

SUMMARY REPORT

Third Party Complaint; Brooklyn Manufacturing (El Salvador)

May 18, 2018



FAIR LABOR
ASSOCIATION™

On December 18, 2017, the Fair Labor Association (FLA) accepted for review a Third Party Complaint filed by a worker – who requested anonymity – at Brooklyn Manufacturing, El Salvador (hereinafter “Brooklyn” or “the factory”), making a number of allegations regarding violations of the FLA Workplace Code of Conduct at the factory. Brooklyn is affiliated with the FLA as a Participating Supplier.

The allegations in the Complaint concerned practices at the factory that appeared to violate FLA Compliance Benchmarks with respect to Hours of Work and Compensation. In particular, the complainant alleged:

1. Workers are not compensated for hours worked when they stay in the factory beyond regular hours: on several occasions, the factory requested that workers voluntarily stay and work for 1-2 hours beyond the regular working schedule in order to meet production demands, but the workers did not receive overtime for such work, as required by national law and the factory’s internal rules. The most recent incident occurred on Saturday, December 2, 2017, when around 60 workers from production plant A were requested to work 4.5 hours to meet production orders of plant C. (The factory has three production plants.) The workers affected by this request were mainly supervisors, trainers, mechanics, and sewers.
2. Workers who refused to work overtime were subject to retaliatory action from management and supervisors. For example, workers who refuse to work overtime may be denied personal leave.
3. Workers who are requested to stay for two hours beyond the regular work hours from Monday through Friday as a result wind up leaving the factory between 6:30 pm and 7:00 pm. This late departure from the factory represents a personal security risk, as it is very difficult to find transportation to return to their homes at that time. Moreover, prices of public transportation rise at those hours, and Brooklyn does not provide any transportation subsidy to workers or any other additional compensation to meet the higher transportation cost.

The FLA accepted the Complaint at Step 2 of the Third Party Complaint process. Under Step 2, the FLA-affiliated company has up to 45 days to conduct an assessment of the allegations and provide a report to the FLA with suggested remediation, if appropriate. Alternatively, the affiliated company may waive the assessment and agree to move the case to Step 3, where the FLA identifies a third-party monitor to conduct the assessment. Brooklyn, the FLA-affiliated company, chose to conduct its own investigation.

ASSESSMENT BY FLA-AFFILIATED COMPANY & CORRECTIVE ACTIONS

Brooklyn management conducted an assessment of the allegations and informed the FLA of the outcome, including a plan to remediate identified areas of noncompliance. FLA staff reviewed the information provided, requested additional information and clarification in some instances, and engaged Brooklyn on the issues over an extended period. Brooklyn was responsive to the issues raised by the FLA.

Allegation 1: Workers are not compensated for overtime performed. Categories of workers not compensated for overtime include managers, supervisors, trainers, mechanics and sewers.

Brooklyn management provided evidence – in the form of payroll data – confirming that mechanics and sewers who had performed overtime on December 2, 2017 had been compensated at the appropriate overtime rate.

Brooklyn management confirmed in addition that, since the inception of production at the factory, Brooklyn had classified trainers, managers, and supervisors as “trabajadores de confianza” (trusted employees), who are not subject to overtime rules.

- **Trainers:** Effective April 16, 2018, Brooklyn management converted trainers to regular employees; from this point forward, trainers are subject to overtime payment rules.
- **Managers and Supervisors:** Brooklyn management provided evidence that managers and supervisors are considered to be salaried employees;

the terms and conditions of their employment are set out in individual employment contracts. Brooklyn provided further evidence that the monthly salaries of managers and supervisors are considerably higher than the minimum wage in El Salvador.

- Brooklyn management has committed to discuss the terms and conditions of employment with salaried personnel, including the no overtime clause, during the next contract renewal commencing at the end of 2018, and will inform all employees of the implications of this classification.
- Brooklyn management indicated to the FLA that at the request of an individual worker, it would be willing to consider converting salaried personnel to hourly employees; this would result in such employee becoming subject to overtime rules, but at the same time losing certain other benefits that accrue to salaried personnel, such as payment at 100 percent (rather than 75 percent, as required by law) for any disability, medical, and maternity leave, and payment for any justified absence.

Allegation 2: Managers and supervisors take retaliatory actions against workers who refuse to work overtime, for example by denying them personal leave.

The factory has policies and procedures regarding requesting and granting personal leave, and management reports that requests for personal leave are routinely granted. Management provided evidence from payroll records regarding different forms of leave taken by workers in 2017, and personal leave accounted for 54 percent of leave used by workers in 2017.

Brooklyn management conducted a “refresh” training of all employees, including managers and supervisors, concerning factory leave policies on January 9, 2018. This training included information conveying the prohibition on retaliating against workers who choose not to work overtime.

Allegation 3: Workers who are requested to work for two hours beyond the regular work hours leave the factory between 6:30 pm and 7:00 pm; the late departure represents a personal security risk and is also expensive, as prices of public transportation rise at those hours.

Brooklyn management reported that overtime at the factory is always voluntary; operators may agree voluntarily to work an additional 1-2 hours. They reported further that work always ends before 6:30 pm. Management acknowledged that it does not provide additional transportation subsidy to workers who perform overtime, noting that this is not required by law, while noting that this overtime work is paid at double the regular wage rate.

FLA CONCLUSION AND NEXT STEPS

Brooklyn management’s assessment corroborated some of the allegations in the Third Party Complaint but not others. Brooklyn has already taken steps to correct the classification of certain workers for overtime eligibility and has committed to improve communications with managers and supervisors concerning overtime issues. As noted above, Brooklyn has engaged in outreach to managers and supervisors concerning the prohibition on retaliation when a worker chooses not to work overtime.

The FLA calls on Brooklyn management to continue to monitor overtime at the facility to ensure that it is voluntary. In particular, Brooklyn management should provide eligible workers with the opportunity to switch from salaried to hourly status should they wish to do so, subject to adjustments to employment terms and conditions and as long as they are fully aware of the consequences of those adjustments.