

## 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.*

### **SHORT-TERM CONTRACTS IN PERU**      **Oct. 2014**

#### **THE ISSUE:**

How should FLA affiliates approach the use of repeated short-term contracts by suppliers in Peru?

#### **THE HISTORY:**

Since the late 1970s, Peruvian law has authorized companies producing “non-traditional manufactured goods” to employ workers on short-term contracts to work on specific purchase orders for export.

Originally designed to stimulate investment and build a stronger export market in Peru, Decree Law 22342 requires companies to export at least 40 percent of their annual production to entitle them to hire workers on a short-term basis. Temporary workers hired under this law must be working on a specific purchase order, and the hiring company must notify the Ministry of Labor and Employment Protection that it is using short-term labor.<sup>1</sup>

However, because the law allows employers in the apparel and textile export sector to re-hire the same workers repeatedly, employers can undermine the original intent of the law, and in so doing, deny their workers the benefits of full-time employment. Repeated hiring of “temporary” workers creates a precarious workforce, and denies workers their health care benefits, social security, and other benefits associated with their seniority. A perpetually “temporary” workforce is easier to terminate, and is less able to exercise its rights of freedom of association and collective bargaining.

#### **THE CALL FOR REPEAL:**

In 2008, labor unions in Peru filed a complaint about the abuse of the short-term contracts law with the International Labour Organization (ILO). The ILO, in turn, urged the Peruvian government to cooperate with “the most representative workers’ and employers’ organizations” to examine ways to prevent the short-term contracts law from

<sup>1</sup> Andrea Carolina Sánchez Matos, *Implicancias en la Libertad Sindical del Régimen Laboral Especial del Decreto Ley No. 22342 Ley de Promoción de Exportación no Tradicional*. Lima, PLADES, 2010, pp. 3-4.

### **THE GOVERNING ELEMENT OF THE FLA CODE: EMPLOYMENT RELATIONSHIP\***

“Employers shall adopt and adhere to rules and conditions of employment that respect workers, and, at a minimum, safeguard their rights under national and international labor and social security laws and regulations.”

#### **BENCHMARK 9**

Employers shall not:

- use contract/contingent/temporary workers on a regular basis for the long-term or multiple short-terms;
- hire contract/contingent/temporary workers as a means to support normal business needs on a continuous basis or as regular employment practice; or
- make excessive use of fixed-term contracts or schemes where there is no real intent to impart skills or provide regular employment.

\* <http://www.fairlabor.org/our-work/labor-standards>

being “an obstacle to the exercise of trade union rights.”<sup>2</sup> Peruvian textiles unions have continued to urge Peru’s Congress to amend the law, and the general secretary of IndustriALL has spoken out in favor of reform as well.<sup>3</sup>

Following inaction by the Peruvian Congress in 2013, several companies, including FLA affiliates like New Balance, Nike, PVH Corp., VF Corp., and 47 Brand, sent a letter to Peruvian President Ollanta Humala Tasso, identifying how abuse of the short-term contracts law impedes the application of workplace codes of conduct. The companies stated that they are “concerned that Decree Law 22342, which allows ‘non-traditional’ exporting companies to employ workers on fixed-term contracts, acts to encourage and condone violations of labor rights,” and called for repeal of the relevant labor provisions.<sup>4</sup>

#### **RELATIONSHIP TO THE FLA WORKPLACE CODE OF CONDUCT:**

The FLA’s most recent SCI report from a factory in Peru includes a finding that clearly illustrates how abuse of short-term work contacts runs afoul of the FLA Workplace Code of Conduct. The assessment, conducted in 2012, finds that for the factory in question, “it is a factory employment practice to use temporary contracts on a regular basis for multiple short-term periods... All production employees renew their employment agreements every three months.”

In its recommendations for remediation on this finding, the FLA was unequivocal in stating that the factory should end the practices. Such a finding relates directly to one of the benchmarks of the “Employment Relationship” element of the FLA Workplace Code of Conduct, which forbids employers to hire “temporary workers on a regular basis for the long-term or multiple short-terms, [or] hire contract/contingent/temporary workers as a means to support normal business needs on a continuous basis or as regular employment practice.”<sup>5</sup>

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2 [http://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID.P50002\\_LANG\\_CODE:2911664.en](http://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID.P50002_LANG_CODE:2911664.en)

3 <http://www.industrialunion.org/leading-apparel-brands-urge-peru-to-repeal-harmful-law>

4 <http://www.fairlabor.org/blog/entry/short-term-employment-contracts-put-workers-risk-peru>

5 <http://www.fairlabor.org/our-work/labor-standards>

#### **FLA REFLECTIONS:**

Upon the conclusion of a recent FLA investigation of a [Third Party Complaint](#) against a Peruvian factory using short-term contracts, the FLA suggested several action steps for affiliates sourcing from Peru.<sup>6</sup> The FLA encourages such affiliates to express strong preferences for permanent contracts and employment stability, and to explain to their suppliers how repeated temporary contracts violate the FLA Code of Conduct. Prior to sourcing from Peru, brands should be aware of the prevalence of short-term contracts, and favor suppliers that offer permanent contracts and develop more permanent relationships with their workers.

The FLA recommends engaging with local labor-focused CSOs and others knowledgeable about this issue, in order to participate fully in the ongoing debate in Peru about the future of Decree Law 22342. However, even without a change in the law, FLA affiliates must seek to increase employment security in the facilities from which they source, and to identify strategies to remediate harm done to workers by repeated temporary contracts.

One of the purposes of a Workplace Code of Conduct is to provide strong protections for workers when domestic law fails to do so, as is the case with Decree Law 22342. Though short-term contracts remain legal in Peru, the practice of repeatedly renewing short-term contracts for the normal functioning of a factory violates workers’ rights, and in this case the FLA expects affiliates to meet a higher standard than the national law requires.

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6 <http://www.fairlabor.org/reports/hialpesa>