

# Independent Investigation Report Decotex International LTDA de CV

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Ciudad Arce, La Libertad Province, El Salvador

**Field Investigation: May 17-28, 2021**

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**Requested by:**  
Fair Labor Association

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## I. Background

In April 2021, the Fair Labor Association (hereinafter, FLA) received a Third Party Complaint (hereinafter, TPC) from the union federation *Federación de Sindicatos Independientes de El Salvador* (hereinafter, FEASIES). The TPC alleges that beginning on March 01, 2021 Decotex International LTDA de CV (hereinafter, the factory or Decotex) changed its work schedule and adopted a so-called 4x4 work shift, in which workers are working twelve hours per day for four consecutive days, followed by four days off.

According to FEASIES, the factory implemented these changes without previous consultations with workers' representatives and without adequately communicating its plans to the workforce. FEASIES also alleges that this decision contravenes the legal limits with respect to daily maximum working hours in El Salvador.

In early May 2021, the FLA commissioned the independent consultants Ena Núñez and Francisco Chicas (hereinafter, the investigators) to conduct the following activities:

- ✚ A legal analysis on the legality or illegality of the factory's decision to implement a 4x4 work shift;
- ✚ An assessment of the implementation process of the 4x4 work shift followed by the factory since March 2021, to determine if the factory has complied with national regulations and applicable FLA Compliance Benchmarks on Hours of Work and Employment Relationship;
- ✚ A review of the cases of the workers who have resigned since March 2021, in particular those workers who have ended their employment relationship with the factory motivated by the implementation of the 4x4 work shift.

The American apparel manufacturer Tegra operates Decotex, and the factory is a sourcing facility for the FLA Participating Companies Fanatics, Hanesbrands Inc., Nike Inc., and Under Armour, and the FLA-affiliated licensee, Branded Custom Sportswear Inc.

At the time of the field investigation Decotex employed around 1,840 workers, distributed in four different plants, identified as Plants H, R L and D (although Plants L and D are considered as one plant) within the American Industrial Park, in Ciudad Arce. The only workers working under the 4x4 work shift were those at Plant R, which employed 1,117<sup>1</sup> workers at the time of the onsite visit; hence, the field investigation focused on this plant.

Decotex is a unionized facility with the presence of two trade unions, both affiliated to FEASIES: 1) *Sindicato de Trabajadoras y Trabajadores de la Industria Maquiladora, de Comercialización, Servicios y Afines de El Salvador* – Branch Decotex (hereinafter, SITRAIMES); and, 2) *Sindicato de Trabajadores de la Industria del Vestir de El Salvador* – Branch Decotex (hereinafter, STIVES).

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<sup>1</sup> This number might have increased by the time this report was produced due to the number of new workers the factory was hiring the week of the onsite visit. Just during the first day of the visit, around 60 new workers were receiving orientation training, and they had not been counted as part of the current workforce size.

## II. Methodology

Between May 17 and 28, the investigators gathered information relevant to the investigation, through offsite interviews with union leaders and former factory workers. Also, the investigators conducted an onsite visit to the factory on May 19 and 20, which included interviews with management and workers, records review and a physical inspection.

The following interviews were conducted:

OFF-SITE INTERVIEWS		
Date	Interviewee(s)	Type of Interview
May 17	2 union leaders of SITRAIMES and 2 union leaders of STIVES (all current Decotex workers)	In-person group interview
May 18	General Secretary of FEASIES	Phone interview
Between May 22 and May 25	14 former Decotex workers	Individual phone interviews
ON-SITE INTERVIEWS		
Date	Interviewee(s)	Type of Interview
Between May 19 and May 20	7 Tegra/Decotex representatives  (After the onsite visit the investigators reached out to management to request some documentation on some allegations raised by former workers interviewed)	Group interviews after the opening meeting and before the closing meeting + Frequent interactions during the onsite visit
Between May 19 and May 20	50 current Decotex workers	In-person individual interviews
TOTAL INTERVIEWS WITH CURRENT WORKERS (4 offsite interviews with union leaders + 50 onsite interviews with workers)		54
TOTAL INTERVIEWS WITH FORMER WORKERS		14
TOTAL WORKER INTERVIEWS		68



70% of interviewed workers –both, former and current factory workers– are female. The sample of current factory workers interviewed included workers from all departments operating under the 4x4 work shift: sewing, quality inspection, warehouse, and mechanics, although most of them were sewing operators, as they are about 90% of Plant R workers. There are two working shifts under the 4x4 scheme which alternate the working days with the rest days: Shift A and Shift B. At the time of the onsite visit, only workers from the Shift A were available for interview, as this shift went from May 19 to May 22. The investigators randomly selected most of the sample, except for six workers proposed by the unions and six workers proposed by the factory management who were included in the sample. The onsite interviews also included one union leader who did not participate in the offsite interview with other union leaders.

Former workers interviewed were randomly selected from the list of workers who quit their jobs after March 01, 2021, as provided by the factory.

At the time of the onsite visit there were only eight workers who had not accepted to move to the 4x4 work shift; but only six were present at the factory. The investigators interviewed all six (four were interviewed onsite and the other two had already been interviewed offsite, as they are union leaders).

In detail, management interviews included the following Tegra/Decotex staff:

- 1) Tegra Deputy General Counsel;
- 2) Tegra Senior Director of Sustainability, Compliance and Safety;
- 3) Decotex General Manager;
- 4) Decotex Human Resources Manager (hereinafter, HR Manager);
- 5) Decotex Compliance Manager;
- 6) Decotex Plant R Manager.
- 7) Decotex Payroll Responsible

Opening and closing meetings were undertaken with the same staff listed above, except Plant R Manager and Payroll Responsible.

It is worth to note that the investigators requested an interview with the Minister of Labor with the purpose of getting the institutional perspective on the legality/illegality of the 4x4 work shift, but the Ministry of Labor (hereinafter, MoL) representatives did not respond.

Additionally, the investigators reviewed the following records, pertaining this investigation:

No	Document Description
1	Decotex legal analysis of 4x4 scheme
2	Decotex presentation on 4x4 scheme (Description)
3	List of current factory workers, including position/work area and employment starting date
4	Tegra's "New Day, New Way"- Biosafety Protocol to Manage COVID-19 Workplace related Risks
5	Decotex Occupational Risk Management Program, updated February 2021

6	Salary payrolls from January 2021 to date (until the last payroll paid in May)
7	List of terminated workers (including resignations) from June 2020 to date
8	List of new hires from June 2020 to date
9	Internal Regulations approved by the MoL (from 2007)
10	Hours of Work Policy and Procedure
11	Sample of amendment signed by workers on the change of work schedule to 4x4
12	List of current workers under 4x4 (work shifts A and B)
13	Legal Opinion issued by the Head of the Legal Unit of the MoL on procedure for changing work schedule
14	Samples of information posted by Decotex on the 4x4 scheme (e.g., list of scheme benefits/calendar until Dec 2021/information about transportation operation)
15	Record of communication shared by management to workers on the 4x4 scheme, dated February 10, 2021
16	Minutes of Dialogue Table between union representatives and Decotex (dated March 24 and April 14, 2021)
17	FEASIES List of Petitions to Decotex on the 4x4 scheme (dated March 24, 2021)
18	Trisha Earls letter to FEASIES dated May 3, 2021
19	Minute of meeting between HR Manager and workers, dated May 11, 2021 to discuss on workers issues around the 4x4 scheme
20	Resolution of the General Directorate of Labor of the MoL approving DECOTEX working hours, dated September 27, 2007
21	Memorandum issued by the General Directorate of Labor of MoL, on the request for information Ref. DGT-HC-00111-INT-2021, dated March 02, 2021.
22	Resolution of the Unit of Access to Public Information of MoL dated March 10, 2021. Resolution Ref RSI-MTPS-0018-2021
23	FEASIES-Summary 4x4 issues
24	List of personnel who have signed the amendment accepting the 4x4 scheme
25	List of workers who have not accepted the 4x4 scheme
26	30 personnel files of workers terminated after March 01, 2021, including: resignation letters, settlements, copies of checks paid, calculation sheets issued by MoL
27	MoL Inspection Visit reports, dated May 12, 13 and 14, 2021
28	Decotex presentation to the FLA on implementation of the 4x4 scheme
29	Time records (punch-in and punch-out) from February 25, 2021 at Plant R
30	Training material (presentation) used during orientation training with new workers and during annual refresh training
31	Decotex letter requesting a labor inspection to the MoL, dated May 06, 2021
32	MoL Conciliation Hearing minutes, EXP. 81/2021, dated April 22 and May 28, 2021
33	MoL Final Inspection Report, Ref. 08841-IC-05-2021-Programada-SS, May 27, 2021
34	Inspection request letters submitted to MoL by SITRAIMES & STIVES (dated April 13 and 29, 2021) and by FEASIES (dated April 16, 2021)

### III. Investigation Results

#### 1) Legal Opinion on the Legality of the 4x4 Work Shift Implemented by Decotex in light of the Constitution

**Authors' Note:** It is worth mentioning that any citizen with legal knowledge and expertise has the ability to propose legal opinions to interpret national laws and regulations in El Salvador. This is also applicable to public institutions that can conduct their own interpretation of laws while performing their duties. In principle, acts and decisions of public institutions enjoy legality presumption unless other authorities with power to issue official and legal interpretations, on a mandatory basis and with general effects over the country state otherwise. In El Salvador those authorities with the last word on the legality of acts and norms are the Supreme Court of Justice (through the constitutionality processes followed before the Constitutional Chamber), and the Legislative Assembly (through the Authentic Interpretations of laws they have issued)<sup>2</sup>. Due to the lack of an official resolution from the Supreme Court or an Authentic Interpretation by the Legislative Assembly on the subject of the following legal analysis – implementation of the so-called 4x4 work shift, or similar work schedules by employers in El Salvador – the authors are providing this legal opinion, in the framework of this Third Party Complaint investigation commissioned by the FLA.

##### 1.1) Legal hierarchy in the Salvadoran legal system

The Salvadoran legal system is ruled by the *Supremacy of the Constitution Principle* that “{...} confers the highest authority in a legal system in the Constitution”<sup>3</sup>. This entails that the Salvadoran Constitution is the source for all other legal bodies and regulations, including international treaties ratified by the State, which cannot contradict provisions incorporated in the *Supreme Norm*, as the Constitution is acknowledged. In this respect, the Constitutional Chamber of the Supreme Court of Justice has stated that the Supremacy of the Constitution Principle proscribes that any lower ranking legal norm contradicts a constitutional provision<sup>4</sup>.

Aside from the Constitution, all other legal norms have their own hierarchy within the country's legal system, as indicated in the Figure N° 1 below. Based on this hierarchy, if an international treaty ratified by El Salvador conflicts a secondary law<sup>5</sup>, the treaty will prevailed over the secondary law; or in a case that a secondary law conflicts with an executive decree or a municipal by-law, the secondary law will always prevail.

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<sup>2</sup> Article 131 section 5º and Article 183 of the Salvadoran Constitution.

<sup>3</sup> Limbach, J. (2001). The Concept of the Supremacy of the Constitution. *The Modern Law Review*, Vol. 64(1), p.

1. Retrieved May 14, 2021, from <http://www.jstor.org/stable/1097135>

<sup>4</sup> Constitutional Chamber of the Supreme Court of Justice, Case Reference Number 177-2013, resolution dated April 23, 2014.

<sup>5</sup> The concept “secondary law” refers to a legal body passed by the Legislative Assembly.

**Figure Nº 1: Hierarchy of Norms in El Salvador**

[Source: Elaborated by the authors based on Articles 144, 145, 235 and 244 of the Constitution]



In cases where legal norms of the same hierarchy conflict, it is important to consider the following criteria to determine which norm should be applied:

- 1) Principle of *lex posterior*;
- 2) Principle of *lex specialis*<sup>6</sup>.

Based on the Principle of *lex posterior*, the later law supersedes earlier law; in other words, the latest norm issued or passed prevails over the old or previous norms.

On the other hand, the Principle of *lex specialis* requires that, whenever two or more norms deal with a given subject or matter in different ways, priority should be given to the norm that is more specific.

### **1.2) Legal framework on working hour's limits**

Article 38 section 6 of the Constitution mandates that effective work on daily working hours shall not exceed 8 hours, and in the case of the workweek, it shall not exceed 44 hours. However, this same provision opens the possibility of extending these daily

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<sup>6</sup> Michaels, R., Pauwelyn, J. Conflict of Norms or Conflict of Laws?: Different Techniques in the Fragmentation of Public International Law. *Duke Journal of Comparative & International Law*, Vol. 22:349, p. 351. Retrieved May 21, 2021 from <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1293&context=djcil>



and weekly limits on hours of work, but only in circumstances of *force majeure*, which is the only one valid exception.

As per the second paragraph of Article 161 of the Labor Code, the ordinary daily working hours shall not exceed 8 hours, unless legal exceptions exist. This provision also limits the daily weekly working hours to 44. In this respect, the second paragraph of Article 169 of the Labor Code allows exceeding the working hours limits in cases of *force majeure*, such as fire, earthquake, or similar situations, as long as the workers are paid the ordinary salary for those hours worked in excess.

### **1.3) Legislative Decree N° 757**

On October 29, 2020 El Salvador's Legislative Assembly passed the Special Transitory Law to Contain the Covid-19 Pandemic (hereinafter, Decree 757), which came into force on January 21, 2021 after its publication in the country's Official Journey<sup>7</sup>, for a period of eight months (until September 21, 2021).

According to Article 1 of Decree 757 the purpose of this law is to set the regulations for managing and comprehensively controlling the Covid-19 pandemic at the national level. To that effect, the law contains preventive and relief regulations applicable to the private and public sectors, and that affect some human rights, such as freedom of movement, right to work and right to health.

Some of the measures concerning labor aspects that are incorporated in Decree 757 are the following:

- Workers under isolation, quarantine or medical monitoring –on the grounds of Covid-19 cannot be subjected to termination, disciplinary actions or salary deductions; and they will have the right to receive the subsidy and medical services provided by the Social Security Institute, in cases of disease or accident (Article 8).
- Revision of management systems designed to prevent occupational risks, to include rules on physical distance, such as: i) staggered arrival and departure times; ii) avoidance of manual or biometric time recording systems; iii) ensuring a distance of at least 1.5 meters between workstations or installation of separators; iv) provision of relevant protective equipment; v) reducing face-to-face activities; vi) encourage hand washing and providing hand sanitizer; vii) encouraging cleaning of surfaces; and, viii) conducting training on Covid-19 prevention to all levels within the workplace (Article 14), among other measures.

Additionally, Article 14 section I.a.5 allows employers to adjust work schedules, as needed, in order to follow all Covid-19 preventive measures, by stating:

*“Following the existing regulations, in the framework of this law, changes to work schedules and working hours may be implement, as needed, in order to*

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<sup>7</sup> Legislative Decree N° 757, published in the country's Official Journal on January 29, 2021, and available at <https://www.diariooficial.gob.sv/diarios/do-2021/01-enero/29-01-2021.pdf>

*comply with the preventive measures to avoid big concentrations of workers, using public transportation or at workplaces”.*

Moreover, Article 14.II allows employers to modify work schedules in such a way that workers perform up to three additional working hours per day (in addition to the regular daily eight working hours, for a total of eleven working hours), for four consecutive work days so workers can rest for three consecutive days.

#### **1.4) Unconstitutionality of Decree 757 in regards to the extension of hours of work limit**

As previously mentioned, when two secondary laws are in contradiction it is relevant to use Principles of *lex posterior* or *lex specialis* to overcome such conflict. Both the Labor Code and the Decree 757 are secondary laws that regulate hours of work limits in two different ways. In this case, Decree 757 prevails over the Labor Code, as this last legal body was passed in 1972 while the Decree 757 was passed in 2020 (*lex posterior*). Moreover, the Decree 757 is a specialized law that incorporates more specific regulations on hours of work limit than the Labor Code (*lex specialis*).

However, when examining Decree 757 in light of the Constitution's requirements, such Decree does not pass the analysis of constitutionality in regards to the provisions that extend the daily hours of work limit. The investigators are aware of the exception established by the Constitution to the hours of work limits, in cases of *force majeure*. Actually, it is the factory's main argument that the limitation of hours shall not apply in cases of *force majeure*, as defined in Article 38. According to the factory, the current Covid-19 pandemic is a declared state of emergency; and hence, a continuous event of *force majeure*<sup>8</sup>.

To understand the scope of the *force majeure* concept, it is important to consider what is regulated in Article 13 of the Labor Code. In section d) of the third paragraph of this provision, *force majeure* is limited to wars, disasters or threat of disasters, such as fires, floods, hunger, earthquake, epidemics, violent epizootics, invasion of animals or harmful parasites, or in general, all circumstances that put in risk, threaten or endanger life or normal living conditions of all or part of the population.

Even when epidemics are listed in the law as examples of *force majeure*, it is the investigators' opinion that such category is not applicable at the current stage of the Covid-19 pandemic in El Salvador, and more concretely to the specific subject of this investigations, which is the 4x4 work shift, for the following reasons:

- ✚ The Executive Decrees issued by the President of El Salvador during 2020 stating and renewing the state of emergency were declared unconstitutional by the Constitutional Chamber of the Supreme Court, in the resolution reference 21-2020/23-2020/24-2020/25-2020, dated June 8, 2020.
- ✚ The state of emergency declared by the Legislative Assembly on March 14, 2020 ended on May 16, 2020, as per the Article 2 of Legislative Decree 634.
- ✚ Currently, there is not an existing state of emergency in force in El Salvador.

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<sup>8</sup> Arguments presented in the legal analysis provided by Decotex to the investigators.

- ✚ The limitation of the hours of work is a fundamental labor right, recognized in the very first International Labor Organization Convention in 1919<sup>9</sup>. Article 03 of this Convention institutes that the limit of hours of work in case of *force majeure* may be exceeded but only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking.
- ✚ It is also relevant to highlight the *Protective Principle* (part of the Labor Code). Under this principle, one of work law's essential functions is to protect worker because they are the "weaker parties" whose human dignity is at stake<sup>10</sup>. Based on this principle, any restriction or limitation to labor rights shall be only applicable exceptionally, and not as a general rule. In this respect, the Civil Chamber of the Supreme Court of Justice has stated that situations that raise doubts while interpreting labor law, should be enriched with the rule or Principle *Pro-Hómine*, according to which the interpretation that is more favorable to the individual, in this case the worker, should be followed, by giving prevalence to the norm that means less restriction on workers' rights<sup>11</sup>.
- ✚ Based on the Inalienability of Labor Rights Principle, regulated in Article 52 of the Constitution, labor rights cannot be waived; it means that, even with a signed agreement with workers, constitutional rights cannot be given up.

The investigators acknowledge that the current Covid-19 pandemic is out of the ordinary, not only for El Salvador but also for many other countries worldwide. However, the current context in El Salvador cannot be considered a "permanent *force majeure*" situation to justify limitations to constitutional rights, for the reasons explained above.

The Salvadoran Constitution only allows extending hours of work limits in cases of *force majeure*, and the secondary law could not regulate other exceptions to this rule. *Force majeure* could be invoked by any employer but only in specific cases of impending risks that threaten workers' life or integrity, or that expose an irreparable damage to the enterprise (on facilities, equipment or tools), and where such risks could not be managed otherwise than through extending the hours of work limits. In other words, the extension of the hours of work limits should not be the general rule applicable for an extended period of time.

As explained above, due to its quality, the Constitution is at the pinnacle of all other legal norms and regulations; thus it is an important consequence that all laws are developed in compliance with constitutional norms<sup>12</sup>.

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<sup>9</sup> ILO, C001 – Hours of Work (Industry) Convention, 1919 (Nº 1). Even when El Salvador has not ratified such Convention, it is an important instrument of the International Labor Law to consider in this analysis.

<sup>10</sup> Gamonal S., Rosado C. (2014). Protecting Workers as a Matter Principle: A Latin American View of U.S. Work Law, Washington University Global Studies Law Review, Vol. 13, Abstract. Retrieved May 24, 2021 from [https://openscholarship.wustl.edu/law\\_globalstudies/vol13/iss4/5/](https://openscholarship.wustl.edu/law_globalstudies/vol13/iss4/5/)

<sup>11</sup> Civil Chamber of the Supreme Court of Justice, Case Reference Number 37-CAL-2009, resolution dated June 05, 2009, page 11.

<sup>12</sup> Dragne, L. (2013). Supremacy of the Constitution. *AGORA International Journal of Juridical Sciences*, ISSN 1843-570X, E-ISSN 2067-7677, Vol. 4, p. 39. Retrieved May 14, 2021 from <file:///Users/franciscochicas/Downloads/841-1-1556-1-10-20131221.pdf>

In the opinion of the investigators, Decree 757 was passed in violation of the Constitution specifically with regards to those provisions of Article 14 that extend the daily hours of work limits. (This would not require striking down the entire Decree as unconstitutional.)

## 2) Analysis of the Implementation of 4x4 Work Shift in light of Decree 757 requirements and other applicable laws and regulations

Even as the investigators have found Decree 757 unconstitutional concerning the provisions related to the extension of the hours of work limit, it is relevant to assess how the factory has implemented such legal body because there are other applicable laws and regulations that should be taken into consideration by employers when shifting work schedules.

### 2.1) Lack of previous worker consultation

The first formal communication from management to the workers, to inform them of the change to the 4x4 work shift, was done on February 10, 2021, through some group meetings organized by modules, in which the Decotex General Manager, former HR Manager, and Plant R Manager explained, among other aspects:

- ✚ The reasons for executing this change;
- ✚ The relevant provisions of Decree 757 related to modification of hours of work;
- ✚ The benefits according to management derived from the 4x4;
- ✚ The starting implementation period (in March);
- ✚ The way the transition would be implemented (gradually by modules); and,
- ✚ The need for signing the employment contract amendments to update the work schedule.

In the case of the unions, the first communication from management on the factory's plan to move to the 4x4 work shift was done in mid-February 2021. The union leaders of both unions confirmed this, and they argued that management only invited two leaders per union to this meeting, instead of all or most of union leaders. Union leaders confirmed this was an information meeting only, and that they were not consulted. There are no minutes kept of this meeting.

In this respect, Article 165 of Labor Code establishes that the employer could unilaterally determine the work schedule at the beginning of the employment relationship; however, subsequent changes on work schedule should be made in consultation with workers.

The investigators reviewed the content of the message verbally shared by Decotex<sup>13</sup> with workers, starting on February 10, 2021, where the workers were called by groups to be informed, but not consulted, about the change of work schedule. Also, the investigators gathered sufficient information from worker interviews, indicating that Decotex

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13 Decotex shared with the investigator a document describing the message shared by workers during these meetings. It is worth to note that workers did not receive any written information.

management did not consult with workers/worker representatives before making the decision of implementing the 4x4 work shift, as is presented next.

39 out of the 54 current workers interviewed (72.22%), including union leaders, commented that management only informed them about the need for changing the 4x4 scheme, without asking their feedback; these workers also confirmed they were asked to sign the amendment to their employment contracts accepting the 4x4 scheme with no alternative options presented. 13 out of the 14 former workers interviewed also confirmed that management only communicated the factory's decision to switch to the 4x4 shift.

Only 6 out of 54 current workers (11.11%) mentioned they were asked whether they wanted to sign accepting the change, and they voluntarily signed. However, the investigators noticed that, even in the case of these workers that voluntarily and freely accepted signing for the change of scheme, Decotex did not provide them with an opportunity to share any feedback around the change of work schedule.

From worker interviews, the investigators also found that, after the very first modules were moved to the 4x4 work schedule, the few workers who did not accept the change were not assigned to a specific module, and they spent many days just waiting to be assigned without the opportunity to earn production bonuses. One sewing operator commented he was even asked to sweep in the sight of other work colleagues. Also, some workers commented that the former HR Manager and the Plant R Manager made the following comments: "at some point you should end up signing (the amendment)"; "choose between your studies or your work".

The investigators considered that this context influenced some workers' perception, as some of them ended up conceiving the 4x4 scheme as not voluntary, or as detrimental to their compensation. In this respect, 9 out of the 54 workers (16.67%) mentioned they were not willing to accept the change but they decided to sign the amendment because all other work colleagues at their modules signed, and they were afraid of losing their jobs, or being discriminated against or isolated if they did not sign the acceptance with the 4x4 work shift.

The investigators found that on May 11, 2021 the new factory HR Manager held meetings with 89 workers randomly selected from different work areas to get their feedback on issues they might be facing derived from the implementation of the 4x4 work shift. While this is a very positive and useful practice that the investigators would like to highlight, it is also worth noting that Decotex did not undertake similar efforts before the implementation of the 4x4 scheme.

Similarly, Decotex met with FEASIES, SITRAIMES and STIVES representatives on March 24 to listen to the main concerns the unions had around the implementation of the 4x4 work model. On this occasion the factory gave a presentation to provide more details to FEASIES and the unions on the 4x4 work shift that had already been implemented. After that, a second follow up meeting with FEASIES and the two unions was held in mid April. According to the minute provided by factory, this meeting took place on April



14, but FEASIES commented it was on April 16. The minute also states that Decotex management committed (among other commitments) to create an ergonomic committee with the participation of workers, and to solve some transportation issues resulting from the implementation of the 4x4 work shift; however, according to FEASIES, the factory did not commit to solve transportation issues on this occasion. The investigators noted that none of these two minutes (of March and April meetings) were signed by the parties, and the minute of the March meeting does not mention SITRAIMES and STIVES participation either.

On a separate note, but still about consultation, the FLA Benchmark H/A.8.2 requires that employers assess risks arising from work arrangements, such as night shifts or other schedules, in consultation with workers/worker representatives. As mentioned before, Decotex did not conduct any type of prior consultation with unions or workers on the implementation of the 4x4 scheme, including potential risks associated with the 4x4 model.

Decotex has informed workers of several benefits resulting from working under a 4x4 shift, e.g., reduction of ergonomic injuries, possibility of increasing income, more time for studying, more free time or spending more time with family, among others. The investigators asked management what is the technical basis to sustain the existence of such benefits, and the management explained it is based on Tegra's experience in Honduras, but no technical evidence was presented to the investigators.

During the physical inspection at Plant R, the investigators observed posters inviting workers to report to management any issues they might be facing due to the 4x4 shift; these posters indicated that there are other positions available where workers could be relocated, and it includes phone numbers of factory HR staff. About this, management insisted that workers have always had the option to pass on the 4x4 work shift, or to stay under the old work shift.

However, during the interviews with workers, most of them had not seen these posters, and the few workers who had seen them commented that they were posted one or two weeks before the onsite visit, when the 4x4 scheme had already been almost fully implemented. Additionally, two workers commented they called to request returning to the old shift, and the person who answered told them that they should present evidence that proves the issues they are facing in working under a 4x4 shift.

Also, around 80% of workers commented that returning to the old work schedule is not an option available for them. Management did not present other evidence showing that they have actively and clearly communicated to workers that they had the option to keep working under the old schedule, or still have the option to return to the previous shift.

The investigators acknowledge that most of the interviewed workers prefer to work under the 4x4 shift: 27 out of 54 current workers (50%) claimed they prefer to continue working the 4x4 shift; 23 out of 54 (42.6%) responded they would like to return to the old shift; and, 4 out of 54 (7.4%) said they could not respond, as both work schemes

have advantages and disadvantages. With respect to the 14 former workers interviewed, five told the investigators they had quit their jobs because of different issues derived from the 4x4 work shift, while the other nine workers were fine with this scheme and said they resigned for personal reasons.

There are three main reasons for workers to prefer working under the 4x4 scheme:

- ✚ They could spend more time at home (either for resting or for spending time with family);
- ✚ Some workers have the impression that they are earning more salary. Also, a few of them commented they could do other business, and in that way they could increase the family income.
- ✚ More time for doing personal or familiar activities without requesting unpaid leave.

On the other hand, the investigators heard the following reasons expressed by current and former workers for disagreeing with the 4x4 work scheme:

- ✚ Family logistics: workers could not travel with their spouses (working at Decotex or at other factories within the same industrial park) from home to work and vice versa.
- ✚ Family logistics: workers unable to spend time with their spouses, as they are working on the other 4x4 shift (e.g., workers on Shift A and their spouses on Shift B).
- ✚ Family logistics: issues finding someone who takes care of children.
- ✚ Safety reasons: mostly female workers who expressed fear of traveling alone very early in the morning and very late in the night in dangerous areas where they live (the 4x4 shift workers must arrive one hour earlier to the factory).
- ✚ Transportation issues: some workers need to use additional transportation to get out of their neighborhood, and this transportation is not available very early in the morning; hence, they have to walk long distances.
- ✚ Religious issues: for some workers it is important to attend church on Saturdays or Sundays, and it is not always possible under the 4x4 scheme.
- ✚ Stress: more pressure to work.
- ✚ Health and comfort: too much time passes without eating between lunch and dinner.
- ✚ Studies: working time not compatible with studying time.

## **2.2) Regular workweek exceeds legal limit**

As previously mentioned, the Constitution and the Labor Code have set a legal workweek of 44 hours. The current 4x4 work shift implemented by Decotex includes twelve working hours per day, which makes a total of 48 hours per week. Management explained that the daily 35-minute breakfast break and the 35-minute lunch break are not counted as effective working time, hence, workers are working ten hours with fifty minutes per day, which is within the legal limits.

However, Decotex's interpretation of breaks as not being effective working time goes against Article 163 of the Labor Code, which defines "effective working time" as all time in which the worker is at the disposal of the employer, including breaks for having meals and for the satisfaction of biological needs. According to management, they undertook a legal analysis of this topic, in which they were advised that, if the breaks exceed 30 minutes then they do not count as effective working time; however, there is no legal provision in the national labor laws that states this.

Moreover, the investigators found that workers might even perform off-the-clock work during the break periods. During the physical inspection on day one of the onsite visit, the investigators saw three workers at Module 01 and three workers at Module 02 working during the time designated for their lunch break. Management explained that workers are not allowed to perform off-the-clock work; however, the factory's Hours of Work Policy and Procedure does not address this issue; also, most of the interviewed workers confirmed they have the ability to start working before the designated times for having breakfast and lunch end.

Some workers revealed that on some occasions they have started to work at 6:15 or 6:20 a.m., instead of 6:35 a.m., while during lunch break they have returned to their workstations 15 minutes before the break ending time.

Moreover, the vast majority of interviewed workers think they cannot leave the factory during lunch break, unless they receive previous authorization. Only three out of 54 workers said they think it is possible to go out of the factory during lunch break, but they have never done it. According to management, workers are free to leave the facilities during lunch break. The factory's Hours of Work Policy and Procedure does not include any regulations in this respect. The fact that workers are not able to leave the premises during lunch breaks reinforces the argument that they are under the employer's disposal during this break; hence, the break time should be counted as effective working time.

It is relevant to mention that Decree 757 allows employees to work eleven hours per day, at a maximum. Also, according to Article 169 of the Labor Code, all work done in excess of the regular working hours limit should be compensated with a premium of 100% of the value of an ordinary work hour, for each extra hour performed. Finally, first paragraph of Article 170 of the Labor Code prohibits that overtime is permanently performed.

### **2.3) Lack of authorization by the General Directorate of Labor**

Last paragraph of Article 170 of the Labor Code mandates that all agreements between employer and workers that modify the work schedule must be authorized by the General Directorate of Labor of MoL. Similarly, changes to the rest days should be also approved by the General Directorate of Labor, as per Article 173 of the Labor Code. The 4x4 work model implies a change to the modality workers enjoy for the rest day. Management explained they have not requested authorization from the MoL to operate under the 4x4 work scheme, since the Decree 757 automatically authorizes them.

Management also clarified that they have not updated the sections of the Internal Regulations related to work schedules, salary payment period and rest days, as the Decree 757 is a temporary law, and there is not certainty on whether work schemes such as the 4x4 will be allowed after the Decree validity period.

Based on the Law on Access to Public Information, FEASIES requested information from the General Directorate of Labor on past requests presented by Decotex related to changes on work schedule. The General Directorate of Labor issued a resolution providing FEASIES such information<sup>14</sup>. The investigators reviewed said resolution, and it mentioned that in December 2020, Decotex requested authorization for changing the work schedule, but on January 15, 2021 the MoL declared that request as inapplicable for exceeding the legal hours of work. Although the resolution does not specify which work schedule was declared inapplicable, according to FEASIES it refers to the 4x4 work shift.

The management explained they requested a labor inspection in order to get approval from the MoL for operating the 4x4 model; this request was done through a letter submitted to the MoL on May 07, 2021 and signed by Decotex's General Manager. Between May 12-14, 2021, a team of labor inspectors visited Decotex facilities to assess how the factory has implemented the 4x4 work shift. Prior to the closing of this Third Party Complaint investigation report, the investigators reviewed the final labor inspection report, as issued on May 27, which concluded that Decotex has not infringed the labor laws with the change of working hours to the 4x4 work shift, as most of workers agreed with this work scheme. Additionally, the MoL stated that this agreement on the change of work schedule will be valid for the time the Decree 757 is in force.

FEASIES, SITRAIMES and STIVES had also submitted to the MoL the following requests of a labor inspection, in order to assess compliance around the implementation of the 4x4 work shift as follows: i) on April 13, SITRAIMES and STIVES submitted a letter to the General Directorate of Inspection Office; ii) on April 16, FEASIES submitted a letter to the Minister of Labor; and, iii) on April 29, SITRAIMES and STIVES submitted a letter to the regional office of Inspection of La Libertad Province. FEASIES confirmed that none of these letters were responded by the MoL.

In this respect, the investigators would like to highlight that by law, the General Directorate of Labor is the MoL department responsible for authorizing modifications of work schedules and hours of work, as well as changes to the rest days (among other functions)<sup>15</sup>. Conversely, the separate General Labor Inspection Directorate is in charge of ensuring that the labor law is complied with through field verifications (labor inspections) but is not empowered to authorize changes to work schedules/hours of work.

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<sup>14</sup> Resolution of the Unit of Access to Public Information of MoL dated March 10, 2021. Resolution Ref RSI-MTPS-0018-2021, page 2.

<sup>15</sup> This is based on Articles 164, 165 and 170 of the Labor Code, and confirmed in the following official website of MoL <https://www.mtps.gob.sv/faq/para-que-tipo-de-horarios-se-necesita-contar-con-la-autorizacion-por-parte-de-la-direccion-general-de-trabajo/>

To close this sub-section, the investigators consider it worth noting that on April 22, 2021 the General Directorate of Labor had convened a Conciliation Hearing at the MoL office to hear the factory and the FEASIES and unions points of view about the implementation of the 4x4 work model. FEASIES and the unions initiated this administrative procedure before the MoL. Decotex's representatives did not participate in this meeting, except through one factory lawyer.

Hence, a second hearing was rescheduled for May 28, 2021. In this second meeting Decotex's representatives did not show up but one of their lawyers did again. During this second hearing FEASIES and the unions set out the reasons for opposing the 4x4 work schedule, and the factory's lawyer commented that the implementation of the 4x4 model has been in compliance with the local laws, and that this topic was being discussed with the unions in the ongoing roundtable meetings they have been holding, where the unions' proposals are being heard. A third hearing was scheduled for June 11<sup>16</sup>.

#### **2.4) No registration of amendment at the MoL**

By law, employment contracts signed between employers and workers (including amendments) should be made in three copies: one to be registered at the General Directorate of Labor of the MoL within the following eight days after the contract was signed by both parties, another copy to be provided to the workers, and the last one for the employer (Article 18 of the Labor Code).

Decotex has not registered the amendments to the employment contracts of workers that passed to the 4x4 work shift, and that modify their work schedule, before the MoL, as legally required. The factory has not provided workers with copies of the amendments, either. This was confirmed by all interviewed workers and by management. According to management they would only provide a copy of the amendment upon a worker's request, but they explained that so far no worker has raised this petition; however, the legal requirement of providing copies of contracts or amendments to the workers is not subjected to the workers' request.

About the amendment content, it indicates that "based on the Decree 757 the new work schedule is", and next it presents seven work shifts under the 4x4 system, as example, by indicating the starting (6:00 am) and ending (6:00 pm) times, and mentioning the work days and rest days in each of the three shifts. The amendment also mentions the two daily breakfast and lunch breaks of 35 minutes each, and it highlights that overtime will be voluntary and that it will be only performed upon factor's approval. The last paragraph of the amendment states that both parties (worker and employer) agree to extend the change of work schedule even after the Decree 757 is not in force.

#### **2.5) Implementation of the 4x4 work scheme for different purpose than that established in Decree 757**

According to Sections I.a.5 and II of Article 14 of Decree 757, "the employer should organize work in a way that **the number of exposed workers - to the risk of Covid-19 infection - is reduced**". As examples, this provision mentioned shifts of eleven working hours per day for four consecutive workdays followed by three consecutive rest

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16 Conciliation Hearing minutes, EXP. 81/2021, dated April 22 and May 28, 2021.



days with the purpose of **“limiting the number of workers at public transportation and also within the same work environment”**.

During the opening meeting, management explained to the investigators that the main reason for switching to the 4x4 work scheme was the need for increasing social distance between workers, in order to reduce the risk of Covid-19 infections among the workforce. However, in the record of the communication shared with workers in February 2021, it is stated that Tegra is assigning more work to Decotex; hence, in order to satisfy the buyers' demands it is necessary to use models that allow to increase the flow of work in a profitable way, at the same time as the legally required safety and biosafety measures are respected.

During the worker interviews, the investigators asked workers whether the management explained them the reasons for changing to the 4x4 shift, and if so, what those reasons were. 48% of interviewees mentioned that it was because of the high demand of work; 18% responded that it was to ensure compliance with the biosafety standards (social distancing); 20% said it was because of both of these two reasons (high production demand and also to ensure social distance); and 13% did not remember what the management explained.

The investigators also noted that, from January 01, 2021 to May 11, 2021, 338 workers left the factory, while the number of hired workers in the same period was 724, and this number is still growing. In this respect, most of interviewed workers complained that the canteen is crowded during the breakfast breaks, as the number of factory workers has increased during the last several weeks. Some workers commented that it is usual to see workers standing next to the sitting workers eating at the tables, waiting for an available seat to eat. Other workers commented that some workers opt for eating on the floor. The investigators also learned of isolated incidents of tensions between workers as some workers keep place of available seats for their friends when other workers want to use such seats.

On a positive note, the investigators found that the factory has implemented staggered shifts for workers to have lunch breaks on different times, which reduces the concentration of workers at the canteen; and interviewed workers confirmed that issues with crowded canteen are being progressively addressed. Nevertheless, all workers are still having breakfast at the same time (with no staggered shifts), and even when some workers said they have breakfast at home, the issues related to the significant concentration of workers at the canteen are still happening; as a result, the need for having social distancing is still being compromised.

Also, from the express wording of Sections I.a.5 and II of Article 14 of Decree 757, it is understood that workers are allowed to work eleven hours during four consecutive days so they can consecutively rest during the other three days of the week; but those provisions never mention that another group of workers is allowed to work during those three days; in other words, those provisions are not referring to rotating shifts. However, it is the factory's understanding that Decree 757 is allowing employers to operate a work model known as 4x3.

If that would be the case, management was questioned why they implemented a 4x4 work scheme instead of the 4x3, which is the only one the Decree 757 would be authorizing, and they responded that it was because it would be discriminatory to have one group of workers working four days and the other group working three days.

The investigators believe that any source of employment is very welcome, as well as all private investments that contribute to economic growth of countries and families; however, it is also relevant to note that such investments should be done following all applicable laws and regulations. In this case, the information gathered indicates that Decotex might have applied Article 14 of Decree 757 to respond to the factory's growth needs, when the only purpose of this legal regulation is to reduce the concentration of workers at a given facility, and also at public transportation by providing them three consecutive rest days.

### 3) Review of Termination Records

From the list of terminated workers during 2021, the investigators found that from March 01, 2021 to May 11, 2021, 134 workers had left the factory; from those, the investigators reviewed 32 personnel files, and interviewed 14 former workers.

From the 32 workers, only ten were eligible to receive the economic compensation for renouncing<sup>17</sup>, and all ten received the payment of termination payouts, as legally required. The investigators reviewed copies of checks provided to the workers and the calculation sheets of the total severance to be paid.

Despite the above, the resignation letters found in the personnel files of workers were not authenticated by a Notary. Even when the resignation letters mentioned the presence of a Notary, the Notary's signature and seal were missing, in violation of Article 3 of the Regulatory Law of Monetary Benefit for Voluntary Resignation, and Articles 50, 51 and 54 of the Notaries Law. On this point, Article 402 of Labor Code establishes that resignation letters will only be valid if they have been written on official sheets issued by the Ministry of Labor or Labor Judges, or if they have been authenticated by a Notary.

Also, some former workers commented that they were not provided with a copy of the settlement, and the personnel files are missing documentary evidence that workers who resigned had signed acknowledgment of receipt of the delivery of a copy of the corresponding settlement.

## 4) Additional Findings

### 4.1) Lack of signed amendments by workers

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<sup>17</sup> According to the Regulatory Law of Monetary Benefit for Voluntary Resignation, workers who renounce to their jobs have the right to receive 50% of severance, only if they have at least two years of seniority, and if they notify the resignation in writing to the employer at least 15 days before.

The investigators reviewed eight personnel files of current factory workers that are working under the 4x4 work shift, and found that three of them were missing the signed amendment of acceptance of the 4x4, as legally required.

Management explained that some workers that voluntarily decided to pass to the 4x4 scheme were transferred before signing the corresponding amendment. The factory was missing information on the exact number of workers under the 4x4 model that had not signed the employment contract amendment yet.

#### **4.2) Workers not sufficiently informed about the new payment scheme**

During the interviews with workers, the investigators noted that some of them had the impression that they are earning more salary under the 4x4 work shift than in the previous work schedule. Some of these workers commented that the factory is now paying one additional workday that is known as 'eighth day', and based on that, they are earning USD \$70 per workweek under the 4x4, while with the previous work shift they earned USD \$123 on a biweekly period, which is less than the sum of two workweeks with the 4x4<sup>18</sup>. A few workers also commented they are now being deducted income tax, and they do not have clarity on why now this is happening and the implications of such deductions. Management explained there have been some cases in the past (during the old work schedule) where they had to deduct income tax from workers' salary, when they have reached or exceed the legal limit for implementing such deductions.

The investigators reviewed the salary structure, jointly with the factory's Payroll Responsible, to understand how the salary payment is being done now. The investigators found that the 4x4 work shift implies that each payment period is comprised of eight days (four workdays and four rest days); hence, the sum of two pay periods means sixteen workdays. In other words, the difference of payment between two workweeks with the 4x4 and one biweekly period is two days, and that is responsible for the difference that workers have noticed.

During the information meetings the management held with the groups of workers to inform them of the details of the transition to the 4x4 scheme, workers were provided with general explanations about compensation, e.g., that salary payment would be done over the base of the same basic salary, that Christmas bonus and pension and social security contributions would not be affected, and that the production bonuses would be paid as usual (meaning in proportion to the hours worked). However, specific information on the new salary structure and its difference with the old salary structure was not provided to the workers.

During the jointly review of payroll with the Payroll Responsible, the investigators also learnt that income tax deductions are based on the tax law requirements; however, it is also necessary to provide workers with detailed explanations on the legal grounds for

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<sup>18</sup> These features are net values after legal deductions, and based on the legal minimum wage. In some cases the salary could be higher if workers are paid production bonuses.

such deductions, their implications, and how workers might obtain from the Government total or partial devolutions of such amounts deducted during next year.

#### **4.3) Case of one worker alleging pending payment of salary and medical expenses**

One of the fourteen former workers interviewed started working with Decotex on March 02, 2021, and resigned on April 13, 2021; by then he was already moved to the 4x4 work shift. He commented that the first week of April and during his rest days he suffered a motorcycle accident. On April 05 he had to start a new work shift, but instead of showing up to work he went to a social security clinic seeking medical care, as the symptoms of accident worsened. The staff at the social security clinic told him that they could not provide him with the medical attention as he was not enrolled at the Salvadoran Social Security Institute (hereinafter, ISSS) system. The worker went to talk with Decotex HR Management about this issue, and he was told that they were in the process of enrolling him at the ISSS, and gave him two days off so he could seek medical attention by his own means.

The worker commented that he went to a private clinic and paid for the medical assistance he needed. The doctor issued a medical leave for two days, and then the factory provided him with two more days of unpaid leave, as he needed to undergo additional examinations; as a result, he did not work during that work shift (April 05-08). According to this worker, the management told him that they would pay him the salary for those days off, but they did not do so.

The investigators followed up on this case with Decotex. They submitted the ISSS pre-payroll dated April 08, which showed that the worker had been enrolled at the ISSS system. Also, the factory submitted the time records and pay slip corresponding to April 05-08, which showed that this worker was on unpaid leave, and that he only received USD \$22 of salary for that work period.

The investigators recognize that the factory followed the regular process for enrolling this worker to the ISSS, which is to report new workers on the ISSS payroll the month following their starting date. Based on Articles 7 and 12 of the Regulations for the Implementation of the ISSS Law, workers should be enrolled at the ISSS within ten days after their starting date, and it should be done through a registration notice with the signature and seal of the employer, so the workers could receive medical attention in case of disease or accident.

The investigators requested this registration notice to Decotex, and they responded that this worker had already been enrolled at the ISSS (by a previous employer), so they do not have such documentation. However, the registration notice mentioned on Article 7 cited above does not refer to the initial enrollment, and it applies to all future employers workers could have. The official website of the ISSS describe the procedure that employers should followed to notify the ISSS on the registration of new workers so

they and their family members could receive medical assistance, and it is through a provisional accreditation that should be presented to the ISSS offices<sup>19</sup>.

The investigators considered that the factory failed to issue and submit such provisional accreditation to the ISSS within the next ten days the worker started to work at the factory; or, in any case, such notice should have been issued on April 05, when the worker consulted HR Management about the status of his enrollment at the ISSS, so he could receive free medical attention.

Based on Article 50 of the Constitution, Article 307 of the Labor Code, and Articles 48 and 100 of the ISSS Law, the investigators consider that Decotex is responsible to pay this worker the 75% of salary for the period April 05-08, 2021, and also to reimburse him the medical expenses he incurred<sup>20</sup>.

## IV. Conclusions

From the legal analysis conducted, the investigators conclude that Decree 757 is unconstitutional with respect to the sections of Article 14 that extend the daily hours of work limit, as they are based on an excessively broad interpretation of the '*force majeure*' concept, which is the only exception allowed by the Constitution to exceed the hours of work limits. The investigators acknowledge that this finding is not legally binding for Decotex, and it is up to the factory to decide how to respond to the investigators' points of view on the unconstitutionality of Decree 757.

Regardless of the future decisions the factory will make concerning the 4x4 work scheme, it is relevant to bring to Decotex's attention the gaps the investigators have found in the implementation of this new work model so far:

- 1) No consultation with workers prior to undertaking the transition to the 4x4 scheme, as legally required. After communicating to workers a decision that was unilaterally made by the factory, some management officials reinforced the idea that workers had to accept the change, as there were no alternative options. The worker consultation takes on special importance as the 4x4 model is impacting some workers' life in many different ways. (In violation of Article 165 of Labor Code, and FLA Compliance Benchmark HOW.1)
- 2) Potential risks derived from the 4x4 scheme have not been assessed in consultation with workers. (In violation of FLA Compliance Benchmark H/A.8.2).
- 3) By not counting the breaks as effective working time, as legally required, the factory is requiring work of twelve hours per day (instead of the eleven work hours allowed by the Decree 757), which in turn exceeds the weekly hours of work of 44 hours, and leads to mandatory and unpaid overtime. (In violation of

<sup>19</sup> Frequent Question Number 8, available at

[http://www.issv.gob.sv/index.php?option=com\\_content&view=article&id=93&Itemid=137](http://www.issv.gob.sv/index.php?option=com_content&view=article&id=93&Itemid=137)

<sup>20</sup> By law, workers under medical leave due to accident or illness should receive payment of 75% of salary, after the third day of medical leave.



Articles 163, 169 and 170 (first paragraph) of Labor Code, and FLA Compliance Benchmarks HOW.8.2, C.1.1, C.9 and C.9.1)

- 4) Lack of understanding of salary structure by workers, who have misconceptions about the new calculation method of salary under the 4x4 scheme; including lack of clarity around the income tax deductions. (In violation of FLA Compliance Benchmark C.19.1)
- 5) The accelerated and constant growth of the factory during 2021 is compromising the biosafety requirements related to social distancing, specially at the canteen. This also calls into question the factory's argument to shift to the 4x4 model with the purpose of reducing the concentration of workers at the workplace, which is the only condition under Decree 757 to allow employers to set work schemes of four consecutive workdays of eleven work hours per day. (In violation of Articles 14.I.2, 14.I.5, and 14.II (paragraphs 1 and 2) of Decree 757, and FLA Compliance Benchmark HOW.1).
- 6) The wording of Article 14 of Decree 757, contrary to the view of factory management, does not open the possibility for employers to operate rotating shifts, such as the 4x4 or 4x3. (In violation of Articles 14.I.2, 14.I.5, and 14.II (paragraphs 1 and 2) of Decree 757, and FLA Compliance Benchmark HOW.1).
- 7) The factory has not followed the legally required administrative procedures before the General Directorate of Labor of MoL to obtain authorization for the modifications of the work schedule and change of rest days; also, amendments to the employment contracts in which work schedules and rest days are modified has not been registered before the General Directorate of Labor; moreover, the Internal Regulations have not been updated accordingly –including the new salary payment period–, and the workers have not been provided with a copy of the amendment, as legally required. (In violation of Articles 18, 170 (fourth paragraph) and 173 of Labor Code, and FLA Compliance Benchmark HOW.1)
- 8) The factory has not clearly communicated to workers that they have the ability to opt for working under the previous work schedule, without fear of retaliation, as well as the specific options they have to keep working under the previous work schedule, without having to justify the reasons for preferring that arrangement. (In violation of FLA Compliance Benchmark 4.1).

In addition, and apart from the work shift the factory operates, it is critical to avoid that workers continue performing off-the-clock work prior and during the designated breaks, as well as to widely communicate to workers on their ability to leave the premises during lunch break without requesting previous authorization.

As stated before, the investigators welcome job generation in the country; however, it is crucial that company growth is driven in compliance with applicable national laws and regulations. Despite the recent labor inspection report stating there are no labor law infractions with the implementation of the 4x4 work model by Decotex, this independent investigation did find and corroborated a range of noncompliance issues as described throughout the report, and the investigators conclude that based on Article 52 of the Constitution (Inalienability of Labor Rights Principle), workers cannot waive their constitutional labor rights.

## V. Recommendations

**In light of the investigation findings, it is recommended that the factory:**

- 1) Stop operating the rotating 4x4 work shifts, and seek other alternatives that respond to the factory's production requirements and that also respect hours of work limits required by the Salvadoran legal framework.

**If, however, Decotex decides to continue operating the 4x4 work scheme based on Decree 757, it is recommended that the factory:**

- 2) Design alternative options for workers who want to return to work under the old work shift.
- 3) Widely communicate to all workers on their ability to freely choose the work shift they prefer, either the 4x4 or the previous shift, without fear of suffering any form of retaliation or discrimination. In the case of workers who want to continue working the 4x4 system but are needing a change of shift (from A to B or vice versa) to solve familiar or safety issues, offer immediate options for them to change shift.
- 4) Consult with workers on their work shift preferences; to that effect, the factory should design a mechanism for workers to individually and confidentially express their preferences.
- 5) Ensure that Plant R managers do not interfere with workers' ability to choose the work shift that better suits them, and establish a confidential grievance channel for workers to report any form of interference or retaliation based on their decision.
- 6) Engage with SITRAIMES and STIVES to conduct a risk assessment of the potential risks derived from the implementation of the 4x4 work scheme. After such risk assessment is completed, design preventive and corrective actions, and communicate those to all workers.
- 7) Continue to engage with workers to hear their views on the issues that affect them as a result of the implementation of the 4x4 work shift, and take adequate remediation actions.
- 8) Adjust the daily working hours to avoid exceeding the eleven work hours limit.
- 9) Retroactively pay workers the overtime performed in excess of eleven hours per day since the implementation of the 4x4 work shift (one overtime hour per day of work).
- 10) Follow the legally required administrative procedures before the General Directorate of Labor to: i) obtain authorization to operate the 4x4 work shift; ii) update the Internal Regulations accordingly on new work shifts, salary payment

periods and provision of rest days; and iii) register the amendments related to the change to the 4x4 work shift.

- 11) Ensure that all workers working under the 4x4 model sign the corresponding amendment and provide a copy of the amendment to all of them.
- 12) Provide specific and clear communication to workers on the salary calculation and payment methods, under the 4x4 work shift. Also, communication on the legal grounds for implementing income tax deductions should be provided to the workers, as well as the implications of such deductions, and the procedure and requirements for obtaining a total or partial Governmental devolution of those amount deducted in the following fiscal year.
- 13) Count the lunch and breakfast breaks as effective working time, as required by law.
- 14) Cease the implementation of the 4x4 work schedule in Sept 2021, when the Decree 757 expires.

**Regardless of the work shifts Decotex operate, it is recommended that the factory:**

- 15) Take measures to avoid workers perform off-the-clock work, and communicate to all workers on the importance of fully enjoying breaks for their health.
- 16) Communicate to workers on their ability to leave the premises during lunch break.
- 17) Ensure that resignation letters signed by workers who quit their jobs are authenticated by a Notary, as legally required, and provide a copy of the settlement to the workers.
- 18) Revise current Hours of Work Policies and Procedures to include: i) recognition of breaks as effective working time; and ii) prohibition of performing off-the-clock work.
- 19) Pay the former worker mentioned in Section 4.3 of this report the difference owed for the 75% of salary corresponding to the work shift of April 05-08, 2021, and reimburse him for the medical expenses he incurred due to the lack of notification to the ISSS on the status of his enrollment.
- 20) Consult with unions and FEASIES, through dialogue based on transparency and good faith, prior to implementing any future change on working conditions that may have an impact on workers' lives.
- 21) Issue and submit to the ISSS the provisional accreditations of new workers enrollment to the ISSS scheme, on a monthly basis, so workers and their beneficiaries can receive medical attention.