

ISSUE BRIEF

The FLA is a multi-stakeholder organization combining the efforts of businesses, universities, and civil-society organizations to improve conditions for workers around the world. Occasionally, the FLA publishes briefs on current issues in the global supply chain. We intend for these briefs to provide an overview of the various perspectives on a given issue. At all times, the FLA expects its business affiliates to comply with all legal requirements, as well as the provisions of its Workplace Code of Conduct.

Social Insurance in China

September 2014

THE ISSUE:

What social insurance contributions must employers in China provide for their workers?

THE FIVE CATEGORIES:

According to China's social insurance law, which was passed on October 28, 2010, and came into effect on July 1, 2011, employers must provide contributions for their workers in the following five categories of social insurance¹:

- 1) basic pension
- 2) basic medical
- 3) unemployment
- 4) work-related injury
- 5) maternity

The law requires employers to contribute to all five social insurance schemes in all geographic regions of the country for all workers, whether they are migrant workers registered elsewhere or residential workers registered in the city where they are working. Along with employer payments to the social insurance system, workers must also contribute to pension, unemployment, and medical insurance.

Local provincial, city, and county governments have the authority, under national law, to determine (on an annual basis) the social insurance contribution rates that will govern their area, based on local average incomes for the previous 12 months. This geographic flexibility results in small general variations in the social security rates that employers and workers pay by region, in full compliance with the national law. However, no regional government authority may issue any waivers or exemptions to any parts of the social insurance system, nor devise any variations to any of the five payment rates that apply only to specific companies or factories.

WHY THERE ARE VARIATIONS:

¹ Find full text of the law at the International Labour Organization's NATLEX database, under the heading "Social Insurance Law of the People's Republic of China (adopted at the 17th meeting of the Standing Committee of the 11th National People's Congress of the People's Republic of China on October 28, 2010)", http://www.ilo.org/dyn/natlex/natlex_browse.home

THE GOVERNING ELEMENT OF THE FLA CODE: COMPENSATION

"Every worker has a right to compensation for a regular work week that is sufficient to meet the worker's basic needs and provide some discretionary income. Employers shall pay at least the minimum wage or the appropriate prevailing wage, whichever is higher, comply with all legal requirements on wages, and provide any fringe benefits required by law or contract. Where compensation does not meet workers' basic needs and provide some discretionary income, each employer shall work with the FLA to take appropriate actions that seek to progressively realize a level of compensation that does."^{*}

^{*} <http://www.fairlabor.org/our-work/labor-standards>

Contrary to the national law, FLA assessors nonetheless report finding local, regional, or factory-specific variations in social insurance payments, including waivers, exemptions, and special contribution rates.

In one SCI report for a Chinese factory found to be paying its social insurance premiums below the legally mandated rate, FLA assessors noted as a root cause that the supplier considered these costs to be “financially burdensome.” As additional root causes, assessors noted a lack of enforcement at the local government level, and confusion within the social insurance system around how migrant workers can access their premiums when they return to their hometowns.

In fact, migrant workers’ difficult experiences with the system, combined with some workers’ preference to avoid their own contributions (and maximize short-term income), can lead workers to acquiesce to employment situations that fail to comply with the law. Companies and suppliers can use non-compliance to advance their interests in reducing the overall cost of their workforce, and local governments can advance their interests by using the cost-savings associated with local variances as incentives for attracting business.

Despite the widespread occurrences of such arrangements, social insurance variations and waivers do in fact violate Chinese law, and therefore violate the FLA Workplace Code of Conduct, which stipulates that “employers shall ... comply with all legal requirements on wages, and provide any fringe benefits required by law.”

THE STRIKE IN DONGGUAN:

In April of 2014, workers in Dongguan organized one of the biggest strikes in China’s history, demanding that local factories comply with the social insurance law. When workers at a number of footwear factories discovered their social insurance benefits (and another benefit, the housing provident fund) were not being fully paid by their employer, as many as 40,000 workers walked off the job.

Because the law allows for significant fines for an employer’s failure to declare or pay social insurance contributions for its workers, non-compliance – in addition to its unfairness to workers – can add up to significant additional costs in the long term. In fact, the strike in Dongguan cost the supplier² an estimated \$27 million from the work stoppage, plus

2 The factories in question are operated by Yue Yuen Industrial Holdings, which is owned by the Pou Chen Group, a Participating Supplier with the FLA.

\$31 million to settle the dispute.³ As more workers claim their right to social insurance, and their demands become more visible, non-compliance on this issue becomes more and more of a liability for companies.

FLA REFLECTIONS

The Chinese government has designed these social insurance programs to protect workers’ interests collectively and in the long term. Employers’ non-compliance with the social insurance law hurts workers when, in the future, they find insufficient funds available if they are unable to work due to child-bearing, injury, illness, old age, or unemployment.

For these reasons, while there are clearly gaps between the national law and local government practice, making compliance more difficult and ambiguous, the FLA expects that affiliated companies sourcing from China will require full payment of all social insurance contributions, and that affiliated suppliers will not seek waivers or variations to the national law.

When brands encounter non-compliance with the social insurance law, the FLA recommends implementing the following three strategies:

- Developing a detailed and pragmatic corrective action plan to address violations.
- Developing a preventive action plan to avoid recurrence of violations.
- Following up with an evaluation of the effectiveness of the preventive actions.

The current widespread non-compliance with the law does not provide an excuse for failure to fully contribute to the various social insurance funds. The FLA recognizes that changing current practices will require the combined efforts of brands, suppliers, local governments, and sometimes – as the Dongguan strike demonstrates – workers themselves. As workers demand their rights, and as compliance with the social insurance laws progresses, companies that already meet the requirements of the national law will be best positioned for the future.

3 <http://www.bloomberg.com/news/2014-04-28/yue-yuen-resumes-production-at-dongguan-factory-after-strike.html>