clearly states that the workday ends at 4:30 p.m. However, by March 2021, Can Man had not yet had its new internal work rules registered at the local authorities, and although management promised to send a copy of the eventual registered internal work rules, Can Man did not provide any further proof that the rules had since been registered.

At the time of the WRC's follow up factory visit in March 2021, the factory had fewer orders and did not require workers to work overtime. Thus, while at the time of inspection, Can Man no longer was violating the law regarding forced overtime, further follow up is still needed to determine whether this remains the case when orders increase.

3. Failure to Provide Short Rest Breaks

Findings

Vietnamese law requires the factory to provide workers with multiple short rest breaks per day,¹³ in addition to their one-hour meal break. The law mandates that the timing and duration of these short rest breaks should be stipulated either in the factory's collective bargaining agreement or in the company's internal work rules, and that these breaks must be paid.

Can Man's formal policy was to provide two daily 15-minute breaks, the first from 9:00 a.m. to 9:15 a.m. and the second from 3:00 p.m. to 3:15 p.m. This policy would have, if it had been implemented, complied with the law's requirements in this regard.

However, none of the workers whom the WRC interviewed at Can Man reported that they ever took such short rest breaks. The workers added, however, that their supervisors, generally, were not overly strict and that the workers were able to occasionally walk or stand and stretch when needed. However, to comply with the law (and Covered California's labor standards), the company had to implement the practice of providing two 15-minute breaks daily.

Recommendations

The WRC recommended that, in order to comply with Vietnamese law and, by extension, Covered California's labor standards, Can Man should implement a schedule of providing two 15-minute breaks daily. Moreover, the WRC noted that Can Man should compensate workers for the statutory rest breaks which they have not been provided to date, back to workers' dates of hire or the statutory limit, whichever period was of shorter duration.

Status

Can Man reported on January 26, 2021, that it had clarified to its employees that workers are entitled to two 15-minute breaks during the workday from 9:00 a.m. to 9:15 a.m. and again from

¹³ Labor Code, Article 108 (3) ("In addition to the rest break prescribed in Clause 1 and Clause 2 of this Article, an employer shall determine other short breaks, as stipulated in the internal work regulations.").

3:00 p.m. to 3:15 p.m. Workers, when interviewed in March 2021, expressed awareness of the two breaks but also told the WRC that Can Man was not strictly enforcing taking these breaks as a requirement. Workers explained that a bell rang in the factory at the break times and that some workers would use this time to stretch their legs, go to the toilet, while others would still work during the break, repairing mistakes they had made on products. Can Man has not made any commitments to compensate workers for its past unlawful failure to ensure that the workers were able to take these short breaks.

4. Failure to Provide Statutory Menstrual Break or Pay in Lieu Thereof

Findings

Vietnamese labor regulations require employers to allow women employees to take an additional half-hour break on three days in the month when they are menstruating or, if workers prefer to forgo this break, receive an additional 1.5 hours' wages per month (which for workers at Can Man, amounted to roughly VND 35,700 (US\$1.53)).¹⁴ None of the workers whom the WRC interviewed reported that women workers receive this break, and a review of the company's internal work rules and payroll records revealed that workers also did not receive any pay in lieu of taking the menstrual break. Accordingly, the WRC concluded that Can Man violated Vietnamese law (and Covered California's labor standards) by failing to provide workers with menstrual breaks or additional pay in lieu thereof.

Recommendations

The WRC recommended that, in order to comply with Vietnamese law and, by extension, Covered California's labor standards, Can Man should implement a practice of offering women workers the statutory menstrual break or, should workers choose to forgo it, pay them an additional 1.5 hours' wages per month. Moreover, WRC told Can Man that it should compensate women workers for the statutory menstrual breaks which they have not been provided to date, back to workers' date of hire or the statutory limit, whichever time period is of shorter duration.

Status

On January 26, 2021, Can Man reported that it had made it clear to employees in its factory rules that women workers could take a 30-minute menstrual break per day. The WRC found this commitment of Can Man to be inadequate as the company' corrective action did not acknowledge that workers also had the right, in the case of menstrual breaks, to forgo them and receive an additional 1.5 hours' pay per month. Also, Can Man's response did not mention the need to compensate workers for the company's past failure to ensure that either these breaks are taken or workers receive this additional pay. Furthermore, despite the commitment to provide menstrual breaks going forward, the WRC found on its follow up visit to the factory on March 30, 2021, that none of the workers interviewed expressed any awareness about menstrual breaks. Workers had also not received any back pay for the company's past failure to provide menstrual breaks in the past. Therefore, this violation has not been corrected or remedied.

¹⁴ Decree No. 45/2013/ND-CP, Article 3 ("Periods included in paid working hours [...] A rest period of 30 minutes every day for menstruating female employees.").

B. Wages and Benefits

In Vietnam, the applicable legal minimum wage varies depending on the designated Economic Region in which the workplace is located.¹⁵ Can Man is located in the Bin Tanh District of the HCMC, which is part of Economic Region I. In January 2020, the monthly minimum wage in Economic Region I was set at VND 4,420,000 (US\$190.40).

In addition, Vietnamese law requires that wages for “skilled workers” must include a seven percent increase over the minimum wage;¹⁶ and that a five percent wage adjustment must be paid for “hazardous work”.¹⁷ Vietnamese law has classified operating industrial sewing machines, the most common work performed at Can Man, as both “skilled” and “hazardous”,¹⁸ which means that the minimum legally allowable wage for sewing operators at Can Man at the time of the WRC’s assessment was VND 4,950,400 (US\$212.80) per month.

Both the company’s written wage scale document and workers’ employment contracts stated that the starting wage at the factory is VND 6,250,000 (US\$268.67), significantly above this minimum legal rate. However, as discussed below, the actual wage paid to workers varied widely, with many employees receiving less than the applicable legal minimum wage of VND 4,950,400.

Payroll documents showed, and worker interviews confirmed, that Can Man provided employees with a monthly housing allowance of VND 300,000 (US\$12.90), an attendance allowance of VND 400,000 (US\$17.19) per month, and, in lieu of providing workers with lunch (which is the customary practice in many garment factories in Vietnam),¹⁹ a lunch allowance of VND 15,000 (US\$0.64) day.

1. Failure to Comply with Minimum Wage Laws

Findings

a. Falsification of Wage Records

The payroll documents initially provided by Can Man to the WRC investigators onsite at the factory showed the company to be following Vietnamese minimum wage laws. However, the payroll document had several implausible features, such as showing every worker as having

¹⁵ Labor Code, Article 91; Decree 157/2018/NĐ-CP; and Circular 33/2013/TT-BLĐTBXH.

¹⁶ Decree 49/2013/NĐ-CP, Article 7(3b) (“The lowest wage level of the work or title requiring labourers to have to be received vocational training (including labourers trained by enterprises themselves) must be at least 7% higher than the region-based minimum wage levels prescribed by the Government.”).

¹⁷ Decree 49/2013/NĐ-CP, Article 7(3c) (“The wage level of work or title with the heavy, hazardous and dangerous labour conditions must be at least 5% higher; work or title with the special heavy, hazardous and dangerous labour conditions must be at least 7% higher than the wage level of work or title having the equivalent complexity but working in normal labour conditions”).

¹⁸ *Guide to Vietnamese Labor Law for the Garment Industry*, 7th ed. (International Labor Organization and International Finance Corporation, 2019), 85–87, https://betterwork.org/wp-content/uploads/2020/01/BWV_LLG-Booklet_English_2019.pdf.

¹⁹ *Guide to Vietnamese Labor Law for the Garment Industry*, 7th ed.

worked the same amount of time—25 regular working days and 16 hours of overtime—in October 2020. Such uniformity in working hours is a clear and well-recognized sign of falsified documents.

In addition, the amounts of wages stated as paid in the payroll documents did not correspond to the amounts indicated on workers' pay stubs. After the WRC pointed out these inconsistencies to the company, Can Man's management produced a new set of payroll documents, which showed quite different figures, including wage levels that, for most workers, fell below the legal minimum requirement.

b. Payment of Wages below Legal Minimum

The WRC's review of Can Man's actual (non-falsified) payroll documents found that the majority of workers at Can Man received regular wages that were lower than the legal minimum wage, which, as explained above, is VND 4,950,400 (US\$212.80) per month. Can Man's management responded to this finding by stating that workers at the factory were paid based on productivity (i.e., piece rates). However, while Vietnamese law allows employers to pay wages based on piece rates or production, as under US laws, Vietnamese law does not exempt employers who pay workers by the piece or according to production levels from the requirement to provide all workers with no less than the applicable legal minimum wage.²⁰

Can Man also informed the WRC that its practice was to pay workers a premium of VND 5,000 (US\$0.21) per hour of overtime performed, regardless of whether overtime hours are performed on a regular workday (Monday–Saturday) or a rest day (Sunday). Vietnamese law requires employers to pay workers a premium rate for overtime. However, the legally required premium for overtime varies depending on which day of the week the overtime is performed. On regular working days, overtime must be paid at a minimum of 150 percent of the normal wage rate, but on Sundays it must be paid at a minimum of 200 percent of the normal rate.²¹

Based on the applicable minimum wage, the hourly overtime rate that Can Man is required to pay to workers for overtime on regular workdays is at least VND 35,700 (US\$1.53) per hour, and, on Sundays, is at least VND 47,600 (US\$2.05) per hour, requiring wage premiums for overtime that are several times higher than the overtime premium that Can Man paid its workers.

In order to determine whether the factory's overall wage practices complied with Vietnamese law, the WRC compared the actual wages paid by the factory according to the (non-falsified) payroll document provided for October 2020, the month when production of face masks for Covered California began, with the legal amount that the company, at the minimum, was required to pay employees based on the number of days and overtime hours that they worked.

²⁰ Labor Code, Article 90 (1) ("Wage is a monetary amount which is paid to the employee by the employer to perform the work as agreed by the two parties. Wage includes remuneration which is based on the work or position, as well as wage allowances and other additional payments. An employee's wage must not be lower than the minimum wage provided by the Government.").

²¹ Labor Code, Article 97.

The company's October payroll document contained 122 names, with four entries for one person—the factory manager. Three other persons were listed on the payroll as being paid salaries without having any working hours recorded. After removing these four persons from the sample, the total number of employees left on the company's payroll document was 115.

The WRC found that 66 out of these 115 workers, or 57 percent of the group, were paid less than the legal minimum wage that they were required to be paid for their regular working hours and overtime hours. Of these 66 workers who were underpaid, 11 workers, or roughly 10 percent of the sample, were paid less than *half* of the legally required minimum. On average, these 66 workers received wages and overtime pay corresponding to 69.7 percent of the legal minimum. The total underpayment in October 2020 for all 66 workers who were not paid the legal minimum rates amounted to VND 99,873,427 (US\$4,293).

Of the remaining 49 workers who received more than the legal minimum, roughly half, 25 employees, received wages that were less than VND 1,050,000 above the minimum required amount. This figure is significant because VND 1,050,000 is the amount of the monthly contribution that Can Man is legally required to make—but does not make—toward workers' state social security coverage. When Can Man's failure to pay this legally required contribution on workers' behalf was considered, then the share of the workers on the company's October 2020 payroll to or for whom Can Man did not make legally required payments rose to 91 out 115 employees, or nearly 80 percent of the workforce.

All these underpayments of wages violated Vietnamese minimum wage laws and, by extension, Covered California's labor standards.

Recommendations

The WRC recommended that Can Man provide back pay to workers who have received less than the legal minimum wage for their regular and overtime hours equal to the difference between the wages they received and the minimum legal amount they should have been paid calculated based on their regular and overtime hours worked and the applicable legal minimum wage and overtime wage rates for those hours. The WRC told Can Man that back pay should be provided back to workers' date of hire or the statutory limit, whichever period is the shorter, and that the factory should also revise the wage rates paid to all workers going forward to ensure compliance with Vietnam minimum wage laws.

Status

Can Man revised its minimum wage policy and began paying a wage much closer to the legal minimum wage. The factory also improved legal compliance of its wage practices by calculating workers' payment for overtime hours separately from their wages for regular hours.

The minimum wage paid to workers by Can Man for their regular hours, at the time of the WRC's follow up inspection was VND 4,729,400 million (US\$203.30), which is equal to the minimum wage adjusted by seven percent for skilled work but without adjusting five percent for hazardous work—or 95 percent of the legal minimum wage. While this was a significant

improvement over past practice, where, as calculated above, more than half of the workers received less than 70 percent of the minimum wage on average (corresponding to only VND 3,450,430 (US\$148.32) per month), the WRC continued to recommend that Can Man pay the minimum wage adjusted with all legally required modifications, which would be VND 4,950,400 (US\$212.80) per month.

Can Man reported that it paid back compensation for previous underpaid wages to workers in February 2021. Workers confirmed the receipt of a large lump sum cash amount, separate from payment of the bonus from Covered California, although the exact amount in each worker's case could not be verified. While positive, the WRC was not able to determine whether full remediation of back pay for underpaid wages had been achieved and found that the factory was still violating the legal minimum wage, albeit, to a lesser degree.

2. Additional Underpayments of Wages

Finding

The WRC also found, through random sampling comparing workers' pay stubs with the company's payroll records, repeated underpayments, where the amount paid to workers was less than the amount indicated on the company's payroll documents. For instance, one worker received VND 167,000 (US\$7.18) less in her pay for her October wages than was listed on the company's payroll documents. Not paying workers their wages in full is a violation of Vietnamese law and, by extension, Covered California's labor standards.²²

Recommendation

The WRC recommended that Can Man conduct a review comparing the wages it had paid to workers as indicated on their pay stubs with the wages the workers were due according to the company's payroll documents and reimburse workers for the difference in amounts. The WRC told Can Man that this review should be conducted back to workers' date of hire or the statutory limit, whichever period was shorter in duration.

Status

As discussed above, workers reported that they had received back wages for wrongly calculated wages in the past. It is unclear, however, whether the previous underpayments in wages were paid in full.

3. Failure to Provide Wage Allowances Stipulated in Collective Bargaining Agreement

Findings

Can Man's management provided the WRC with a copy of a collective bargaining agreement ("CBA") that it had signed covering the factory's workers. This document was dated August 12, 2020 and committed the factory to pay workers the following monthly allowances in addition to

²² Labor Code, Article 96 ("An employee shall be fully paid on time as agreed and direct manner.").

their regular wages: (a) a monthly fuel allowance of VND 200,000 to 500,000 (US\$8.60 to US\$21.49) and (b) a monthly phone allowance ranging from VND 200,000 to 500,000 (US\$8.60 to US\$21.49). In addition, the CBA provided that the company pay workers a bonus of VND 200,000 (US\$8.60) on their birthdays and a bonus on Vietnamese Independence Day of VND 200,000 (US\$8.60) as well.

The WRC found, upon reviewing the company's payroll documents, that the company did not actually provide workers with the wage allowances stipulated in the CBA. Can Man's failure to pay workers the allowances that the company had agreed to provide in the CBA is a violation of Vietnamese law²³ and, by extension, Covered California's labor standards.

Recommendations

The WRC recommended that, in order to comply with Vietnamese labor laws (and Covered California's standards), Can Man pay workers the allowances it had agreed to provide in the CBA and to compensate workers for its prior failure to pay these allowances back to the date that they were first agreed to in the company's CBAs, or the statutory limit, whichever period was of shorter duration.

Status

Can Man issued a new company regulation that mentioned that workers are entitled to a birthday allowance and an allowance on Independence Day, September 2, each in the amount of VND 200,000 (US\$8.60). However, in the WRC's follow up inspection in March 2021, the WRC did not see any evidence that these birthday allowances were actually provided.

Can Man also stated that the fuel and phone allowances promised in the factory's CBA were only for the company's sales people. However, the CBA provided to the WRC did not specify that the fuel and phone bonus only applies to sales employees and managers.

While sales employees and managers may incur additional costs for work-related fuel and phone use, CBAs in Vietnam often include allowances for these type of ordinary expenses for regular employees as well. The WRC found that, in order to comply with the CBA as written, Can Man should provide these allowances for all employees and reimburse workers for not providing them previously. However, Can Man failed to take such corrective action.

²³ Labor Code, Article 84 (1) ("The employer ... shall be responsible for the full implementation of the collective bargaining agreement.").

4. Punitive Wage Deductions

Findings

Vietnamese labor law prohibits employers from using wage deductions as a form of discipline or punishment.²⁴ The WRC found that Can Man violated this prohibition by disproportionately penalizing workers for use of statutory sick leave or annual leave.

Workers interviewed by the WRC explained that Can Man deducted their entire monthly attendance bonus if they are absent for more than three days in a month, even if the reason for their absence was an approved use of statutory sick leave or annual leave. The workers' monthly bonus attendance totaled VND 400,000 (US\$17.19), so the penalty, as a share of workers' monthly compensation, was quite onerous.

As the amount of this deduction was completely disproportionate to the employee's actual absence from work and as the deduction was imposed on account of the worker's approved use of leave to which she had a statutory right, the deduction was clearly punitive and disciplinary in nature, which violated the prohibition on such deductions under Vietnamese law²⁵ and, therefore, by extension, also violated the labor standards of Covered California. As discussed further below, imposing such a deduction also placed an unlawful restriction on workers' use of statutory leave.

Recommendations

The WRC recommended that Can Man revise its policy and practices to cease deducting workers' attendance bonuses for approved use of annual leave or sick leave and communicate this change to all workers. The WRC told Can Man it should conduct a review of its payroll records and reimburse workers for all prior deductions of attendance bonuses on account of use of approved annual leave or sick leave, and this review should be conducted back to workers' date of hire or the statutory limit, whichever period has the shorter duration.

Status

Can Man responded by changing its factory work rules to specify that if an employee worked for more than 24 days in a month, they would be entitled to VND 400,000 as their attendance bonus, but if the employee worked 24 or fewer days in a month the employee would need to show a valid purpose for their absence to qualify for the bonus.

The WRC found Can Man's response inadequate as it did not make clear that workers' attendance bonuses will not be deducted for use of statutory sick leave or annual leave regardless of the number of days of absence. In addition, Can Man did not agree to compensate workers who have been denied attendance pay as a result of this unlawful practice.

²⁴ Labor Code, Article 128: ("Prohibited Actions When Commencing Disciplinary Procedure: ... 2. All forms of financial punishments such as withholding or diminution of salary....").

²⁵ Labor Code, Article 128.

5. Non-provision of Statutory Childcare Allowance

Findings

Vietnamese law requires that employers assist and support workers with young children by either building onsite daycare facilities or covering a portion of employees' childcare expenses.²⁶ Although, with respect to the latter option, Vietnamese law does not specify the amount of the childcare allowance that the employer is required to provide to each eligible worker, the generally prevailing amount in the Vietnamese garment industry is VND 100,000 (US\$4.32) per month. The WRC found, and Can Man's management confirmed that, contrary to the law's requirements, and, by extension, Covered California's labor standards, Can Man did not provide workers with either daycare facilities or a childcare allowance.

Recommendations

The WRC recommended that Can Man provide workers with young children a VND 100,000 (US\$4.32) per month childcare allowance and compensate workers for its prior failure to provide this benefit. The WRC told Can Man that compensation should be paid back to workers' dates of hire or the statutory limit, whichever period had the shorter duration.

Status

Can Man provided the WRC a copy of its revised CBA, which states that workers are entitled to VND 100,000 per month in childcare allowance for up to two children under seven years of age. Can Man management committed to pay this allowance from 2021 onwards but did not agree to provide compensation for past failure to provide this benefit.

Moreover, the WRC's review of the company's payroll for January and February 2021 did not show payments of childcare allowances to any worker, indicating that the factory did not implement the promised corrective action.

6. Failure to Enroll Workers in and Make Legally Required Contributions for Social Insurance, Medical Insurance, and Unemployment Insurance

Findings

Vietnamese law requires workers who have signed a labor contract for one month or more to be enrolled by their employer in the country's mandatory social insurance program and for workers who have signed a labor contract for three months or more to be enrolled in the country's health insurance and unemployment insurance programs.²⁷

²⁶ Labor Code, Article 154 (4) ("Employers shall assist and support in building day care facilities and kindergartens, or in covering a part of the childcare expenses incurred by female employees.").

²⁷ (Vietnam) Law on Social Insurance (2014), Art. 2 (1) ("Employees being Vietnamese citizens shall be covered by compulsory social insurance, including: a/ Persons working under indefinite-term labour contracts, definite-term labour contracts, seasonal labour contracts or contracts for given jobs with a term of between full 3 months and

The WRC found that in October 2020 Can Man had only enrolled and made contributions for six of the factory's employees (one of whom is the factory manager), amounting to less than five percent of its workforce, in the legally required social insurance, medical insurance, and unemployment insurance programs. Can Man's management admitted that the factory was not enrolling workers in these insurance programs or making contributions for them, which were both serious violations of Vietnamese law and, by extension, Covered California's labor standards.

Some workers interviewed by the WRC stated that they were asked by the management if they wanted to enroll in these social insurance programs. However, enrollment in these insurance programs is not voluntary but, instead, a legal requirement for all employers and employees.

Moreover, lack of these insurance coverages has significant implications for workers' welfare, as not only unemployment benefits but also retirement, sickness, accident, and maternity benefits will only be available to the workers if their employer enrolls them and makes these contributions. Can Man's failure to make the legally mandated insurance contributions amounted to a further significant underpayment to workers, as the required monthly employer contribution is 21.5 percent of the workers' basic wages or around VND 1 million (US\$45) per worker per month,²⁸ money that Can Man was saving while depriving workers of this legally required social safety net.

Recommendations

The WRC recommended that Can Man enroll all eligible workers in and make contributions for them to Vietnam's social insurance, medical insurance, and unemployment insurance programs, and compensate workers for its prior failure to make these contributions. The WRC told Can Man that this compensation should be paid back to workers' earliest date of eligibility for such contributions or the statutory limit, whichever period has the shorter duration.

Status

In January 2021, Can Man committed to enroll eligible workers into Vietnam's required insurance programs over the next several months. Can Man told the WRC that 39 employees had already been enrolled by January 2021 and that 11 more employees would be enrolled in February 2021. According to the enrollment plan Can Man provided to the WRC in January 2021, around 20 workers would be added every month.

under 12 months, including also labour contracts signed between employers and at-law representatives of persons aged under 15 years in accordance with the labour law; b/ Persons working under labour contracts with a term of between full 1 month and under 3 months"); and Decision 595/QD-BHXH, clause 4 stipulates that employees who have a labor contract of full 1 month or more must participate in compulsory social insurance. The Law on Health Insurance, Article 12; Decision 595/QD-BHXH article 17; and Decision 595/QD-BHXH, Article 13 all stipulate that employees who have a labor contract of three months or more in duration must participate in health insurance and compulsory unemployment insurance.

²⁸ Law on Social Insurance, Art. 5 (2) ("The compulsory social insurance premium rate shall be calculated based on an employee's monthly salary. The voluntary social insurance premium rate shall be calculated based on the monthly income selected by employees."). See for details, *Guide to Vietnamese Labor Law for the Garment Industry*, at 32–33.

However, after enrolling a few workers in January 2021, Can Man ceased enrolling its workers, and, by February 2021, apart from the factory management, only 22 production workers had been enrolled. The management told the WRC that it had put plans for further enrollment on hold. Can Man also did not commit to compensate workers for its prior failure to make social insurance contributions.

C. Terms of Employment

1. Unlawful Use of Successive Short-Term Employment Contracts

Findings

a. Excessive Renewal of Short-Term Contracts

Vietnamese law allows employment of workers under two types of contracts: indefinite (i.e., long-term) employment contracts and definite (i.e., short-term) employment contracts.²⁹ Employers are allowed to renew a worker's definite employment contract only once, whereafter the worker must be employed under an indefinite employment contract.³⁰

The WRC found that Can Man violated this requirement by failing to provide indefinite employment contracts for any of its employees, regardless of whether they had been previously employed by the company under a prior definite contract. Instead, Can Man employed workers under successive one-year contracts, which were renewed each January for every worker.

As many of the workers at the factory had been employed by Can Man for more than two years, and hence had been employed under more than the one definite term contract that the law permits, this practice violated Vietnamese laws and, by extension, Covered California's labor standards.

b. Inadequate Duration of Short-Term Contracts

Vietnamese labor law also does not permit use of definite term employment contracts with a duration of less than 12 months.³¹ The WRC found that if a worker at Can Man began their employment mid-year, the company provided her with an initial short-term contract for the

²⁹ Labor Code, Article 22 (1) ("1. An employment contract shall be concluded in one of the following types: a) Indefinite term employment contract. An indefinite term employment contract is a contract in which the two parties do not determine the term and the time at which the contract terminates; b) Definite term employment contract. A definite term employment contract is a contract in which the two parties agree to fix the term of the contract for a duration of from 12 months to 36 months....").

³⁰ Labor Code, Article 22 (2) ("[W]here the two parties conclude a new contract with a definite term, it shall be the one and only additional definite term employment contract to be signed; after that, if the employee continues to work, an indefinite term contract shall be signed.").

³¹ Labor Code, Article 22 (3) ("It is prohibited to enter into a seasonal or work-specific employment contract of less than twelve (12) months to carry out regular work which has the duration of more than twelve (12) months, except in order to temporarily replace an employee who has taken leave for military obligations, pregnancy and maternity, sick leave, occupational accident or other temporary leaves.").

remainder of the year, which violated the law (and, therefore, Covered California's labor standards), as the duration of this contract was shorter than the 12-month minimum.

Recommendation

The WRC recommended that in January 2021, when workers' current contracts expired, Can Man convert all employment contracts due for renewal from definite term employment contracts to indefinite employment contracts. With respect to all future hires at the factory, if the company intended to hire these workers initially under definite term contracts, these contracts should not be of less than 12 months' duration.

Status

Can Man failed to make clear commitments in its corrective action plan with respect to this issue. The company stated that it would use both 12 month and 36-month contracts, as well as regular and seasonal contracts. It was not clear from the plan how many workers would be given what type of contract and under what conditions. Although workers reported that they had been asked to sign new contracts, because Can Man did not provide copies of these contracts to the workers, it was not possible to determine to what extent Can Man rectified this violation.

2. Failure to Provide Workers with a Copy of Their Employment Contracts

Finding

Vietnamese law requires employers to enter into a written employment contract with a worker for any employment relationship that exceeds three months in total duration and to provide the worker with a copy of this contract.³² Workers interviewed by the WRC testified that they were not given a copy of the contract they signed with Can Man. Failure to provide workers with a copy of their employment contract is a violation of Vietnamese law and, by extension, Covered California's labor standards.

Recommendation

The WRC recommended that Can Man should provide all workers with copies of their employment contracts.

Status

While Can Man had workers sign a new employment contract, the company did not provide a copy of these contracts to the workers and, as a result, failed to rectify this violation.

³² Labor Code, Article 16 ("1. An employment contract shall be concluded in writing and made in two copies, of which the employee keeps one copy; the employer keeps one copy, except for the case regulated in clause 2 of this Article. 2. The two parties may conclude a verbal employment contract in respect of temporary work for a duration of less than 3 months.").

3. Failure to Register Internal Work Rules

Finding

The WRC found that Can Man violated Vietnamese law, and, by extension, Covered California's labor standards, by failing to register the factory's internal work rules with the local District People's Committee as the law requires.³³

Recommendation

The WRC recommended that Can Man register the factory's internal work rules with the local District People's Committee.

Status

At the time of the WRC's follow up inspection on March 31, 2021, Can Man had not yet registered its internal work rules with the local authorities. Moreover, despite promising to send it, the company did not provide the WRC with a copy of the internal work rules that had been registered with the local District People's Committee.

D. Employment of Underage Workers under Illegal Conditions

Findings

The WRC found, upon review of the company's payroll documents, that at least three workers at the factory were less than 18 years of age during their employment in 2020, with the youngest of these three being only 15 years old in October 2020.

While Vietnamese law permits the employment of workers who are as young as 15 years of age, it requires certain protections for employees below the age of 18.³⁴ Companies must not allow these young employees' working hours to exceed eight hours per day,³⁵ must ensure that their working conditions are not heavy, hazardous, or dangerous,³⁶ and cannot employ them at night.³⁷

In the case of Can Man, the WRC's review of the company's payroll records for March 2020 and October 2020 found that all three workers listed as being younger than 18 years of age had

³³ Labor Code, Article 120 (1-2) ("An employer must register the internal work regulations with the state labour management authority at the provincial level. Within 10 days from the date of issuance of the internal work regulations, the employer must submit a dossier of the internal work regulations for registration.").

³⁴ *Guide to Vietnamese Labor Law for the Garment Industry*, 11.

³⁵ Labor Code, Article 163 (2) ("The working hours of minor employees from 15 full years of age to fewer than 18 years of age shall not exceed 08 hours in 01 day and 40 hours in 01 week").

³⁶ Labor Code, Article 163 (1) ("The employment of minor employees is prohibited for heavy and hazardous work, and work with exposure to toxic substances or in work and workplaces which create a harmful influence to their dignities, as described in the list issued by the Ministry of Labour, Invalids and Social Affairs in coordination with the Ministry of Health.").

³⁷ *Guide to Vietnamese Labor Law for the Garment Industry*, 11.

worked overtime—i.e., beyond eight hours in a day—in March 2020 and two of these young workers had performed overtime in October 2020.

Two of these young workers also had worked overtime beyond the legal limit of 30 hours per month, indicating that this violation occurred on a regular basis. Can Man’s practice of allowing these young workers to perform overtime violated Vietnamese law and, by extension, Covered California’s labor standards.

Recommendation

The WRC recommended that Can Man revise its policies and practices so that workers younger than 18 years of age are not permitted to perform overtime.

Status

Can Man confirmed that, as of January 2021, the factory employed three workers under the age of 18 years. The factory committed to not allowing these workers to work overtime going forward. As mentioned earlier, given that Can Man did not have workers perform any overtime in February, these three workers also did not work overtime. The WRC was not able to determine, however, whether the factory continued to refrain from having these workers perform overtime going forward.

E. Paid Leave

Vietnamese law requires employers to provide employees with various forms of paid leave. The law mandates that employers provide time off for paid sick leave to workers when so directed, in writing, by the worker’s physician.³⁸ Because employment in garment factories is classified under law as involving hazardous work, the law also requires employers to provide workers with 14 days of paid annual leave.³⁹ Furthermore, workers are entitled by law to an additional day of annual leave for every five years of service.⁴⁰

1. Restrictions on Use of Statutory Leave

Findings

a. Restrictions on Use of Paid Annual Leave

With respect to statutory annual leave, Can Man’s formal internal regulations were consistent with the law’s requirements. However, the company’s payroll records did not indicate that workers actually take annual leave.

³⁸ Law on Social Insurance of November 20, 2014, Law 58/2014/QH13 (“Law on Social Insurance”), Article 25 (1), available in English translation at: <http://vietnamlawenglish.blogspot.com/2014/11/vietnam-social-insurance-law-2014.html>.

³⁹ Labor Code, Articles 111 and 112; Decree 45/2013/NĐ-CP, Article 7; Decision 1152/2003/QĐ-BLĐTBXH (establishing that textile manufacturing is heavy and hazardous work); and Decision 1629/1996/QĐ-BLĐTBXH. *See also, Guide to Vietnamese Labor Law for the Garment Industry*, 33.

⁴⁰ Labor Code, Article 112.

Given that workers at Can Man were only paid by piece rates (production), and, therefore, only for the days they actually worked, there was no evidence to indicate that workers were able to take any *paid* annual leave. In fact, given that payroll records indicated that the majority of workers earned less than the legal minimum wage, there was a strong indication that, when workers take days off, this leave is unpaid.

Workers interviewed by the WRC did indicate that they could take leave on some occasions but added that they were not permitted to do so in months in which there were public holidays (which, in Vietnam includes four to five months of the year). As discussed, workers also stated that if they took more than three days of leave in a month their entire attendance bonus (VND 400,000 (US\$17.19), a sizeable amount relative to workers' wages) would be deducted from their pay.

Can Man's practices with respect to taking deductions from employees' wages for use of statutory annual leave, as well as its refusing to permit workers to take paid annual leave during months in which there are public holidays (which rules out four to five months of the year) placed unlawful restrictions on workers' access to this statutory benefit, thereby violating both Vietnamese laws and, by extension, Covered California's labor standards.

b. Restrictions on Use of Paid Sick Leave

Under Vietnamese law, workers have the right to take sick leave, for which they are paid for their period of absence by the country's social insurance program, when approved by a certified health provider.⁴¹ Workers interviewed by the WRC reported that Can Man deducted their entire attendance bonus of VND 400,000 (US\$17.19) per month if the worker was absent on more than three days in a month, even if the reason for the absence was use of statutory sick leave and even if this leave had already been approved by a certified health provider.

As the amount of the attendance bonus that was forfeited—VND 400,000 (US\$17.19)—was substantial, the deduction of this bonus functioned as a strong economic deterrent against workers accessing leave that they had a legal right to use for their own benefit. This practice placed unlawful restrictions on workers' access to paid sick leave through the country's social insurance program.⁴²

Furthermore, as has been described above, due to the factory's unlawful failure to enroll and make contributions for employees in the country's social insurance program, only a handful of the factory's workers were eligible to receive paid sick leave from this program. Therefore, as a result of the company's practices of both imposing wage deductions for use of sick leave and failing to enroll workers in or make contributions to social insurance, the company effectively denied workers' legal right to paid sick leave. These practices violated Vietnamese law and, by extension, Covered California's labor standards.

⁴¹ Law on Social Insurance, Article 25 ("[C]onditions for enjoying the sickness regime: 1. Employees who have to take leave due to sickness or accidents other than labor accidents, with the certification of a competent health establishment under the Ministry of Health's regulations.").

⁴² See, Law on Social Insurance, Articles 25 and 27.

Recommendations

The WRC recommended that Can Man end its policy and practice of deducting workers' attendance bonus if they take leave to which they are legally entitled, including sick leave or annual leave. Furthermore, the WRC told Can Man that it should also end its policy that workers cannot take leave in months when there are existing public holidays. Finally, the WRC relayed to Can Man that it should enroll all workers in and make contributions for them to the country's social and medical insurance programs in order to enable them to access paid sick leave.

Moreover, the WRC pointed out that, unless Can Man could produce credible evidence that workers have previously received paid annual leave, the company should compensate workers for its prior failure to provide paid annual leave. In addition, the WRC stated that Can Man should also compensate workers for its prior failure to provide sick leave, and its improper deductions of attendance bonuses for use of statutory leave. In all cases, such compensation was owed for the period from the workers' date of hire or the statutory limit, whichever period has the shorter duration.

Status

Can Man provided the WRC with its payroll documents for February 2021, which the WRC reviewed as part of the March 2021 follow up assessment. However, these payroll records still did not have any columns showing that employees were taking leaves of any kind. Thus, the WRC was not able to verify whether the factory was providing the workers with paid leave as required by law. In addition, Can Man did note provide workers compensation for its prior failures to provide paid sick leave and annual leave or its improper deductions of attendance bonuses for use of statutory leave.

2. Failure to Provide Paid Holidays for Lunar New Year

Finding

Vietnamese law requires companies to provide five paid holiday days during the Tết Lunar New Year.⁴³ In March 2021, the WRC reviewed Can Man's payroll records for February 2021 and found that workers had not been paid for any of the five holiday days required to be provided during the Lunar New Year, which, in 2021, fell from February 10 through February 16.

⁴³ Labor Code (2019), Article 112 (1) re Public holidays ("Employees shall be entitled to fully paid days off on the following public holidays: a) **Gregorian Calendar New Year Holiday: 01 day (the 1st of January of the Gregorian calendar); b) Lunar New Year Holidays: 05 days; c) Victory Day: 01 day (the 30th of April of the Gregorian calendar); d) International Labor Day: 01 day (the 1st of May of the Gregorian calendar); dd) National Day: 02 days (the 2nd of September of the Gregorian calendar and the previous or next day); e) Hung Kings Commemoration Day: 01 day (the 10th of the third month of the Lunar calendar.”).**

Recommendations

At the time of the March 2021 follow up assessment, the WRC pointed out to the factory management the need to provide workers with pay for the five public holiday days in order to comply with Vietnamese law.

Status

The WRC has seen no evidence to indicate that Can Man subsequently provided workers with pay for the five holiday days during the Lunar New Year as the law required.

F. Occupational Health and Safety

The Can Man factory is physically located at 1028/14 Tan Ky Tan Quy Street, Binh Hung Hoa Ward in Ho Chi Minh City. The factory is housed in a single building with three floors, of which the ground floor contains two of the factory's sewing production lines, its packing area, and its accessories and finished good warehouses. The second floor (in Vietnam, the "first floor") contains six more sewing lines and a logo pressing area, and the third floor ("second floor" in Vietnam) houses the factory's cutting operation and materials warehouse.

The WRC's onsite inspection of the facility found numerous areas where the factory's health and safety practices failed to comply with the requirements of Vietnamese law or otherwise pose hazards to workers and, thereby, violated Covered California's labor standards. These violations, the WRC's recommendations for corrective action, and the extent to which these were implemented by the factory are discussed in detail below.

1. Lack of Workplace Safety Officer

Finding

Vietnamese law required that factories of Can Man's size retain a safety officer.⁴⁴ Contrary to the law and, by extension Covered California's labor standards, Can Man did not have such an officer but instead makes the factory's vice director, who is not a safety professional, responsible for worker safety.

Recommendation

The WRC recommended that the factory should retain a dedicated safety officer.

Status

Can Man claimed that the factory's vice director had received safety training and was certified. Can Man provided documentation that the vice director had received this training in December 2020 and explained there would be monthly recurring training. The WRC was not able to

⁴⁴ Occupational Safety and Health Law, Article 72.

establish with certainty that the vice director had received the full and appropriate safety training needed to fill this position.

2. Lack of Safety Training

Findings

The factory failed to provide workers and managers with adequate safety training. Factory records indicated that the factory's deputy director and three maintenance personnel had received safety training in 2014, but there was no record that any more recent safety training had been provided and, in particular, no record of any safety training having been conducted for production workers.

Moreover, while the factory provided the WRC with a list designating 15 employees as its fire safety team, these employees also had not received legally required training. Failure to provide safety training, including fire safety training, is a violation of Vietnamese law⁴⁵ and, by extension, Covered California's labor standards.

Recommendations

The WRC recommended that the factory should develop and deliver to workers and managers a safety training program, including, as a priority, fire safety training.

Status

The WRC has reviewed documentation showing that six factory staff received safety training on December 14, 2020, and another 14 received fire safety training from the HCMC fire safety authorities from January 22 to 24, 2021. While an improvement in factory practice, the WRC finds that such training needs to be delivered more broadly to the factory's workforce and management.

3. Lack of Personal Protective Equipment

Findings

The WRC observed that many workers at the factory did not wear face masks. Under ordinary circumstances, with normal ventilation, employees involved in cutting and sewing operations that do not involve exposure to chemicals do not need face masks for respiratory protection.

At the time of the WRC's inspection cases of Covid-19 reported in Vietnam were extremely low with only one case of local transmission reported in the previous three months. Since case levels in Vietnam have since increased substantially, it is hoped that the factory has begun to consistently provide and require use of face masks as well as to implement other infection control measures.

⁴⁵ Occupational Safety and Health Law, Article 76; Law on Fire Prevention and Fighting, 27/2001/QH10, Article 4.

The WRC also observed that workers who use cutting machines in the factory were not equipped with protective metal mesh gloves (*see Figure 1*). Failure to provide such basic protective equipment for workers using dangerous machinery is a violation of Vietnamese law⁴⁶ and Covered California's labor standards.

Recommendations

The WRC recommended that the factory should provide workers operating cutting machines with metal mesh gloves and require their consistent use, and, should case levels of Covid-19 in the local area increase, provide all workers at the factory with face masks and other forms of infection control measures.

Status

Can Man reported that the factory had provided metal mesh gloves to the cutting workers and provided photographic evidence of their use. However, on the day of the WRC's follow up visit to the factory in March 2021, no cutting was taking place, and the WRC was not able to confirm whether it is being consistently used.

4. Lack of Adequate First Aid Equipment

Findings

The WRC observed that one first aid cabinet (first aid kit) was provided on each floor of the factory. However, the kits did not contain all the first aid supplies that the law specifies must be maintained (*see Figure 2*). Moreover, the kits contained various medicines, which the law prohibits from being kept in such kits (as they should be dispensed by a health provider). Failure to properly maintain first aid kits is a violation of Vietnamese law and, by extension, Covered California's labor standards.

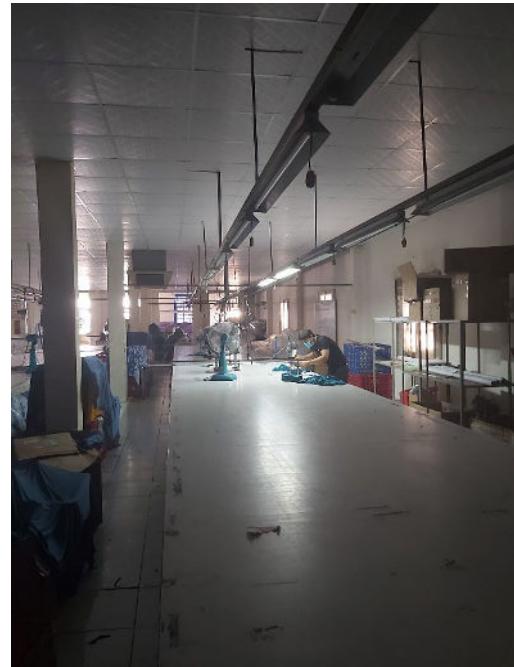


Figure 1: Worker in cutting operation without protective metal mesh gloves



Figure 2: First aid cabinet not adequately stocked and improperly contains medicines

⁴⁶ Labor Code, Article 149.

Recommendations

The WRC recommended that the factory should properly stock the first aid kits and remove the medicines that are improperly stored there.

Status

On the follow up visit to the factory on March 30, 2021, the WRC found that the first aid cabinets had been properly stocked.

5. Fire Safety Hazards

The WRC found numerous serious fire safety hazards at the Can Man factory. The WRC directed that these hazards should be corrected as a priority as they posed immediate life safety risks to workers.

a. Inadequate and Unimplemented Fire Safety Plan

Findings

The WRC found that, while Can Man had a fire safety plan, it had not been approved as required by the local fire safety authorities. Records showed that the factory had been fined on multiple occasions for this omission. Moreover, the plan had not been properly implemented by the factory, as records showed that the fire safety plan was practiced once in January 2019, but thereafter no fire drills had been held. These omissions posed safety hazards that violate Vietnamese law⁴⁷ and Covered California's labor standards.

Recommendations

The WRC recommended that the factory should retain the assistance of a fire safety professional to review, update as needed, and obtain local fire authorities' approval for its fire safety plan, and then implement this plan through regular fire drills.

Status

Can Man reported that it had retained a fire safety engineer to update its fire safety plan and that the facility had been certified by the city to pass fire standards.

b. Inadequate and Unsafe Emergency Exit Routes

Findings

Can Man's factory building has three floors. On the second and third floors there are two exit stairwells at two opposite sides of the building.

⁴⁷ Law on Fire Prevention and Fighting, 27/2001/QH10, Article 4.

However, on the ground floor there is only one exit toward the street, and there is no exit on the other side of the building. Instead, one of the stairwells exits to the ground floor toilet, rather than to the exterior (see Figures 3 and 4). Therefore, if the sole exit that leads to the exterior were to be obstructed or unusable in case of an emergency, workers could be trapped inside the building.



Figure 3: Stairwell exiting to toilet, not building exterior



Figure 4: Only one exit on ground floor of factory

In addition, the entrances to the exit stairways on the upper floors are not enclosed as would be needed to maintain fire separation and prevent them from filling with smoke and becoming impassable in case of a fire on the lower floors (see Figure 5). The main stairwell in the middle of the building is not enclosed to prevent spread of smoke, and, while the exit stairwells on the end of the building have doors, during the WRC's inspection, these were observed to be kept open, thereby negating any fire separation (see Figure 6). Moreover, it was unclear whether these doors were fire-rated and unlockable.



Figure 5: Unenclosed exit stairwell



Figure 6: Open door to emergency exit stairwell

Finally, the landing of one of the exit staircases on the ground floor was obstructed by materials (see Figure 7). As a result, if access to the other exit staircase were blocked by fire or other obstruction, in case of emergency, workers would, again, be unable to quickly exit the building. It was also observed that, on the factory floors, the aisles which provide routes to the emergency exits are obstructed at many places, which would, again, prevent workers from exiting the factory quickly in case of a fire (see Figures 7 to 10).

All these conditions posed severe safety hazards that violated Vietnamese safety regulations⁴⁸ and/or Covered California's labor standards.



Figure 7: Open stairwell with landing obstructed by flammable boxes and obstructed exit route



Figures 8–10: Emergency evacuation routes obstructed

Recommendations

The WRC recommended Can Man should immediately remove all materials obstructing the aisles, stairways, landings, and exits. In addition, the WRC told Can Man that the doors to exit stairwells must be kept shut (and kept unlockable) at all times.

In addition, the WRC directed Can Man to retain the services of fire and building safety engineers to provide a plan for making the necessary modifications to ensure that exit stairwells, their doorways, and landings are enclosed (including with properly fire-rated, unlockable, outward-swinging doors) to provide necessary separation to prevent the transmission of (and their obstruction by) smoke in the event of a fire on the lower floors and that exit stairwells lead directly to the exterior of the building. The WRC stressed that this plan, once obtained, should be implemented as a top priority.

⁴⁸ Circular 07/2010/TT-BXD.

Status

On the WRC's follow up visit to the factory on March 30, 2021, the WRC found that the stairways, although having seen some improvements and repairs, were still not enclosed and one stairway still led into the interior of the building. Furthermore, boxes were still found to be blocking the walkways.

c. Inadequate Fire Safety Equipment

Findings

The WRC's inspection found that there was no record of the factory's fire extinguishers being regularly checked (*see Figures 11 and 12*). Moreover, the factory lacked any form of smoke or fire detector. Finally, no emergency lighting had been installed on the factory's emergency exit routes (*see Figures 13 and 14*). All of these conditions posed safety hazards that violated Vietnamese law⁴⁹ and/or Covered California's labor standards.



Figures 11 and 12: Fire extinguishers not checked regularly



Figure 13: Lack of emergency lighting in stairwell



Figure 14: Lack of emergency lighting at and along exit door

Recommendations

The WRC recommended that the factory's fire extinguishers be regularly inspected, replaced when needed, and records of the same should be consistently maintained. The WRC also stated that Can Man should also install emergency lighting on all exit routes.

Status

The WRC found that Can Man had installed a fire sprinkler system in December 2020, which is a significant step forward for fire safety at the factory. Can Man also added new fire extinguishers and exit lights.

⁴⁹ Vietnam Standard of Construction, 439/1997/BXD-CSXD; Vietnam Standards 7435-1 & 2:2004 PCCC and 7890:2009 PCCC.

6. Electrical Safety Hazards

Finding

The WRC found that Can Man had not tested its electrical system since 2014. The WRC found numerous conditions that posed electrical hazards including electrical wiring and switches that were not properly covered and electrical panel boxes whose covers were left open (*see Figures 15–18 below*). All of these conditions posed safety hazards that violated Vietnamese law,⁵⁰ and/or Covered California’s labor standards.



Figure 15: Uncovered electrical switch and wiring



Figure 16: Open electrical panel box



Figures 17 and 18: Uncovered wiring



Recommendations

The WRC recommended that the factory ensure all electrical panel boxes are kept closed when not being serviced. The WRC also stated that Can Man should obtain the services of an electrical safety professional to cover all electrical wiring and switches, and make any other upgrades needed.

Status

Can Man reported that it had enclosed all electrical panel boxes and that wires had been patched. The company provided photographic evidence of these improvements, which were confirmed on the WRC’s follow up visit to the factory on March 30, 2021.

7. Unsafe Machinery

Findings

The WRC found multiple hazards associated with the factory’s machinery that violate Vietnamese law⁵¹ and Covered California’s labor standards. None of the sewing machines at the factory were equipped with either finger guards or eye guards, two standard pieces of equipment

⁵⁰ Electrical Law No. 28/2001/QH11, Articles 54 & 57.

⁵¹ Labour Code, Article 138; Occupational Safety and Health Law, Articles 16 (2)-(4).

needed to protect workers from the risk of puncture wounds to fingers and wounds to eyes from broken needles, respectively.

Moreover, neither the factory's air compressor nor the building's elevator had current inspection certificates, with the last documented inspection certification for the compressor having expired in 2018 and no certificate at all available for the elevator. The latter omission was of particular concern as the elevator safety door on the ground floor was observed to remain open when the lift has traveled to the upper floors of the building, with the open elevator shaft posing a serious hazard (see Figures 19 and 20).



Figure 19: Air compressor not inspected



Figure 20: Elevator safety door not closed exposing elevator shaft

Recommendation

The WRC recommended that Can Man have the elevator immediately serviced and properly operated to ensure the functioning and use of the safety doors at all times. The WRC also stated that both the elevator and air compressor should be inspected and the inspection certifications maintained.

Status

Can Man did not make any commitments to install finger guards and eye guards on the factory's sewing machines, which meant that this hazard remains unresolved. With respect to the elevator and compressor, Can Man had both inspected for safety and showed the WRC certificates as documentation.

8. Lack of Ergonomic Equipment for Sitting and Standing Workers

Findings

The WRC found several ergonomic hazards that violated Vietnamese safety standards,⁵² and by extension Covered California's labor standards, by posing risks to employees of musculoskeletal injuries. First, operators worked seated on backless benches or rigid plastic chairs that lacked any basic ergonomic features, such as back and lumbar support, padded seat pan, height adjustment, and swivel (see Figure 21 below). Moreover, employees who worked in a standing position on hard flooring were not provided with antifatigue floormats (see Figure 22 below).

⁵² Labor Code, Articles 137, 138 and 148; Joint Circular 01/2011/TTLT-BLDTBXH-BYT.

Recommendations

The WRC recommended that the factory assess the ergonomic risk factors for all operations with prolonged standing or sitting and modify the work process to reduce the risks of musculoskeletal injury. The WRC told Can Man that the factory must also provide ergonomic chairs with a suitable backrest, seat, height adjustment, and swivel, as well as antifatigue floormats and height-adjustable workstations.

Status



Figure 21: No ergonomic chairs provided for workers in sitting jobs



Figure 22: No anti-fatigue mats provided for workers in standing jobs

The WRC was able to observe some minimal changes to the seating provided to workers during the follow up visit to the factory on March 30, 2021. On the building's ground floor, some chairs had been changed. But, while the new chairs had added cushioning, they were neither adjustable nor provided any back support. Upstairs, the WRC found no changes to workers' seating with many workers still sitting on small plastic chairs without backrests. No anti-fatigue mats have been provided.

G. Freedom of Association and Collective Bargaining

Can Man told the WRC that a factory-level union has been established at Can Man for a number of years and that the company deducts VND 50,000 (US\$2.15) per month in union dues from each worker's wages. While Can Man provided the WRC with what it said was a list of elected union leaders and a copy of a collective bargaining agreement ("CBA"), the WRC found numerous inconsistencies in the company's labor relations documents, casting doubt on whether an actual union existed at the factory or not.

The WRC, like many other international observers, has generally found that factory-level unions in Vietnam are created and dominated by employers, rather than being independent organizations that represent worker interests. The WRC found no evidence that the labor relations situation at Can Man was otherwise.

1. Falsification of and Failure to Implement Collective Bargaining Agreement

Findings

The CBA which Can Man provided to the WRC had been signed by the company owners on August 18, 2020. Can Man also told the WRC that the previous leadership of the factory's union had resigned and that a new union leadership recently had been elected.

Another document Can Man provided announced the election of the union's new leadership and was also dated August 18, 2020. It is implausible that an authentic union would elect its leaders and then negotiate and conclude a new CBA on the *same day*. As a result, this union election document cannot be considered credible.

A third document purported to show that the union leadership had been elected on June 20, 2020. Yet this document stated that the union's leadership was elected by vote of 399 out of 400 workers at the factory. As the company's actual payroll document, as discussed, lists fewer than 150 workers, the authenticity of the document purporting to memorialize the June union election is highly suspect as well.

Moreover, when, after the inspection, the WRC inquired with Can Man as to why benefits stipulated in the August 18, 2020, CBA, such as phone and fuel allowances for workers, were not being provided to the workforce, Can Man told the WRC that the CBA it had initially provided to the WRC was not its actual CBA. Can Man then sent the WRC a different document, which it claimed was the actual CBA, that did not mention phone or fuel allowances.

However, the document that Can Man claims is the actual CBA covering the factory's workers is dated July 13, 2020—*before* the date of both the CBA that Can Man originally provided, and the date of the election of the union's new leadership. It is implausible that when two CBAs are compared, the CBA that *predates* the other, between the same parties, is the operative one, especially when, as here, the second CBA is signed by the owner of the employing firm.

For this reason, the WRC concludes that the later-dated CBA, which includes the phone and fuel allowances, is the applicable one, with the result that, as discussed earlier, Can Man is violating Vietnamese law,⁵³ and by extension Covered California's labor standards, by failing to provide workers with the fuel and phone allowances promised to them under this agreement.

Recommendations

The WRC recommended that Can Man should begin providing workers with the fuel and phone allowances specified in the CBA and should compensate workers for its failure to pay these benefits since the CBA was signed in August 2020.

Status

As mentioned earlier, the WRC found that Can Man is still not providing fuel and phone allowances specified in the CBA to all workers.

⁵³ Labor Code, Article 84 (1) ("The employer ... shall be responsible for the full implementation of the collective bargaining agreement.").

2. Failure to Transmit and Provide Matching Funds for Union Dues

Findings

Workers at Can Man told the WRC that factory deducts VND 50,000 (US\$2.15) per month from their wages for union dues. However, when questioned by the WRC, the factory management admitted that the company had not transmitted any of these funds to the relevant union federation for nine months.

This omission by the company violated Vietnamese law, which requires that workers' union dues deductions be forwarded by the employer to the appropriate labor body and that the employer match these deductions,⁵⁴ by sending double the amount of the workers' dues to the employer monthly. By extension, therefore, this omission also violated Covered California's labor standards.

Recommendations

The WRC recommended that Can Man should forward workers' union dues and the company's matching payment to the appropriate labor body.

H. Additional Issues of Concern

The WRC also identified two other issues of concern with respect to Can Man's labor practices that, while they did not constitute a violation of Vietnamese law or Covered California's labor standards, should be addressed by the company as a matter of responsible business practice.

1. Inadequate Meal Benefits

Finding

A study of manufacturing establishments in Ho Chi Minh City in 2016 found that more than 90 percent of the factories surveyed provided their employees with lunch, at an average cost to those factories of VND 15,000 (US\$0.66) per meal.⁵⁵ As mentioned above, however, Can Man paid employees a lunch allowance of VND 15,000 (US\$0.64) per day instead of providing employees with a lunchtime meal.

Adjusting this figure for inflation results in the average cost of VND 17,000 (US\$0.73) per employee meal. As a result, the meal allowance that Can Man pays to workers, VND 15,000 (US\$0.65), is VND 2,000 (US\$0.09) less than the meal expenditure of the average garment factory in southern Vietnam.

⁵⁴ Law on Trade Unions, Articles 26 (1–2) ("Finance of Trade Union included the following revenues: 1. Trade Union fee is paid by Trade Union members as prescribed in charter of Vietnamese Trade Union. 2. Trade Union funds are paid by agencies, organizations and enterprises in 2% salary funds based to pay social insurance for laborers.").

⁵⁵ See, Research Center for Employment Relations, *Living Wage Report: Urban Vietnam Ho Chi Minh City, with focus on garment industry March 2016*, June 2017, https://www.isealliance.org/sites/default/files/resource/2017-12/Urban_Vietnam_Living_Wage_Benchmark_Report.pdf.

Moreover, the per meal cost to Can Man workers of purchasing lunch is likely significantly higher than the per meal cost to garment factories of providing lunch to workers, as employers are likely to obtain lower per meal prices as a result of bulk purchasing and long-term contracts with vendors.

Recommendation

The WRC recommended that Can Man increase the meal allowance it paid to workers to 17,000 VND (US\$0.73) per day, per employee.

Status

Can Man agreed to provide VND 17,000 in food allowance starting at the beginning of 2021. A review of the factory's payroll in January and February 2021 confirm that workers are receiving VND 17,000 in food allowance.

2. Employee Pay Statements

Finding

The WRC found that Can Man did not provide its workers with a pay statement at the time the company pays them their wages. Although Vietnamese law does not require that employers issue workers' pay statements at the time the latter receive their wages, the labor law does require that such wages be paid in full and in a timely manner.⁵⁶

Without a pay statement that shows how the wages the employee is being paid have been calculated—i.e., the number of regular hours and overtime hours that have been worked, as well as the number of hours of employer-paid time off (for holidays, etc.) that have been taken, the applicable rates of pay for all of these hours, the amounts of bonuses earned for good attendance and fulfilling production targets, and the additional allowances included in and the deductions made from the worker's pay—it is difficult for employees to determine whether the company is complying with its legal obligation to pay workers their wages in full and on time. For this reason, providing workers with a written statement explaining the calculation of their wages at the time these wages are paid is a basic element of responsible business practice and is mandatory under the laws of many other jurisdictions⁵⁷ and the codes of conduct of many other brands.⁵⁸

⁵⁶ Labor Code, Article 96 ("An employee shall be fully paid on time as agreed and direct manner.").

⁵⁷ E.g., Cambodian Labour Code, Article 112(b) ("The employer must take measures to inform the workers in a precise and easily comprehensible fashion of: ... [t]he items that make up their wage for every pay period when there is a change to the items.").

⁵⁸ E.g., Gap, Inc., *Code of Vendor Conduct*, ("The facility shall ensure that for each pay period, workers are provided understandable wage statements that includes all relevant details written in a language they understand."), https://gapinc-prod.azureedge.net/gapmedia/gapcorporatesite/media/images/docs/codeofvendorconduct_final.pdf.

Recommendation

The WRC recommended that Can Man provide employees, at the time their wages are paid, with a written pay statement that shows how the wages the employee is being paid have been calculated—i.e., the number of regular hours and overtime hours that have been worked, as well as the number of hours of employer-paid time off (for holidays, etc.) that have been taken and/or paid, the applicable rates of pay for all of these hours, the amounts of bonuses earned for good attendance and fulfilling production targets, and the additional allowances included in and the deductions made from the worker's pay.

Status

Workers testified to the WRC in March 2021 that they were still not being provided pay slips by the company.