



2011

FAIR LABOR ASSOCIATION INDEPENDENT EXTERNAL MONITORING REPORT

COMPANY: American Pad & Paper LLC
COUNTRY: Mexico
FACTORY CODE: 3200501273J
MONITOR: COVERCO
AUDIT DATE: July 11 – 12, 2011
PRODUCTS: Ruling, Envelopes, Padline,
File Folders
PROCESSES: Full
NUMBER OF WORKERS: 532

FLA Comment: This report was submitted with a corresponding corrective action plan to the FLA and was reviewed by FLA staff. In an effort to improve the effectiveness of remediation, the FLA has provided feedback and recommendations to the company; however, the company did not incorporate findings FOA.2, H&S.17, and H&S.OTHER have not been agreed upon or recommendations. The report is posted in its current state and is considered finalized. Updates on the progress of the corrective action will be posted when received by the company.



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

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

Noncompliance

Explanation: Management considers the 2nd night shift (Wednesday to Thursday, from 19:30 to 4:30) as a mixed shift, although the Labor Law Articles 60 and 61 indicate that these hours should be considered as a night shift. As a result, workers work 45 hours of night shift as opposed to 42 hours a week. Document review revealed that workers are not compensated with an overtime premium for the additional 3 hours of night work. Documentation provided by the factory during the audit indicates that 117 workers were in night shift (Shift nr. 9); these workers were from all working areas. Auditors verified that overtime was paid properly with the exception of the 3 hours of night work. Auditors consulted with the HR Manager, who confirmed that the factory considers it a mixed shift, and also that the union always agreed with it. In the closing meeting, management expressed their disagreement indicating that the factory has already made their legal consultations and that the union has never objected regarding this issue.

Legal Reference: Federal Labor Law, Article 60, Day shift is between 6 and 20 hours (06:00-20:00). Night shift is between 20 and 6 hours (20:00-06:00). Mixed shift includes hours of day and night shifts, whenever the nocturnal period is less than 3 hours and half (3:30 hours), because if it covers 3 and a half or more, it shall be considered as night shift; Federal Labor Law, Art. 61, the maximum duration of the shift shall be: 8 hours of day shift, 7 hours for night shift, and 7 hours and half for mixed shift.

Plan Of Action: Night shift working hours adjusted to 42 hours.

Deadline Date: 09/19/2011

Action Taken: Night shift working hours adjusted to 42 hours. Completed on September 19, 2011.

1. First shift working Monday to Friday 7:00 AM to 5:06 PM, 50.5 hours minus 2.5, meal hours a week, for a net 48 working hours/week.

2. Second shift (night shift) from 7:00 PM to 6:00 PM Monday to Thursday, 44 hours minus 2 meal hours a week, for a net 42 hours. 3. Working hours were aligned with the Mexican Federal Law; working hours are notified to potential new hires and reinforced during the interview/selection process and later during the orientation training session.



Plan Complete: Yes

Plan Complete Date: 09/19/2011

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

Other

Noncompliance

Explanation: There is a noncompliance in the collective bargaining agreement (CBA), according to Chapter IX.2, as it states, "the company is obliged to separate from their work without responsibility, requested by the union in writing, a worker or workers for refusing to be part of the union, being expelled from the organization or being sanctioned by the union." This clause restricts the decision of the worker to freely belong to the union or not, and violates the freedom of workers to leave the union freely with the aggravation that they might be dismissed by the employee without any responsibility. On April 17, 2001, The Supreme Court, in its Statement 385, released that the use of an Exclusion Clause as justification to dismiss workers that had been expelled or quit a union, is a violation of the Constitution, as it violates workers' right to freely organize.

Source: document review; CBA, Chapter IX, Clause IX.2

Legal Reference: Federal Labor Law, Article 358 and Supreme Court, Statement 385

Plan Of Action: Company is to make factory management aware that exclusion clauses are considered to be in violation of freedom of association (FOA) and that discrimination, dismissal or other forms of retaliation, or inducement to resign due to workers' membership or organizing activities are not in compliance with the FLA's Workplace Code of Conduct (COC). Management is to post Ampad's own non-discrimination policy indicating that workers will not be discriminated against on the basis of union membership and/or past or current workers' organizing activities. Lastly, ensure that all legally mandated mixed worker/management commissions are in place and functioning as intended. Request that management receives training on FOA that focuses on the Federal Labor Law, ILO conventions, and FLA's and/or Ampad's COC and benchmarks.

Deadline Date: 11/18/2011

Action Taken: Article 395 of the Federal Labor Law in force establishes the right to include the exclusion clauses in CBAs; this has been a practice since 1931. This article has not been reformed or amended and is still in force. The Mexican Supreme Court has, in fact, ruled in an Injunction Procedure (Juicio de Amparo) case that said article, among others, was considered unconstitutional, because it violated the right of workers to free organization. Though this is true, it was only in a specific case and has not yet created Jurisprudence in Mexican doctrine, but is only creating a very important first precedent, which sooner or later will create the required status of Jurisprudence and be obligatory to the general population and not only on a case per case as it currently is. Until this happens, or the Mexican Federal Labor Law is reformed, the workers that are terminated on the grounds of this article and consider that their rights were violated by this specific article may file an injunction procedure (Juicio de Amparo) before the corresponding Federal Court and request the protection of the Federal Courts, which will most likely apply the before mentioned criteria and resolve in favor of the plaintiff.

1. Every employee was informed and trained about freedom association.
2. American Pad & Paper renewed collective bargain agreements with the same union since 2010.
3. Mexican Law allows the company to establish the clause.
4. During the interview/selection process, new candidates were informed about the association with the SITPMEM union prior to hire.

Plan Complete: Yes

Plan Complete Date: 11/18/2011

Harassment or Abuse: Discipline/Written Disciplinary System

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

Noncompliance

Explanation: The auditor found that the factory does not have disciplinary system policy and procedure. Management commented using Esselte policies, Internal Regulation at Workplace, and CBA. However, auditor reviewed Esselte's policies and found no information regarding a disciplinary system; also, the Internal Regulation at Workplace and CBA do not provide procedure for disciplinary measures.

Sources: document review (company and factory policies), management interview

Plan Of Action: Factory management is to create or enhance policy and procedure with regards to discipline that would include: 1) description of how facility shall maintain an escalating disciplinary policy (verbal warning, written warning, termination), which clearly defines conditions under which an employee may be reprimanded; 2) description of how employees are informed as to why a disciplinary action has being taken, what type of action has been taken, and how they are informed of their rights to appeal; 3) description of how each type of disciplinary method gets executed; and 4) establishment of an appeal process, whereby an employee can challenge disciplinary decisions and how the factory investigates and reaches conclusions on appealed cases.

Action Taken: Company internal regulation shop rules updated as of November 29, 2011, describe in precise detail Ampad's disciplinary policy and procedure for disciplinary measures.

1. Every employee team leader, supervisor, and manager was trained.
2. HR established a disciplinary action procedure/policy established during the selection/interview and orientation process.
3. HR established a yearly-reinforced calendar in order to train and re-train team leaders, supervisors, and management.
4. Every new team leader, supervisor or manager must complete training on the disciplinary action policy/procedure. 4. HR posted on the bulletin boards a flowchart of the disciplinary action procedure/policy; it is easy for everyone to understand. The discipline system flowchart has been sent to the FLA for review.

Plan Complete: Yes

Plan 11/29/2011
Complete
Date:

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

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

Noncompliance

Explanation: During worker interviews, 54% of workers reported that evaluations made by the factory for promotion to new positions are not objective. These workers commented that their evaluations are not rated objectively, since workers with lesser experience are promoted. The auditor verified 13 personnel records and found no objective basis for evaluation. There are no indicators qualifying the skills, abilities, and experience needed for the job/position for promotion. In the closing meeting, management stated that they will be reviewing the proceedings, but mentioned that union delegates also participate in these proceedings.

Sources: worker and management interviews; personnel file review

Plan Of Action: Factory management is to create or enhance its policies and procedures for managing promotions, demotions, and job reassignments, so that they include: 1) specific legal rules or requirements, 2) the steps and requirements for the promotion, demotion, and reassignment scheme, 3) the outcomes of promotions, demotions, and reassignments, 4) the requirement that employees agree or disagree with the promotion, demotion, and reassignment scheme, 5) performance evaluation for promotion during and after the probationary period, if applicable, 6) a principle that demotion is not used as a form of penalty or for disciplinary purposes, but is entirely related to job performance and skills, and, 7) steps and mechanism(s) for communicating the promotion, demotion, and reassignment scheme and structure to the workforce. In addition, someone responsible for implementing and reviewing policy and procedures on promotion, demotion, and reassignment shall be assigned. Ongoing training for the management staff involved and the general workforce shall be provided.

Action Taken:



Procedure updated and reinforced with all unionized employees. Action completed by July 29, 2011. Reference Procedure #ETPR.003 Rev July 25, 2011.

1. A mixed committee of (Capacitacion y Adiestramiento) established by law, created an objective format in order to evaluate an internal candidate for any open position.
2. HR created a procedure/policy for every internal vacancy and informed every employee.
3. HR created an internal application/notification format that must be submitted by any internal candidate.
4. HR posted a flowchart in order for every employee to understand the procedure for an internal promotion or new position.
5. HR included this procedure during the orientation.
6. By law, a mixed committee of employees' seniority reviews the list of employees and HR post the complete list of seniority and updates this list (new employees or additions) every month.
7. All employees can participate in any internal promotion process, they must be notified the final decision by Human Resources.

Plan Yes
Complete:

Plan 07/29/2011
Complete
Date:



Code Awareness:

GEN.1 Establish and articulate clear, written workplace standards. Formally convey those standards to Company factories as well as to licensees, contractors and suppliers.

Noncompliance

Explanation: Esselte-Ampad (Esselte acquired Ampad in 2010) does not have a code of conduct (COC) established. Therefore, the factory has not provided information to workers on FLA Workplace Standards. During interviews, 100% of workers indicated not knowing the FLA COC; also, management commented that they do not provide information on the FLA COC during the induction process and trainings.

Sources: factory walkthrough; management and worker interviews

Plan Of Action: FLA COC posted in the plant, allowing employees to be aware of FLA COC, understand their rights, and report abuses.

Deadline Date: 07/29/2011

Action Taken: Action completed by July 29, 2011. Photos sent for reference.

Plan Complete: Yes

Plan Complete Date: 07/29/2011

Code Awareness:

GEN.2 Ensure that all Company factories as well as contractors and suppliers inform their employees about the workplace standards orally and through the posting of standards in a prominent place (in the local languages spoken by employees and managers) and undertake other efforts to educate employees about the standards on a regular basis.

Noncompliance

Explanation: During factory walkthrough, auditor noted that factory does not have a COC for the company (Esselte) or for the FLA. After the closing meeting, the factory requested the FLA for the code.

Sources: factory walkthrough, management interview

Plan Of Action: Factory management shall internalize COC by communicating code standards in written and verbal form. Factory management is to create and implement a training work plan that includes: 1) description of factory's commitment to prepare employees for their jobs by increasing their knowledge about workplace regulations, 2) defines training obligations, types of training needed (job related, workplace rules including company's COC standards) and training opportunities for employees to gain the knowledge and skills needed to do their jobs and awareness of their rights and responsibilities, and 3) assign someone responsible for managing education and training implementation and obligations.

Action Taken: The company adopted the FLA COC, allowing employees to be aware of FLA COC, understand their rights, and report abuses. Action completed by July 29, 2011. Photos sent for reference.

1. Management created an internal COC for [Factory name] and HR posted it on the bulletin boards.
2. HR included the FLA COC and [Factory name] internal COC during the orientation/training session.
3. Team leaders, supervisors, and new managers must complete a formal training on FLA and internal COC.
4. HR established a calendar of FLA an internal COC training reinforcement (1 time a year) for every employee. The factory's internal COC has been sent to the FLA for review.

Plan Complete: Yes

Plan Complete Date: 07/29/2011

Code Awareness:

GEN.3 Develop a secure communications channel, in a manner appropriate to the culture and situation, to enable Company employees and employees of contractors and suppliers to report to the Company on noncompliance with the workplace standards, with security that they shall not be punished or prejudiced for doing so.

Noncompliance

Explanation: The review of existing policies and procedures revealed that there are no established mechanisms for reporting noncompliances to the company confidentially. Management also confirmed this finding. Additionally, 100% of workers interviewed confirmed that there is no confidential reporting mechanism.

Sources: documentary review; management and worker interviews

Plan Of Action: FLA COC will be posted in the plant, allowing employees to be aware of FLA COC, understand their rights, and report abuses.

Deadline Date: 07/29/2011

Action Taken: FLA COC posted in the plant, allowing employees to be aware of FLA COC, understand their rights, and report abuses. Action completed by July 29, 2011. Photos sent for reference.

1. HR manager [Employee name's] phone number, [Factory name's] direct line, and an email address were available on the FLA and internal COCs.

2. A compliant, suggestion process flowchart was posted on bulletin boards.

Plan Complete: Yes

Plan Complete Date: 07/29/2011

Health and Safety: Personal Protective Equipment

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

Noncompliance

Explanation: During the factory walkthrough, the auditor verified that in several areas of the factory workers were not using ear protection. In the closing, meeting auditor indicated the working areas where the finding was detected and management commented that they believe that all workers use their PPE and the Safety and Health Manager has permanent monitoring of this issue. Management confirmed that they would immediately correct this finding.

Source: factory walkthrough

Reference: Collective Bargaining III.3.F); Internal Workplace Regulation, Chapter IV, 26th; Chapter 8th.

Plan Of Action: Safety program will be reinforced. Proper use of personal protective equipment (PPE) will be reinforced using the different audio-visual channels available in the plant.

Deadline Date: 07/19/2011

Action Taken: Action completed by July 19. 2011. Photo of PPE video and workers wearing PPE sent to FLA for review. We are using our different employee communication channels to properly use the safety equipment, specifically the earplugs.

1. EHS person responsible posted a visual on the bulletin communication board with the proper use of the PPE (earplugs, safety shoes, eyeglasses) according to the work area.
2. Team leaders, supervisors, and managers were trained in the correct way to use the PPE.
3. HR reinforced the use of PPE, team leaders, supervisors, and managers must document every fault by each employee who is not using the PPE.
4. EHS completed a communication PPE use campaign and scheduled the weekly safety meetings.

Plan Yes
Complete:

Plan 07/19/2011
Complete
Date:

Health and Safety: Ventilation/Electrical/Facility Installation and Maintenance

H&S.17 All necessary ventilation, plumbing, electrical, noise and lighting services shall be installed and maintained to conform to applicable laws and in such a manner as to prevent or minimize hazardous conditions to workers in the facility. (S)

Noncompliance

Explanation: Monitors noted during factory inspection intense noise in some areas of the factory. Areas of noise in points 2, 4, 5, 6, 8, 16, 17, 18, 19, 21, 33, 34, and 39 also detected in the assessment carried out in February 2011; in which a specialized firm determined that the levels exceeded the maximum permitted by NOM-011-STPS-2001. The factory does not perform regular audiometry exams for workers. The doctor of the factory confirmed conducting the exam and having the suitable equipment; however, he indicated that supervisors fail to send workers to the clinic for this exam. In the closing meeting, the Quality and Control Manager commented that they will conduct other assessment and will implement methods of noise mitigation.

Sources: factory walkthrough; doctor and management interviews

Legal Reference: NOM-011-STPS-2001, Clause 8.6, "Health surveillance: The employer must carry out specific annual medical examinations to each workers exposed to noise of 85 dB (A) and higher, according to Mexico Official Regulations issued by the Ministry of Health and observe those measure established in Standards. In the absence of regulations of the Ministry of Health, the company doctor will determine the type of medical examinations to be performed, their frequency and measures to be applied, taking into account the susceptibility of workers."

Plan Of Audiometric testing program will be upgraded to prevent permanent damage to
Action: employees' audible capabilities.

Action Taken: Audiometric testing program has been upgraded to prevent permanent damage to employees' audible capabilities. Action completed by July 22, 2011 Reference Procedure #SAPR.021 Rev B.

July 19, 2011; Section 5.6.8 mentioned the test frequency, established once per year. Factory management is to create or enhance procedures for reducing occupational noise that would include: 1) steps on factory noise testing and sampling, 2) a list of employees (or job descriptions) who should be protected against hearing loss and subject to audiometric testing, 3) management plans for protecting workers with potential hearing loss, and 4) a description of the hearing protection that is available and how employees should properly wear it. Please consider improving the plan of action by assigning someone accountable to carry out the accident investigations.

1. Plant doctor is responsible for documenting and following up on every accident or incident using root cause analysis tools, reports, and investigation follow up.

Plan Complete: Yes

Plan Complete Date: 07/22/2011

Health and Safety: Other - Health and Safety

Other

Noncompliance

Explanation: In document review of medical records of 5 accidents (mainly contusions), auditors found similar characteristics, which occurred, same number in each year throughout the last 2 years. However, it was observed that factory management has not taken any preventive actions against these accidents. Interview with the Quality Control Manager indicated that trainings on health and safety will be strengthened; also, in the closing meeting reaffirmed its commitment to strengthen trainings.

Sources: document review, management interviews

Plan Of Action: Review and improve the work instruction for the investigation of accidents, which will give us the steps to find the root causes of any accident occurring in the company.

Deadline 07/26/2011
Date:

Action [Factory name] consider eradication of accidents/and near misses equally important,
Taken: therefore 8D root cause analysis is used to find root cause of accidents/near misses and display preventive and corrective countermeasures. Bases on the use of the 8D root cause analysis tool.

1. EHS complete the 8D's and 5 whys in order to establish countermeasures to eliminate unsafe acts or conditions.

2. EHS keeps a record of every accident or incident data to prevent additional accidents or near misses.

1. 302 machine safe guards.

2. 234 hours of safety training to employees.

3. 225 daily 5 minutes safety meetings.

Plan Yes
Complete:

Plan 07/26/2011
Complete
Date:
