



2008

## FAIR LABOR ASSOCIATION INDEPENDENT EXTERNAL MONITORING REPORT

**COMPANY:** Umbro  
**COUNTRY:** China  
**FACTORY CODE:** 630015778G  
**MONITOR:** SGS  
**AUDIT DATE:** October 22, 2008  
**PRODUCTS:** Knitwear  
**PROCESSES:** Cutting, Sewing, Inspection,  
Ironing, Packing, (Embroidery  
Subcontracted)  
**NUMBER OF WORKERS:** 87

**Company Comment:** The UMBRO licensee is no longer ordering product to be manufactured with this factory. UMBRO, as a licensor, has implemented a new process to evaluate future suppliers to UMBRO licensees, prior to production.



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**Wages, Benefits and Overtime Compensation: Holidays, Leave, Legal Benefits and Bonuses**

WBOT.5 Employers shall provide all legally mandated holidays, leave, benefits and bonuses, such as official holidays, annual leave, sick leave, severance payments and 13th month payments, to all eligible workers within legally defined time periods. In addition, all leave and bonuses shall be calculated correctly. (S)

**Noncompliance**

**Explanation:** Based on document review and workers and management interview, the factory did not provide workforce with various paid leaves, like annual leaves, maternity leaves, statutory holidays, sick leaves, etc.

This violated Regulations on Paid Annual Leave for Employees, Article 3: The annual leave shall be five days for employees who have worked for 1-10 year(s); 10 days for employees who have worked 10-20 years; and 15 days for employees who have worked for 20 years or more. The annual leave shall be additional to national legal holidays and off days; China Labor Law, Article 51 The employing unit shall pay wages according to law to laborers who observe statutory holidays, take leaves during the periods of marriage or funeral, or participate in social activities in accordance with the law. China Labor Law, Article 62 After childbirth, female workers shall be entitled to no less than ninety days of maternity leaves with pay.

**Plan Of Action:** Information on holiday entitlement shall be included in the employees hand book or at least be educated to the employee upon employment; the management must ensure all staff understands how holiday leave is configured.

**Deadline Date:**

**Action Taken:**

**Plan Complete:**

**Plan Complete Date:**

### **Wages, Benefits and Overtime Compensation: Minimum Wage**

WBOT.2 Employers shall pay workers at least the legal minimum wage or the prevailing industry wage, whichever is higher. (S)

#### **Noncompliance**

**Explanation:** Based on payroll review, the factory failed to pay about 5% of workers with legal minimum wage standard of RMB850 per month, since the workers were paid by piece rate. Such under-payment cases (which were RMB 30-80 lower than the legal local minimum wage standards) happened to some new hires and unskilled workers in every month, since they would earn a low piece rate. This violated China Labor Law, Article 48: Wages paid to laborers by the employing unit shall not be lower than the local standards on minimum wages.

**Plan Of Action:** The min wage must always be met under no circumstance can a worker be paid under min wage at any time, Factory are urgently require to pay compensation to employees for their rest on statutory days, wedding leave etc. Employers shall provide all legally mandated holidays, leave, benefits and bonuses such as official holidays, annual leave, sick leave, severance payments and 13th month payments, to all eligible workers within legally defined time periods. In addition, all leave and bonuses shall be calculated correctly. Employers shall make every reasonable effort to ensure workers understand the wages including the calculation of wages, incentives systems, benefits and bonuses they are entitled to in the factory and under applicable laws. Employers shall communicate orally and in writing to all workers all relevant information in the local language spoken by the worker. Workers should sign to confirm they understand. The employees should be educated upon employment and fully understand wage calculation for piece rate on normal hourly rate, the factory are required to provide back pay and compensate the 5% of workers' legal wage standard.

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### **Wages, Benefits and Overtime Compensation: Calculation Basis for Overtime Payments**

WBOT.8 Employers shall compensate workers for all hours worked. For workers on a piece rate payment scheme or any other incentive scheme, payments for overtime hours worked shall be calculated by applying the premium rate required by law or this Code on the same payment scheme as is used for calculating wages for normal working hours, unless the payment scheme used leads to higher wages for workers. (S)

#### **Noncompliance**

**Explanation:** Based on payrolls review, management and workers interview, it was identified that the factory did not pay workers' overtime in accordance with legal rates. Since all workers were paid by piece rate, some of them said no premium was paid for overtime work. The management said for piece rate workers, working hours were not taken into account when their wages were being calculated. This violated China Labor Law, Article 44: The employing unit shall, according to the following standards, pay laborers remunerations higher than those for normal working hours under any of the following circumstances: (1) to pay no less than 150 per cent of the normal wages if the extension of working hours is arranged; (2) to pay no less than 200 per cent of the normal wages if the extended hours are arranged on days of rest and no deferred rest can be taken; and (3) to pay no less than 300 per cent of the normal wages if the extended hours are arranged on statutory holidays.

**Plan Of  
Action:** Factory shall pay wage rates for overtime and piece work that exceeds normal min wage and meet all applicable laws and regulations, at least 150% of regular salary rate for overtime. This shall be communicated to workers upon employment and the info shall be circulated amongst supervisors and all employees. The overtime rate is required to be back paid according to the law starting from the period the non compliance was discovered.

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### Freedom of Association: Right to Freely Associate

FOA.2 Workers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The right to freedom of association begins at the time that a worker seeks employment, and continues through the course of employment, including eventual termination of employment, and is applicable as well to unemployed and retired workers. (S)

#### Noncompliance

**Explanation:** **FLA Comment:** The Chinese constitution guarantees Freedom of Association; however, the Trade Union Act prevents the establishment of trade unions independent of the sole official trade union - the All China Federation of Trade Unions (ACFTU). According to the ILO, many provisions of the Trade Union Act are contrary to the fundamental principles of freedom of association, including the non-recognition of the right to strike. As a consequence, all factories in China fall short of the ILO standards on the right to organize and bargain collectively. Recently, however, the government has introduced new regulations that could improve the functioning of the labor relations mechanisms. The Amended Trade Union Act of October 2001 does stipulate that union committees have to be democratically elected at members' assemblies and trade unions must be accountable to their members. The trade union has the responsibility to consult with management on key issues of importance to their members and to sign collective agreements. It also grants the trade union an enhanced role in dispute resolution. In December 2003, the Collective Contracts Decree introduced the obligation for representative trade unions and employers to negotiate collective agreements, in contrast to the previous system of non-negotiated administrative agreements.

**Plan Of Action:** Factory management needs to educate employees so that they fully understand the need for collective bargaining and freedom of association within the factory for the workers benefit. Workers have the right to establish a worker committee, voting and electing their own responsible committee or group leader is one of the benefits they will experience, workers can enjoy the freedom to discuss and arrange events without factory interference. Workers should be educated on the freedom of association policy within the factory upon employment.

**Deadline Date:**

**Action Taken:**

**Plan Complete:**

**Plan Complete Date:**

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

Other

#### **Noncompliance**

**Explanation:** The factory had no written policy on freedom of association and collective bargaining.

**Plan Of Action:** Factory management needs to educate employees so that they fully understand the need for collective bargaining and freedom of association within the factory for the workers benefit. Workers have the right to establish a worker committee, voting and electing their own responsible committee or group leader is one of the benefits they will experience, workers can enjoy the freedom to discuss and arrange events without factory interference. Workers should be educated on the freedom of association policy within the factory upon employment.

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### **Harassment or Abuse: Discipline/Training of Management**

H&A.7 Employers shall ensure managers and supervisors are fully familiar with the factory disciplinary system and trained in applying appropriate disciplinary practices. (P)

#### **Noncompliance**

**Explanation:** The factory did not keep any disciplinary records.

**Plan Of  
Action:** If the factory has a disciplinary system, then this system should be documented and communicated to workers in local language as soon as possible. Records of disciplinary actions should be maintained and reviewed for improvement in the workplace purposes.

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**Harassment or Abuse: Discipline/Monetary Fines and Penalties**

H&A.8 Employers shall not use monetary fines and penalties as a means to maintain labor discipline, including for poor performance or for violating company rules, regulations, and policies. (S)

**Noncompliance**

**Explanation:** Based on disciplinary rule posted on-site, interview with management and workers, the factory deducted workers' wages (RMB 5-20 per time) for various disciplinary reasons.

**Plan Of Action:** Wage deduction is not permitted and other methods of discipline shall be introduced to replace this policy, this policy shall be terminated instantly.

**Deadline Date:**

**Action Taken:**

**Plan Complete:**

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**Harassment or Abuse: Other - Harassment or Abuse**

Other

**Noncompliance**

**Explanation:** Based on document review, the factory had no policy and procedure in place to prohibit potential cases of harassment or abuse, although there was no harassment or abuse case ever reported or recorded in the factory.

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### **Child Labor: Proof of Age Documentation**

CL.3 Employers shall collect and maintain all documentation necessary to confirm and verify date of birth of all workers, such as birth certificates. In addition, the employers shall take reasonable measures to ensure such documentation is complete and accurate. (P)

#### **Noncompliance**

**Explanation:** Based on document review, it was found that the factory did not keep the age documents of employees to prove that all employees were of legal working age -- 16 years old. This violated Regulation on Banning Child Labor (2002), Article 4: When employing personnel, the employers must verify the identification cards of the personnel to be employed; and may not employ any minor under 16 years old. The employers shall appropriately keep their employment registration and verification files of the personnel employed.

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## **Child Labor: Employment of Young Workers**

CL.6 Employers shall comply with all relevant laws that apply to young workers (i.e., those between the minimum working age and the age of 18) including regulations relating to hiring, working conditions, types of work, hours of work, proof of age documentation, and overtime. (P)

### **Noncompliance**

**Explanation:** 1. The factory did not keep the age documents of workers. But two juvenile workers were identified during the worker interview. And the factory did not provide two juvenile workers with health examinations. This violated Regulations for the Special Protection of Juvenile Employees (Document No. 498, 1994) Article 6: Employers should provide, according to the following requirements, regular physical examination: (1) Before the juvenile employee begins working at the enterprise; (2) After the juvenile employee has worked for one full year; and (3) When the juvenile employee has reached 18 years of age and has not had a physical examination in the previous six months.

2. The factory did not register at least two juvenile workers with the local authority. This violated Regulations for the Special Protection of Juvenile Labor (Document No. 498, 1994) Article 9: Juvenile labor employment and special protection should be under registration administration. (1) An employer who recruits and hires juvenile labor, in addition to complying with general employment requirements, must also undertake registration procedure with the local labor administration department at or above the county level. The labor administration department will then issue the Registration Certificate for Juvenile Labor' and the Registration Form for Juvenile Labor. (2) Each level of Labor Administrative Department should follow the provision of Articles 3, 4, 5 and 7 of this regulation to review physical check result and tentative work position. (3) Juvenile labor must first secure the Registration Certification for Juvenile Labor' before beginning to work. (4) All Registration Certificate for Juvenile Labor' should be printed by Labor Administrative Department of State Council.

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**Child Labor: Other - Child Labor**

Other

**Noncompliance**

**Explanation:** There was no written policy or procedure on prohibition of child labor, identification and protection of juvenile workers. The management appeared to have quite limited knowledge on child labor issues, especially on juvenile workers.

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**Non-Discrimination: Other - Non-Discrimination**

Other

**Uncorroborated Evidence of Noncompliance**

**Explanation:** The factory did not establish a written policy on the prohibition of discrimination. The management appeared to have no knowledge on this field. But the management stated that work assignments were based on the performance of workers during the pre-employment skill training, and payment was based on the skill and performance only.

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**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:** Based on document review and management interview, the company did not provide COC to the factory. And based on workers interview, the company did not communicate the code of conduct to the factory workforce.

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**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:** Based on interview with factory's management, they did not receive any training on COC from the company.

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**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 company did not inform factory's workforce of the non-retaliation policy. In addition, the company did not establish a mechanism for workers to contact or complain directly to the company.

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**Miscellaneous: Illegal Subcontracting**

MISC.1 Illegal Subcontracting

**Uncorroborated Evidence of Noncompliance**

**Explanation:** Based on interview with factory management, the factory was using one subcontractor for the process of embroidery. But, the factory did not oversee the compliance of this subcontractor.

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**Health and Safety: Document Maintenance/Worker Accessibility and Awareness**

HEALTH AND SAFETY: .2 All documents required to be available to workers and management by applicable laws (such as health and safety policies, MSDS, etc.) shall be made available in the prescribed manner and in the local language or language(s) spoken by the workers if different from the local language. (P)

**Uncorroborated Evidence of Noncompliance**

**Explanation:** [The factory did not keep the work-related accident records.](#)

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### **Health and Safety: Written Health and Safety Policy**

HEALTH AND SAFETY: .3 Employers are required to develop, maintain and regularly review a written health and safety policy. The policy must, at the very least, be aimed at complying with legal minimum safety and health standards, regulations and procedures. (P)

#### **Noncompliance**

**Explanation:** Based on document review and workers interview, factory did not have health and safety policy and rules, and did not train workforce on health and safety issues. This violated China Labor Law, Article 52: The employing unit must establish and perfect a system for occupational safety and health, strictly implement the rules and standards of the State on occupational safety and health, educate laborers on occupational safety and health, prevent accidents in the process of work, and reduce occupational hazards.

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## Health and Safety: Permits and Certificates

HEALTH AND SAFETY: .8 The employer shall at all times be in possession of all legally required and valid permits and certificates related to health and safety issues, such as those related to the purchase and storage of chemicals, fire safety inspections, inspection of machinery, and (chemical) waste disposal. (P)

### Noncompliance

**Explanation:** 1. The electrician did not possess a qualification certificate. This violated China Labor Law, Article 55: Laborers to be engaged in specialized operations must receive specialized training and acquire qualifications for such special operations.

2. One elevator was not updated on annual inspection by local authority. This violated Regulations on Safety Supervision over Special Equipment, Article 28: An entity using special equipment shall, in accordance with the requirements of the safety technical code on regular inspection, file the request for regular inspection with the inspection and testing institution in 1 month prior to the expiry of the period of validity of the safety inspection. The inspection and testing institution shall, after receiving the request for regular inspection, make the inspection in a timely way pursuant to the requirements of the safety technical code. The special equipment that hasn't gone through the regular inspection or that has failed the inspection may not be used any longer.

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### Health and Safety: Evacuation Requirements and Procedure

HEALTH AND SAFETY: .9 All applicable legally required or recommended elements of safe evacuation (such as posting of evacuation plans, the installation and maintenance of an employee alarm and emergency lighting systems, ensuring aisles/exits are not blocked and that workers are not blocked within their workstations, employee education, evacuation procedures, etc.) shall be complied with. Workers shall be trained in evacuation procedures. Alarm systems shall be regularly tested and evacuation drills shall be undertaken at least annually. (S)

#### Noncompliance

**Explanation:** Based on document review and workers interview, the factory never conducted a fire drill to educate its workforce. This violated Fire Prevention Law of the People's Republic of China, second subparagraph (3), (4) of Article 16: Key units for fire prevention safety should, in addition to performance of the responsibilities prescribed in Article 14 of this Law, fulfill the following fire prevention safety responsibilities: (3) Conducting fire prevention safety training among workers and staff members; and (4) Formulating contingency plans for fire-fighting and emergency evacuation, and organizing fire-fighting exercises at regular intervals.

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### Health and Safety: Safety Equipment and First Aid Training

HEALTH AND SAFETY: .10 All safety and medical equipment (such as fire fighting equipment, first aid kits, etc.) shall be available in sufficient numbers throughout the factory, maintained and stocked as prescribed and easily accessible to workers. A sufficient number of workers shall be trained in first aid and fire fighting techniques. (S)

#### Noncompliance

- Explanation:**
1. There was no first aid kit or qualified first aid staff present in the factory.
  2. Based on observation on-site, it was identified that some fire equipment like fire extinguishers and hoses were blocked by goods. This violated Code for Design of Extinguisher Distribution in Buildings (50140-2005), Article 5.1.1: Fire extinguishers shall be installed in a distinct and easily accessible location, and shall not hinder safe evacuation.
  3. Based on observation on-site, the factory did not periodically inspect the fire equipment in the factory. This violated Fire Prevention Law of the People's Republic of China, sub-paragraph (5) of Article 14: Organs, societies, enterprises and institutions should fulfill the following fire prevention safety responsibilities:(5) deploying fire-fighting facilities and equipment, putting up fire prevention safety signs pursuant to relevant state provisions, and organizing inspection and maintenance at regular intervals to ensure that fire-fighting facilities and equipment are in perfect condition and effective.

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### **Health and Safety: Personal Protective Equipment**

HEALTH AND SAFETY: .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:** Based on observation on-site and interview with workers, it was identified that factory did not provide cutting workers with metal mesh gloves, and there was missing any posters or warnings to remind workers of using PPE. This violated Production Safety Law of the People's Republic of China, Article 37: The production and business operation entities shall provide labor protection articles that meet the national standards or industrial standards to the employees thereof, supervise and educate them to wear or use these articles according to the prescribed rules.

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### Hours of Work: Rest Day

HOW.2 Workers shall be entitled to at least one day off in every seven-day period. If workers must work on a rest day, an alternative day off must be provided within that same seven-day period or immediately following the seven-day period. (P)

### Noncompliance

**Explanation:** Based on review factory's attendance record, the factory failed to guarantee that workers at least had one day off every week, the longest consecutive working days were 30 days. For example, in September, there were 2 days off; in April, May and July, there was only 1 day off. The average rest days were 1-2 days every month. This was a common situation for almost all workers. This violated China Labor Law, Article 38: The employing unit shall guarantee that its staff and workers have at least one day off in a week.

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### **Hours of Work: Time Recording System**

HOW.6 Time worked by all workers, regardless of compensation system, shall be fully documented by time cards or other accurate and reliable recording systems such as electronic swipe cards. Employers are prohibited from maintaining multiple time-keeping systems and/or false records for any fraudulent reason, such as to falsely demonstrate working hours. Time records maintained shall be authentic and accurate. (P)

### **Noncompliance**

**Explanation:** Based on attendance record review, factory only provided the time records from April 2008 to September 2008 for review. The factory management explained that those records before April 2008 were not kept. This violated Payment of Wages Tentative Provisions, Article 6: An employing unit must register the amount of the wages, the time of payment and the name and signature of the recipient. Wage payment records should be kept for at least two years.

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### Hours of Work: Overtime/Calculation Over Period Longer Than One Week

HOW.10. Employers are allowed to calculate normal hours of work as an average over a period of longer than one week where local laws, regulations and procedures provide for such a possibility but only when all formal and procedural requirements attached to such calculation (for instance, obtaining official permission from the relevant authorities or limits to the period during which such calculations can be made) are met. The basis for such calculation shall, however, remain at all times the lesser of 48 hours per week or legal limits on hours of work in the country of manufacture or, where such legal limits do not exist, the regular work week in such country. (S)

#### Noncompliance

**Explanation:** The management provided the time records from April 2008 to September 2008 for review. These time records indicated that workers worked overtime almost every working day. Throughout this period (April to September), the average daily working hours were 11, maximum daily working hours were 16. On an average basis, the monthly working hours were 290 and the weekly working hours were 74 hours. Maximum weekly working hours were 80.5 hours. Above data was applicable for all workforces in the factory. This violated China Labor Law, Article 41: The employing unit may extend working hours due to the requirements of its production or business after consultation with the trade union and laborers, but the extended working hour for a day shall generally not exceed one hour; if such extension is called for due to special reasons, the extended hours shall not exceed three hours a day under the condition that the health of laborers is guaranteed. However, the total extension in a month shall not exceed thirty six hours.

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