



**COFACO, Peru**  
Final Report  
Third Party Complaint

On March 10, 2015, a worker at the factory COFACO in Peru filed a Third Party Complaint with the Fair Labor Association (FLA) alleging that the factory: (1) was not making the appropriate *prima textil* supplementary wage payments to workers; (2) had failed to make the required contributions for length of service (*Compensación por Tiempo de Servicio*, CTS) for 2014 in the accounts of workers; and (3) had not paid on time the bonuses (*gratificaciones*) due workers in December 2014. FLA-affiliated Participating Company Under Armour sources from COFACO. The complaint alleged noncompliance with the following benchmarks of the FLA Workplace Code of Conduct: Employment Relationship ER.22.1<sup>1</sup> and Compensation C.1, C.10.1, and C.10.1.1.<sup>2</sup>

The FLA accepted the complaint for review under the Third Party Complaint procedure and moved it to Step 2. Pursuant to Step 2, the Participating Company or College or University Licensee has up to 45 days to investigate the alleged non-compliance internally and inform the FLA.

### Under Armour Assessment

Under Armour carried out the assessment of the allegations through its staff in the region and through a field visit by an external assessor engaged by the company. With respect to the allegations, Under Armour reported the following:

1. Peruvian labor legislation requires the payment of a 10% wage premium to workers of the textile and apparel industry, to be paid monthly (known as *prima textil*). The complainant alleged that COFACO workers were not being paid this premium and, in fact, their wages were being reduced by the amount of the *prima textil*. The assessment by Under Armour, as well as the expert's report it commissioned, found that COFACO was indeed accurately paying workers the required *prima textil*, although the paystubs issued to workers did not separate out

<sup>1</sup> ER 22.1 states: "Employers shall provide all legally-mandated fringe benefits, including holidays, leave, bonuses, severance payments and 13<sup>th</sup> month payments to all eligible workers within legally defined time periods."

<sup>2</sup> C.1 states: "Employers shall comply with all national laws, regulations and procedures concerning the payment of compensation to workers." C.10.1 states: "All legally mandated deductions for taxes, social insurance, or other purposes shall be deposited each pay period in the legally defined account or transmitted to the legally defined agency. This includes any lawful garnishments for back taxes, etc." C.10.1.1 states: "Employers shall not hold over any of these funds from one pay period to the other unless the law specifies that deposits are to be made less frequently than pay periods (e.g., monthly deposits, weekly pay)."

such amount from regular wages and therefore it was not clear to workers that the premium was being paid. The factory has taken corrective action and currently the paystubs differentiate between regular wages earned and *prima textil*; this change in the paystubs has been confirmed by the complainant.

2. CTS payments to workers' accounts are due twice a year, on May 15 and November 15. The assessment confirmed that the factory's 2014 CTS contributions were not made on time (they were made on May 22, 2014, a week after their due date, and on March 17, 2015, roughly four months after their due date). Late payment of CTS contributions has been a chronic problem at COFACO, with payments for 2012 and 2013 also delayed. Workers reported that they were aware of the payment delays, explained to them by the factory as cash flow difficulties that arose from the need to purchase machinery and equipment. The CTS payment due on May 15, 2015, was actually paid on May 4, 2015, more than 10 days ahead of time. This has been confirmed by the complainant.
3. Peruvian labor law requires the payment of certain bonuses (*gratificaciones*) to workers at the end of each semester, in July and December of each year. COFACO was late in making the payments in 2014 – in fact, it paid the bonuses in installments, 60% of the amount due in July 2014 on July 15, 2014, and the remaining 40% on August 8, 2014, and 60% of bonuses due in December 2014 on December 19, 2014, and the remaining 40% on February 19, 2015. Payments of bonuses were similarly delayed in 2012 and 2013. Workers informed that they were informed of the delay in paying bonuses. The complainant has confirmed that the July 2015 bonus was paid in full and on time.

### **Under Armour Remediation Plan**

Although the specific noncompliances alleged in the Third Party Complaint have been addressed by the factory at the behest of Under Armour, it is clear that in order to achieve sustainability and prevent the delays in payment of CST contributions and bonuses, the factory will need to put in place systems and procedures to regularize such payments. Moreover, there is need for workers to be better aware of the range of benefits to which they are eligible as well as to the specified dates the benefits are due. The remediation plan developed by Under Armour and the factory consists of the following actions:

- Beginning the first week of September 2015, factory to launch a series of meetings to inform all workers of pay and social benefits to which they are entitled under national law and the due dates for the payment of the benefits. Future meetings to be held the first week of every month. Factory to document material presented and attendance at the sessions.
- Management to amend Employee Handbook to describe more fully pay and benefits and to post information about them on notice boards and other highly visible locations in the workplace.

- Management to provide to Under Armour at least every six months a spreadsheet containing the following information with respect to each benefit to which workers are entitled under Peruvian law:
  1. common name of the benefit;
  2. type of benefit;
  3. management person accountable for ensuring that the worker receives the benefit;
  4. number of workers entitled to the benefit;
  5. legally required due date for payment of the benefit;
  6. estimated payment date;
  7. actual payment date;
  8. amount paid (itemized by worker); and
  9. the payroll cross-reference number or payment transmission transaction number.
  
- Management to collect, and make available to Under Armour, supportive evidence regarding payment of wages and benefits. Supportive evidence may take the form of pay slips, bank deposit receipts, payroll or accounting records of payments to entitled workers.

#### **FLA Comments and Next Steps**

The FLA has been in contact with the complainant and we have learned that the issues raised in the complaint have been satisfactorily addressed. Therefore, the FLA deems this Third Party Complaint as completed.

The remediation plan established by Under Armour (above) should serve as a basis for preventing the reoccurrence of the situations that were the subject of the complaint. The FLA recommends that Under Armour monitor very closely the implementation of the plan to avoid slippages. Given the pattern of delays in the payment of benefits to workers, the FLA recommends that Under Armour pursue with the factory the creation of a fund or special account into which accruals for the payment of benefits would be deposited so that funds are available when they are due to be paid to workers.