



2008

## FAIR LABOR ASSOCIATION INDEPENDENT EXTERNAL MONITORING REPORT

**COMPANY:** New Era Cap Co, Inc.

**COUNTRY:** China

**FACTORY CODE:** 270015843G

**MONITOR:** ALGI

**AUDIT DATE:** September 22 – 23, 2008

**PRODUCTS:** Caps

**PROCESSES:** Cutting, Sewing, Shaping,  
Ironing, Inspection, Packing

**NUMBER OF WORKERS:** 97

*Due to a 2010 IEV (Independent External Verification) at this factory, all updates after 2008 can be found on the IEV report [here](#).*



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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:** 1. Workers are not provided with paid annual leave, paid sick leave and paid holidays. Workers paid based on pieces. When they ask for leave or are on holidays, they do not have production volume, so they are not paid.

2. 45% workers enrolled in 4 kinds of social insurance: pension, occupational injury, maternity, unemployment. No workers enrolled in medical insurance. Factory obtained written waiver from local labor and security bureau stating since factory located in [Area name] Industrial Zone, is allowed not to participate in medical insurance.

Legal References: Art. 2 of Measures on Having Holiday for National Annual Leaves and Memorial Days: 1) 1-day holiday New Year (January 1); 2) 3-day holiday Spring Festival (lunar New Year's Eve, first 2 days of lunar January); 3) 1-day holiday Tomb-Sweeping Day (lunar Tomb-Sweeping Day); 4) 1-day holiday Labor Day (May 1); 5) 1-day holiday Dragon-boat Festival (lunar Dragon Boat Festival); 6) 1-day holiday Mid-Autumn Festival (lunar Mid-Autumn Festival); 7) 3-day holiday National Day (October 1, 2, 3); Art. 6 of Measures on Having Holiday for National Annual Leaves and Memorial Days: Where vacations having holiday for all citizens happen to be on Saturday or Sunday, they shall have additional holiday with working days. Art. 72 of PRC Labor Law (Chapter 9 Social Security and Benefit): Management and employees must participate in social insurance programs. Art.73 PRC Labor Law: Workers shall be provided with social insurance benefits under following circumstances: a) retirement; b) illness; c) disability caused by work-related injury or occupational disease; d) unemployment and e) childbearing. Art. 73 of PRC Labor Law (Chapter 9 Social Insurance and Welfare): Social insurance contribution shall be fulfilled in full and in time. Art. 51 of PRC Labor Law (Chapter 5 Wages and Salaries): Wages and salaries shall be paid to laborers when they have legal holidays or take leaves for marriage or mourning and/or participate in social activities as defined by law. Art.58 of Implementation of PRC Labor Law: Female employees must be paid primary wages during maternity leave. Art. 59 of Implementation of PRC Labor Law: Employees, who were ill or hospitalized, must be paid no lower than 80% of Local Minimum standard during legal healing period. Art. 62 of PRC Labor Law: Childbearing women shall be entitled to maternity leave no shorter than 90 days. Regulations for Special Protection on Female Workers, Art.8: Maternity leave for childbearing women is 90 days. Thereunto, 15 days for leave before childbearing. Providing that several children born at once, there shall be 15 additional days per each child. In case of miscarriage, female worker could get maternity leave with proof given by local hospital.



**Plan Of Action:** For all findings, supplier requested to provide root cause analysis of why noncompliance occurred, and an action plan to correct and prevent issue from occurring in future. Once plan received and reviewed by NEC, conference call was held 10/28/2008 to agree on priorities and timeframes. NEC conducted on-site visit to factory November 10, 2008, a full independent verification audit planned for post-Chinese New Year 2009.

**Deadline Date:** 01/30/2009

**Supplier CAP:** Strictly follow the legal regulation.

**Supplier CAP Date:** 01/30/2009

**Action Taken:** January 9, 2009: NEC held meeting with factory management to review CAP status and make recommendations. According to payroll review, workers received paid holidays in October, but this will need to be independently verified. Not all workers covered by social insurance and NEC not provided with breakdown of factory's enrolment figures for 5 different types of insurance. Factory asked to provide more detailed update on current status and proposed plan to provide social insurance in compliance with PRC law.

2/19/2009: Factory confirmed requirements with social insurance bureau and agreed to provide 5 different types of social insurance.

**Plan Complete:** No

**Plan Complete Date:**

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## 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)

### Uncorroborated Evidence of Noncompliance

**Explanation:** Time records fake, cannot be verified if workers get local minimum wages during regular work hours. Discrepancies between time and on-site production records: 1) Was broken needle record for September 14, 2008, but time records showed all sewing workers had day off. 2) 5 sheets of packing records for September 21, 2008; yet, time records showed no packing workers worked that day. 3) Fire drill records showed 1 fire drill on May 11, 2008, with all workers participating; yet time records showed all workers had day off.

Legal References: Art. 48 of PRC Labor Law (Chapter 5 Wages and Salaries): Employer shall pay workers wages no lower than government established minimum. Article 12 of Regulation for Minimum Wage: Providing that employee worked normally, payment they get should be no less than minimum wage except for: a) OT payment; b) special allowance for middle shift, night shift, working under high or low temperature, mine or toxic environment; c) other benefits regulated by law and regulations.

**Plan Of Action:** NEC requires its suppliers to maintain accurate and complete payroll records, demonstrating payment of all regular and OT wages, as required by law. Accurate wage payment was agreed to be a priority, with regular monitoring and updates to NEC.

**Deadline Date:** 11/30/2008

**Supplier CAP:** Will pay correct OT premiums immediately for hourly and piece rate workers (normal work days: 150%, rest days: 200%, holidays: 300%). Will hire additional workers instead of working excessive OT.

**Supplier CAP Date:** 11/30/2008

**Action Taken:** In October, factory hired new payroll manager and informed NEC they had changed their wage payment system to an hourly system for all workers.

November 10, 2008: NEC met with new payroll manager and observed implementation of new payroll and OT payment.

January 9, 2009: NEC held meeting with factory management to review CAP status and make recommendations. According to payroll reviewed, workers received proper OT compensation, but this will need to be independently verified.



**Plan Complete:** Yes

**Plan Complete Date:** 01/30/2009

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### **Wages, Benefits and Overtime Compensation: Overtime Compensation for Piece Rates and Other Incentive Schemes**

WBOT.12 Employers shall not set production targets, piece rates, or any other incentive or production system at such a level that the payment for overtime work performed is less than the premium pay required by law. (S)

#### **Noncompliance**

**Explanation:** Production workers received 100% of piece unit for all OT hours, not 150% of piece unit for regular OT hours and 200% of piece unit for weekend OT hours. Factory only calculates production pieces for workers, and does not distinguish whether pieces done during regular work hours or OT hours.

Legal Reference: Art.13 of Interim Regulation on Payment of Wages: Piece workers who are required to work OT after they finish production quotas must be paid no less than 150% (regular work days), 200% (rest days), or 300% (statutory holidays) of normal piece rate during regular work hours.

**Plan Of Action:** NEC requires its suppliers to maintain accurate and complete payroll records, demonstrating payment of all regular and OT wages, as required by law. Accurate wage payment was agreed to be a priority, with regular monitoring and updates to NEC.

**Deadline Date:** 11/30/2008

**Supplier CAP:** Will pay correct OT premiums immediately for hourly and piece rate workers (150% normal work days, 200% rest days, 300% holidays). Will hire additional workers instead of working excessive OT.



**Supplier CAP** 11/30/2008

**Date:**

**Action Taken:** In October, factory hired new payroll manager and informed NEC they had changed their wage payment system to hourly system for all workers.

November 10, 2008: NEC met with new payroll manager and observed implementation of new payroll and OT payment.

January 9, 2009: NEC held meeting with factory management to review CAP status and make recommendations. According to payroll review, workers received proper OT compensation, but this will need to be independently verified.

**Plan Complete:** No

**Plan Complete Date:** 01/30/2009

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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:** There are no really free unions in China. This facility has no trade union currently. No workers interviewed showed interest in establishing a union.

Legal Reference: Art. 7 of PRC Labor Law: Laborers have right to participate in and organize trade unions. Unions represent and safeguard legal interests of workers and proceed with activities independently.

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

**Plan Of Action:** In January 2009, NEC is launching new initiative aimed at improving HR management system's performance of contract suppliers. Labor relations and collective bargaining are components to this management system review; the first step will be to analyze supplier's policies, procedures, and capacity in these areas.

**Deadline Date:** 03/31/2009

**Action Taken:**



Plan No  
Complete:

Plan  
Complete  
Date:

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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:** Although deductions never taken place, notice is posted in overlocking workshop, indicating workers would be deducted 5 RMB when they do not clean their workstations.

**Plan Of Action:** In January 2009, NEC is launching new initiative aimed at improving HR management system's performance of contract suppliers. This will include establishing disciplinary procedures based on escalating scale of verbal and written warnings prior to termination and prohibit the use of any monetary fines or restriction of freedom of movement.

**Deadline Date:** 03/31/2009

**Supplier CAP:** Adopt a more humanistic method on implementing factory policy.

**Supplier CAP Date:** 01/30/2009

**Action Taken:** January 9, 2009: NEC held meeting with factory management to review CAP status and discuss HR system review and improvement planning in 2009. As mentioned above, this includes establishing disciplinary procedures in accordance with FLA requirements.

Plan No  
Complete:

**Plan  
Complete  
Date:**

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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:** [New Era fails to provide its code of conduct to facility.](#)

**Plan Of  
Action:** [Supplier has been provided with FLA Code of Conduct \(CoC\) in English and Chinese. In January 2009, NEC is launching new initiative aimed at improving HR management system's performance of contract suppliers. This includes review of factory's training program on their policies and procedures.](#)

**Deadline  
Date:** [03/31/2009](#)

**Action  
Taken:** [January 9, 2009: NEC held meeting with factory management to review CAP status and discuss HR system review and improvement planning in 2009. NEC also provided management with information on benefits and business cases for an effective training program.](#)

**Plan  
Complete:** [No](#)

**Plan  
Complete  
Date:**

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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:** New Era's Code of Conduct not posted and factory management and workers have not been informed or trained on it.

**Plan Of Action:** NEC encourages its suppliers to conduct their own HR training on the rights and responsibilities of employees and management. Training should be based on factory's policies, rules and workers' rights under local law. In January 2009, NEC is launching new initiative aimed at improving HR management system's performance of contract suppliers. Training and employee development is a key pillar of this initiative, and will be addressed as part of a holistic management systems review.

**Deadline Date:** 01/30/2009

**Action Taken:** January 9, 2009: NEC held a meeting with factory management to review CAP status and discuss HR system review and improvement planning in 2009. NEC also provided management with information on benefits and business cases for an effective training program.

**Plan Complete:** No

**Plan Complete Date:**

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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:** New Era fails to develop a secure communication channel in factory to enable its suppliers' employees to report noncompliances to company.

**Plan Of Action:** As above, in January 2009, NEC is launching new initiative aimed at improving HR management system's performance of contract suppliers. An effective internal grievance mechanism is a critical component of this and will be addressed as part of a holistic management systems review. In interim, NEC contact information is provided on CoC poster in facility.

**Deadline Date:** 03/31/2009

**Action Taken:** January 9, 2009: NEC held a meeting with factory management to review CAP status and discuss HR system review and improvement planning in 2009. NEC also provided management with information on the benefits and business case for an effective grievance mechanism.

**Plan Complete:** No

**Plan Complete Date:**

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## Miscellaneous: Illegal Subcontracting

MISC.1 Illegal Subcontracting

### Noncompliance

**Explanation:** 1. Facility has not conveyed FLA or New Era's Codes of Conduct to its subcontractors.

2. Facility has no one overseeing subcontractors to ensure their contracts are implemented in compliance with FLA or New Era's Code elements.

**Plan Of Action:** NEC and supplier have agreed that, as an immediate priority, supplier should focus on making sustainable improvements in their own facility. Monitoring compliance of its washing or embroidery subcontractors could be a longer term goal.

**Deadline**

**Date:**

**Action**

**Taken:**

**Plan** No

**Complete:**

**Plan**

**Complete**

**Date:**

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### Health and Safety: Bodily Strain

H&S.20 Workstations, including seating and standing arrangements and reach required to obtain tools, shall be designed and set-up in such a manner as to minimize bodily strains. Employers shall train workers in proper lifting techniques and items such as belts shall be provided. (S)

#### Noncompliance

**Explanation:** No ergonomic policy or practices are adopted in the facility. Facility does not have any ergonomic program in place. Facility does not provide ergonomic chairs to those with sitting jobs or floor mats to those with standing jobs.

**Plan Of Action:** Ergonomic policies and practices will be addressed as part of an overall review of the health and safety management systems of the factory.

**Deadline Date:** 03/31/2009

**Action Taken:** January 9, 2009: NEC held meeting with factory management to review CAP status and discuss HR system review and improvement planning in 2009. NEC also provided management with information on benefits and business cases for a comprehensive health and safety management system.

**Plan Complete:** No

**Plan Complete Date:**

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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:** Facility fails to provide workers with at least 1 day off in every 7 day period. Details: 1) There was a broken needle record on September 14, 2008 (Sunday), but time records showed all sewing workers had day off. 2) There were 5 sheets of packing records on September 21, 2008 (Sunday); yet, time records showed no packing workers worked that day. 3) Fire drill records showed 1 fire drill, with all workers participating on May 1, 2008 (Sunday); yet, time records showed all workers had day off.

Legal Reference: Art. 38 of PRC Labor Law: Employer shall guarantee that its laborers have at least 1 day off per week.

**Plan Of Action:** Managing work hours is another issue that can only be addressed sustainably with effective management systems, accountability, communication and production planning. These elements will also be assessed as part of NEC's management systems initiative and review in 2009. In the interim, supplier has agreed to controlling work hours and making records available during subsequent verification audits.

**Deadline Date:** 03/31/2009

**Supplier CAP:** Improve the condition via flexible management.

**Supplier CAP Date:**

**Action Taken:** In October, factory hired a new payroll manager and informed NEC they had changed their wage payment system to an hourly system for all workers.

November 10, 2008: NEC met with new payroll manager and observed implementation of new payroll and hour records for October.

January 9, 2009: NEC held meeting with factory management to review CAP status and discuss HR system review and improvement planning in 2009. Best practices in managing working hours were highlighted, as well as business cases for avoiding excessive OT.

**Plan** No  
**Complete:**

**Plan**  
**Complete**  
**Date:**

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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:** Facility uses electric time tracking system and presented records based on this, but they are false. Details: 1) There was a broken needle record September 14, 2008 (Sunday), but time records showed all sewing workers had day off. 2) There were 5 sheets of packing records September 21, 2008 (Sunday); yet, time records showed packing workers had day off. 3) Fire drill records showed 1 fire drill, with all workers participating, carried out May 1, 2008 (Sunday); yet, time records showed all workers had day off.

**Plan Of Action:** Managing work hours is another issue that can only be addressed sustainably with effective management systems, accountability, communication and production planning. These elements will also be assessed as part of NEC's management systems initiative and review in 2009. In interim, supplier has agreed to controlling work hours, and making records available during subsequent verification audits.

**Deadline** 03/31/2009  
**Date:**

**Supplier** Improve the condition via flexible management.  
**CAP:**

**Supplier CAP**  
**Date:**





**Action Taken:** In October, factory hired new payroll manager and informed NEC they had changed their wage payment system to an hourly system for all workers.

November 10, 2008: NEC met with new payroll manager and observed implementation of new payroll and hour records for October.

January 9, 2009: NEC held meeting with factory management to review CAP status, discuss HR system review and improvement planning in 2009. Best practices in managing work hours were highlighted, as well as business cases for avoiding excessive OT.

**Plan Complete:** No

**Plan Complete Date:**

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### Hours of Work: Maintenance of Reasonable Levels of Staff

HOW.7 Employer personnel practices shall demonstrate an effort to maintain a level of staffing that is reasonable in view of predictable or continuing fluctuations in business demand. (P)

#### Noncompliance

**Explanation:** Facility constantly needs to hire temporary workers to finish orders in time. There are 8 temporary workers in facility in case there are urgent orders.

**Plan Of Action:** Managing work hours is another issue that can only be addressed sustainably with effective management systems, accountability, communication and production planning. Factory's designated HR staff should have regular communication with production department, monitoring work hour trends and root causes of OT to ensure workforce meets production needs. This is 1 component of HR systems review that commenced in January 2009.

**Deadline Date:** 03/31/2009

**Action Taken:**

Plan            No  
Complete:

Plan  
Complete  
Date:

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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)

#### Uncorroborated Evidence of Noncompliance

**Explanation:** Average work hours of sewing workers (overlock) are 68 hours per week; other departments do an average of 65 hours per week. Since work hours records not reliable, exact work hours cannot be calculated. According to worker interviews, there is no obvious peak season, so work hours for different months are nearly the same. Average work hours of sewing workers (overlock, 10 workers) are 68 hrs/wk; other departments average 65 hrs/wk.

Worker interview reply to questions on Working Hours, Art.5: Providing that system of comprehensively calculated work hours is executed, in period of comprehensively calculated work hours, actual work hours could exceed 8 hours (40 hours) on specific day (week). But, total actual work hours shall be no more than total normal work hours regulated by law. The excess part shall be regarded as OT and paid according to Art.44.1 of PRC Labor Law. If employee asked to work legal holidays, OT payment should be paid as regulated by Art.44.3 of PRC Labor Law. Besides, average hours of OT each month shall be no more than 36 hours.

Legal Reference: Art. 41 of PRC Labor Law (Chapter 4 Work Hours, Rest Days, Holidays): Employees should not be allowed to work more than 3 OT hrs/day and 36 OT hrs/month.



**Plan Of Action:** Managing work hours is another issue that can only be addressed sustainably with effective management systems, accountability, communication and production planning. These elements will also be assessed as part of NEC's management systems initiative and review in 2009. In the interim, supplier has agreed to controlling work hours, and making records available during subsequent verification audits.

**Deadline Date:** 03/31/2009

**Supplier CAP:** Improve the condition via flexible management.

**Supplier CAP Date:**

**Action Taken:** In October, factory hired a new payroll manager and informed NEC they had changed their wage payment system to an hourly system for all workers.

November 10, 2008: NEC met with new payroll manager and observed implementation of new payroll and hour records for October.

January 9, 2009: NEC held meeting with factory management to review CAP status and discuss HR system review and improvement planning in 2009. Best practices in managing work hours were highlighted, as well as business cases for avoiding excessive OT.

**Plan Complete:** No

**Plan Complete Date:**