

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.

HOUSING PROVIDENT FUND IN CHINA May 2015

THE ISSUE:

What housing provident fund contributions must employers in China provide for their workers?

BRIEF HISTORY OF HOUSING PROVIDENT FUND IN CHINA:

In May 1991, the local government in Shanghai established a pilot project known as the Housing Provident Fund, designed to improve middle- and low-income workers' access to private housing. Other cities like Beijing, Guangzhou, and Tianjin established their own programs in 1992, and a nationwide Housing Provident Fund followed in 1999.

These funds used regular mandatory contributions from both employers and workers to help municipalities meet their housing goals, including by establishing programs to expand low-cost housing construction. However, by mid-1999, the Chinese Central Government had discontinued this practice, and since then, the national government has defined the Housing Provident Fund solely as an employment benefit for individuals, intended to help workers purchase and maintain their own home.

Contributors to the housing fund can apply for preferential rate mortgages, withdraw funds to pay for housing repair and maintenance costs, and apply for rent subsidies. If a worker's contributed funds go unused, they can be transferred to other work locations, withdrawn at retirement, or used under other regulated circumstances.¹

CURRENT PROVISIONS OF THE HOUSING PROVIDENT FUND POLICY:

The national government revised its Regulation on the Administration of Housing Provident Fund in March 2002 with the following provisions:

- Housing Provident Fund regulations apply to the workers in all geographic regions of the country, whether they are migrant workers registered elsewhere or residential workers registered in the city where they are working.
- Fund regulations also apply to workers in all types of enterprises, including state-owned, private sector, and non-profit organizations.
- Both employer and worker must contribute to the worker's personal account and the funds in the account belong solely to worker.
- Contributions must be calculated based on each worker's average monthly wage over the last year.
- Different regions may establish variable housing provident fund rates, as decided by local governments, but contributions may not fall below a minimum of five percent (5%) of the monthly wage.

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>

¹ http://www.housingfinance.org/uploads/Publicationsmanager/0603_Pro.pdf Legitimate withdrawals can also be made when workers resettle abroad or become physically unable to work, terminating their relationship with their employer.

More recently the Chinese government has taken steps² to clarify the claim procedures for workers who wish to withdraw contributions from the Housing Provident Fund for buying or renting a home.³ For example, migrant workers can now use the funds to buy a house in their hometown no matter where they were working when their contributions to the Fund were made.

COMMON VIOLATIONS FOUND BY FLA ASSESSORS:

During the 2014 factory due diligence cycle, FLA assessors found that the overwhelming majority of 48 assessed factories failed to pay into the program for their workers. Of the eight factories found to be contributing to the Fund, only one assessed facility was fully providing contributions correctly while the rest provided contributions only for workers with certain seniority or residential status, or calculated contributions from a base rate below workers' actual earnings. Both are breaches of national regulation and the FLA Code requirement that companies "comply with all legal requirements on wages, and provide any fringe benefits required by law or contract."

In many ways, the lack of compliance by suppliers and lack of enforcement by government on this issue mirrors the situation with social insurance contributions in China.

Local governments often fail to monitor and enforce Housing Provident Fund compliance strictly, in the hope of attracting business with the cost saving associated with local variances. The local government in Shanghai, for example, makes the contributions to the Housing Provident Fund for workers registered as "urban residential" mandatory, but considers contributions for workers who are registered as "suburban residential" to be optional. Factory management may consider full compliance with national law to be a competitive disadvantage and an unnecessary addition to their labor costs in an environment where most factories do not pay into the system.

For their part, some workers earning low wages tell FLA assessors that they are unwilling to make their own housing contributions, as a way of increasing their immediate take-home pay. Moreover, the historical complexity of the Fund claim procedures may deter workers, especially for migrant workers, from making claims. Finally, lacking freedom of association, Chinese workers have no recourse to independent unions for bargaining with employers on contributions to the Fund.

However, the contributions to the fund are legally mandated, and recently workers have begun demanding that their employers follow the law. In

2 http://www.mohurd.gov.cn/zcfg/jsbwj_0/zfbzygjddgls/201410/t20141017_219344.html

3 http://www.mohurd.gov.cn/zcfg/jsbwj_0/zfbzygjddgls/201501/t20150129_220233.html

March 2015, approximately 5,000 workers at a Stella International shoe factory in Dongguan organized a strike demanding proper payment of benefits including the Housing Provident Fund contributions.⁴ Also in March, around 3,000 workers walked off the job at footwear factories owned by Yue Yuen in Dongguan, demanding access to the money they have accrued under the Housing Provident Fund.⁵

FLA RECOMMENDATIONS:

The Chinese government has designed the Housing Provident Fund to help middle and low-income workers meet their housing needs. When employers fail to contribute, workers are denied the funds they are due to help them with the rent, maintenance, or purchase of their home. For this reason, the FLA expects that affiliated companies sourcing from China require full payment of Housing Provident Fund contributions, and that when violations occur they will:

- Develop a detailed corrective action plan to fix the violations and communicate to all Chinese suppliers the brand's requirement that suppliers follow the national law.
- Calculate and arrange with suppliers -- and communicate to workers -- a plan for proper back payments so that workers are not deprived of contributions to which they are entitled.
- Develop a preventive action plan to avoid future violations in all Chinese suppliers.
- Follow up with all Chinese suppliers to confirm correct payment of all Housing Provident Fund employer contributions.
- Encourage suppliers to consult and negotiate with workers directly when addressing workers' concerns regarding compliance with the law.

In the short-term, responsible supply-chain leaders like FLA-affiliated companies must begin to take a proactive approach to bring suppliers into compliance with existing Housing Provident Fund regulations. To support this demand, brands must be prepared to adjust their sourcing and costing strategies to ensure that employer fund contributions are made in accord with national law.

For the longer-term, the FLA plans to work together with brands, suppliers, local governments, civil society organizations (CSOs), and other multi-stakeholder initiatives to find sector-wide solutions to the Fund compliance and enforcement issues.

4 <http://www.chinalaborwatch.org/newscast/430>

5 <http://www.ft.com/intl/cms/s/0/c46252d0-cd48-11e4-9144-00144feab7de.html#axzz3Unk92kER>