



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
re ALAMODE S.A. (HONDURAS)**

**FINDINGS AND RECOMMENDATIONS  
October 22, 2009**

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## **A. Introduction**

This report outlines the WRC's findings and recommendations concerning labor practices at an apparel manufacturing facility in Honduras known as Alamode S.A.

Alamode is located in Siguatepeque, a relatively remote town in the mountains of central Honduras. Alamode is the only export apparel factory in the city. The factory employs roughly 500 workers. It is owned by Hwa Corporation, based in Seoul, Korea.

The compliance assessment was undertaken pursuant to the WRC's role as an independent monitor for the City of Los Angeles in relation to the City's Anti-Sweatshop Ordinance for apparel and other goods procured by the City. The Alamode facility was disclosed by Lion Apparel (sometimes referred to herein as "Lion") as a producer of goods for the City through the City's contract with Galls; under this contract, the City may procure work jackets, jacket liners, and work shirts manufactured by Lion. To produce these and other goods, Lion contracts with a Honduran company known as Grupo Karim, which oversees production issues at the Alamode facility. Lion's relationship to Grupo Karim and Alamode is as a customer; Lion does not own either business.

The WRC initiated an assessment of the Alamode plant after receiving allegations of past and ongoing labor rights violations at the facility from Honduran civil society organizations. The WRC's investigative work was carried out by WRC staff and experienced labor rights inspectors from the Independent Monitoring Team of Honduras (known as EMIH, from its acronym in Spanish). EMIH is a well respected labor rights monitoring organization based in San Pedro Sula, Honduras, which has worked with key stakeholders in the apparel industry for many years. The inquiry included in-depth interviews with production workers, supervisors, and managers, as well as a review of substantial relevant documentation and physical inspection of the factory premises.

Significant areas of non-compliance with applicable labor standards were identified at the facility and, at the urging of Lion, the factory has undertaken substantial corrective action. Further action is needed on several issues.

On the basis of the evidence gathered, the WRC documented the factory's noncompliance with Honduran law and other applicable labor standards in a number of areas. These instances of noncompliance included issues related to workplace health and safety, payment of the statutory minimum wage, use of overtime, legally mandated severance and health benefits, and, finally, discrimination on the basis of gender. The WRC's findings in these areas are outlined in detail in this report. It should be noted that, pursuant to the WRC's investigative protocols, the WRC gathered evidence only in those areas in which violations of labor standards were alleged. This report should not be taken to state conclusions – neither findings of compliance nor non-compliance – in areas not discussed explicitly in the report.

The WRC provided Lion Apparel with a detailed outline of findings and an accompanying set of recommendations for corrective action. Lion responded by conducting its own in-house inquiry, agreeing with the WRC's findings in some areas, while contesting them in others. Ultimately, Lion agreed to urge Alamode to undertake remedial action in most areas of noncompliance identified by the WRC.

The WRC conducted a verification assessment at the Alamode facility in December 2008 and has subsequently gathered additional information. In many of the compliance areas in question, the

implementation of remedial actions was confirmed. These include a retroactive payment of roughly \$30,000 to workers for a period in which the company had failed to implement a statutory increase in the minimum wage; the enrollment of all of the plant's 500 workers in Honduras' legally mandated national health care system – in which nearly 60% of workers had not been previously enrolled; the implementation of several important occupational health and safety measures; and a cessation of annual mandatory pregnancy testing of women workers.

These actions represent progress for workers and they would not have occurred without Lion's intervention. It should also be noted that, at a critical juncture early in the assessment process, Lion agreed, at the WRC's request, to write a letter to workers assuring them that Lion would not respond to worker complaints about labor rights violations by pulling out of the factory, but would work with the factory to address any problems that might exist. This letter was important in addressing fears on the part of workers that candid testimony about labor practices at the factory would lead to its closure.

The WRC's verification assessment, and subsequent fact gathering, identified several areas where further remediation is still necessary. These include additional reforms to ensure workers' safety on the job, to ensure overtime is performed on a voluntary basis, and to ensure workers are paid all legally-mandated benefits at termination.

The latter issue – concerning terminal benefits – emerged late in the assessment process and remains the most pressing unresolved issue. The WRC determined that Alamode was failing to pay full legally mandated terminal compensation to workers upon dismissal, a violation that resulted from the company artificially interrupting workers' seniority each year through a practice of annual termination and rehiring. The WRC conveyed formal findings on this issue to Lion Apparel on May 21, 2009 and urged the company to take action. The matter took on increased urgency at the end of May when Alamode carried out a mass dismissal of approximately 130 employees, using the same formula resulting in underpayment of terminal benefits. The WRC has since had extensive dialogue with Lion Apparel concerning this issue.

After seeking counsel from a labor attorney in Honduras, Lion Apparel notified Alamode on September 30 that it considers Alamode's policies in the area of terminal benefits to violate Lion's worldwide code of conduct. Lion requested that Alamode take a series of actions which, if carried out, would effectively correct the violations, both retrospectively and prospectively. These actions include providing workers who were terminated in May 2009 the balance of the accrued benefits to which they are entitled and revising the company's seniority policy so that workers' continuous seniority is recognized and factored into the payment of terminal benefits. However, as of the date of this report, these recommendations have not been implemented.

The WRC hopes that Lion will continue its efforts to resolve the issue and that Alamode will agree to change its policy and pay the previously dismissed workers the difference between the severance they received and the amount due to them under Honduran law. The sums involved are relatively modest from the perspective of the employer, but are very significant in the lives of the individual affected workers and their families. The WRC will continue to monitor the situation and will issue an update regarding the status of compliance in this area in the future.

## **B. Methodology**

### **1. Sources of Evidence**

The findings outlined in this memorandum are based on the following sources of evidence:

- Interviews with nineteen current Alamode production workers. Fourteen of the workers were interviewed in group settings offsite in locations chosen by workers. Five of the workers were interviewed individually onsite.
- Interviews with the general manager and human resources manager of the Alamode facility.
- Interviews with three production supervisors and the facility's onsite nurse.
- An onsite review of relevant documentation, including a sample of employee personnel files.
- A physical inspection of the factory concerning occupational health and safety issues.
- A review of applicable Honduran labor and employment law by experts in the field.

Before proceeding to a review of our findings, we provide here some brief comments on the sources of evidence relied upon by the WRC, and particular challenges posed, in this case, by the extreme degree of fear among workers toward speaking with outside investigators that the WRC encountered at the factory.

#### *a. Offsite Worker Interviews*

In-depth worker interviews are a critical element of the WRC assessment process. The WRC's methodology recognizes the central importance, in any labor rights fact-finding effort, of workers having the security to speak candidly about their conditions of employment. In order to achieve this degree of security and confidence among workers in the WRC's investigative process, the WRC's protocols require that:

- 1) Interviews are conducted offsite, without the knowledge of factory management, by individuals with no ties to the factory or its customers;
- 2) The interviewer keep in confidence the names of workers who participate in interviews;
- 3) Whenever possible, interviews are arranged through, and conducted with the involvement of, local organizations or community members in whom workers have trust.

In accordance with these protocols, WRC investigators – who included researchers from EMIH with substantial experience conducting offsite interviews with Honduran apparel workers – sought to arrange interviews with current Alamode workers through former factory employees with whom they were already in contact. Because EMIH already had a relationship to these former workers, they could vouch for the organization's independence and trustworthiness with the current employees.

Despite these measures, however, the current Alamode workers whom the EMIH investigators contacted were initially unwilling to participate in the interviews. Workers repeatedly expressed strong fears that they would face retaliation if factory management were to learn of their involvement. While it is not unusual for workers to be wary of speaking candidly about labor conditions, it is notable that the level of fear expressed by these workers was among the highest the WRC has ever encountered at any factory in the region.

Following additional outreach on the part of the researchers, workers did agree to participate in

interviews as a group, so long as no audio recording was taken (interviewers instead took notes by hand). In this way, researchers succeeded in conducting in-depth group interviews with fourteen current Alamode workers. Interviews were conducted in two groups of six and eight workers, respectively. The WRC was able to gather substantial detailed information through this process, and workers reported labor rights violations in a range of areas.

The investigators attempted to persuade workers from these groups to participate in individual follow-up interviews at a date and time of the worker's choosing, but all workers declined. Of very serious concern, workers stated in the group interviews that they had been specifically told by management that if they gave interviews about working conditions to anyone, management would identify them and they would lose their jobs.

Subsequently, workers told the WRC that Alamode management had instructed them the day before the WRC's first onsite inspection on June 19, 2008, described below, to tell the inspectors that there were no problems at the factory. They reported that managers told them that they risked losing their jobs if they told the WRC that violations were occurring at the plant, as brands would withdraw business from the facility. The WRC communicated these concerns to Lion management, which, as described in this report, complied with a request by the WRC to supply a letter to workers assuring them that they would not suffer reprisal for submitting complaints concerning the factory's labor practices. The WRC considered this a positive and relatively unusual step for an apparel brand to take. Nevertheless, even subsequent to the posting and distribution of this letter, the WRC continued to receive reports from workers to the effect that management continued to pressure them to falsely report to outside investigators that there are no problems at the plant.

#### *b. Factory Inspection*

A factory inspection was carried out on June 19, 2008. Significantly, in the case of many code areas, the information regarding violations at the factory that was provided by workers in the offsite interviews was subsequently corroborated by the WRC through the factory visit, and in particular, through a review of relevant factory records. Labor rights violations identified by workers and later corroborated by other sources included failure to implement a statutory increase in the minimum wage, lack of enrollment of a substantial portion of the workforce in the country's legally mandated health insurance program, and inadequate occupational and health and safety provisions, among others. The corroboration of the workers' testimony in these areas strongly enhances the credibility of the workers' reporting on other subjects where, by their nature, physical corroboration is unlikely to be found.

Unfortunately, the WRC encountered some difficulty obtaining cooperation from Alamode management during the initial onsite assessment process. As mentioned later in this report, the investigators who carried out the first onsite assessment reported that the factory's human resources manager inappropriately monitored the assessment process. Even after the investigators made clear to the manager that they needed to conduct their review of personnel records in private, without company interference, the manager stayed with the investigators in the room provided to review the records, hovering over the investigators throughout the process. The manager also limited the time provided to the investigators to conduct their inspection, ending the assessment process abruptly after four hours of work. The manager in question appeared unprepared for the degree of thoroughness with which the WRC's investigators conducted their inspection and commented that the majority of the compliance auditors that come to the factory do not take any notes.

During the course of the factory visit, the investigators conducted interviews with five additional workers inside the plant. In these instances, although EMIH randomly selected the workers to be interviewed, the factory's human resources manager personally escorted the workers to the office provided to EMIH to conduct the interviews. The EMIH investigators reported that the workers appeared visibly uncomfortable and nervous during the interviews, providing only minimal responses to the questions posed to them. The substance of the information that was provided by the workers in this context was markedly different from the information provided by the workers outside of the workplace. The workers reported that the factory was in compliance with the law in virtually all of the areas covered in the interviews. The workers' comportment and obvious discomfort indicated that they were not speaking candidly.

### *c. Conclusion*

Despite the challenges resulting from the extreme degree of fear exhibited by factory workers and inappropriate conduct by factory management – which clearly contributed to this fear – the WRC's investigators conducted a thorough investigation and gathered substantial credible evidence of a range of labor rights violations. Our findings and their evidentiary basis are outlined in the remainder of this document.

## **C. Findings, Recommendations, and Current Status**

The following sections review, as applicable for each area of code compliance, the WRC's findings and recommendations, the response of Lion Apparel, the WRC's verification of whether the instances of noncompliance in this area have been remedied, and any further recommendations by the WRC or responses by Lion. Except where otherwise indicated, for each area of code compliance:

- The initial findings and recommendations section is based on investigative work performed by the WRC and its consultants between March 1 and July 28, 2008 and communicated to Lion Apparel in a memorandum sent to the company on the latter date. An onsite inspection of Alamode was carried out on June 19, 2008.
- The initial Lion response section is based on a memorandum sent by Lion to the WRC on October 29, 2008.
- The WRC verification and further recommendations sections are based on an onsite visit to Alamode on December 10, 2008 and investigative work performed by the WRC and its consultants during the same time period. The results of the WRC verification and our recommendations for further action were communicated to Lion on December 17, 2008.
- The further Lion response section refers to communications from Lion to the WRC on February 3, February 16, May 21, July 7, and September 30 of 2009.

### **1) Occupational Health and Safety**

#### *a. Restroom facilities*

##### Findings

Honduran law sets out requirements for restroom facilities at manufacturing worksites.<sup>1</sup> These

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<sup>1</sup> Article 70 and 72 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness:

Article 70, #2: There will be at least one toilet for every fifteen workers; #4: The minimum dimensions of the toilets

standards include requirements for the number of toilets given the size of an enterprise and mandate that such facilities be kept in clean, hygienic condition. The WRC found that there were a sufficient number of toilets to meet the Honduran legal requirements. However, our assessment found that the restrooms at Alamode did not meet basic hygiene standards. The problems observed included a toilet that did not flush, a sink which lacked running water, lack of locks on toilet stalls, and lack of toilet paper, soap, or a means of drying one's hands (workers were required to ask management for paper and soap, something Lion described as a control mechanism to keep workers from taking these materials home). Workers testified offsite that poor conditions in the factory restrooms, including dirty surfaces and a noxious odor, are the norm at the factory and that the facilities are only cleaned in advance of visits by auditors (although in the case of the WRC's visit, the facilities had not been cleaned thoroughly).

### Recommendations

The WRC recommended that Lion urge Alamode to take the following actions to ensure that the factory's restrooms are kept in clean, hygienic condition: A person or persons should be made responsible for cleaning the restrooms multiple times daily, with a log kept of each cleaning. Maintenance should be done on all broken toilets and sinks.

### Lion Response

Lion notified Alamode management of the need to provide soap, dryers, and toilet paper in the restrooms. Management agreed to install liquid soap dispensers and hand dryers in each restroom. Management agreed to install toilet paper dispensers that are tamper proof, and to maintain the restrooms in a clean state. Lion requested that management repair the inoperable sink in one of the men's restrooms. Management agreed to connect the plumbing to the non-functional sink in the men's restroom. Lion recommended that the management create a cleaning log to document the daily cleaning of the restrooms.

### WRC Verification and Further Recommendations

The WRC verified that problems concerning the restrooms had been generally addressed: All of the restrooms had soap, toilet paper, and automatic dryers. The broken sink identified in the first visit was fixed. However, in two cases, the floors around the sink areas were wet and could pose a hazard. One toilet did not flush and was missing a seat.

The WRC recommended that the factory arrange for a janitor to check the restrooms daily (or more often if needed) and to dry the floors as needed. The maintenance log should be posted at the restroom facilities.

### Lion Further Response

Lion indicated it agreed with the WRC's further recommendations in this area.

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should be one point two zero (1.20) meters surface by two point three zero (2.30) meters high; #5: The toilets and urinals will be installed and conserved in a disinfected and deodorized condition.

Article 72: The floors, walls, and ceiling of the toilets, sinks, showers, changing rooms, and cleaning rooms will be continuous, smooth, and impermeable, painted in a light color with materials that allow for them to be cleaned with liquid disinfectant or antiseptics with the necessary frequency. All of the elements, such as faucets, drains, and showers, will always be in a perfect state of functioning and the stalls and seats will be apt for use.

### *b. Passageways*

#### Findings

Honduran law sets out standards regarding the minimum space required for passageways in production areas, in order to prevent hazards and facilitate exit in the case of emergencies.<sup>2</sup> The inspection found that passageways between production lines were obstructed by tables covered with production materials. Other passageways in the plant were found to be free of obstacles and in accordance with the standards.

AREAS	Aisles	Obstructions		Type of obstruction
		Yes	No	
<b>Production Parking Press Inspection Cutting Warehouse</b>	Front		X	
	Rear		X	
	Right side		X	
	Left side		X	
	Between production lines	X		Production tables

#### Recommendations

The WRC recommended that Lion press Alamode to remove tables obstructing passageways between the production lines and ensure that all passageways are kept free of obstruction through regular checks.

#### Lion Response

Lion stated that it believes that the conditions at the plant were not in violation of the standards. It stated that it had recommended that Alamode ensure that all passageways are kept clear of obstructions and that management agreed to comply.

#### WRC Verification and Further Recommendations

The WRC found in its December 2008 verification assessment that aisles were generally clear. However, it also found that at least five sewing machinery operators (in the line against the front wall of the factory) were surrounded on all four sides by tables as they worked. This obstruction could pose a significant hazard in the case of an emergency evacuation. The WRC recommended

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<sup>2</sup> Article 53 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness:

The aisles should have a width that is adequate in relation to the number of people who have to circulate in them and the needs of the work itself.

The following are the minimum dimensions:

- One point two zero (1.20) meters width for the main aisles.
- One (1) meter width for secondary aisles.

that Alamode rearrange the problematic layout of the production area so that workers can freely access and exit their workstations.

#### Lion Response

Lion stated that it believed the facility is compliant with the relevant standards, but stated that “additional efforts to rearrange production lines would be helpful.”

#### *c. Emergency Exits*

Honduran law requires employers to ensure that workplaces have emergency exits.<sup>3</sup> The WRC inspection found that the facility’s emergency exits were well marked, kept unlocked, were free of obstruction, and had alarms, thus meeting these standards.

Areas	Number	Marked		Open or closed?	Status			
		Yes	No	Open	Clear	Marked	Emergency lights	With alarm
<b>Production and other areas</b>	6	X		Yes	Yes	Yes	Yes, though no tests were done	Yes

#### *d. Fire Extinguishers*

#### Findings

Honduran law sets out requirements for the provision of fire extinguishers in the workplace.<sup>4</sup> The inspection found that the company was in compliance with the standards in this area.

<sup>3</sup> Article 61 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness:

1. The exits and outer doors of the workplace, whose access will be visible or duly marked, will be sufficient in number and width such that everyone can exit through them quickly and safely. The same is true for the evacuation of people with disabilities . . .
2. The minimum width of the outer doors will be one point two zero (1.20) meters when the number of workers who normally use them does not exceed 50 and the width will increase by fifty (50) centimeters for each additional fifty workers or fraction thereof.

Article 205 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness: The doors with access to the outside will always be free of obstacles and will open outward without the need to employ keys. They should remain closed during normal working conditions and they should be equipped with an automatic closing system.

<sup>4</sup> Legislation: 214, 215, 216(a), 217 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness:

Article 214: Locations that can rapidly ignite or propagate flame or those in which there exist highly flammable substances, even in small quantities, are considered locations that are at high risk for fire, this is also true if there are large quantities of substances that have low levels of flammability.

Article 215: These locations should provide one or many portable, 10-pound extinguishers such that the maximum distance to be traveled from any occupied point in the location to an extinguisher is 25 meters.

Areas	Number	Type of Extinguisher	Last checked	Accessible to workers		Height
				Yes	No	
<b>Production</b>	7	ABC	March, 2008	X		Adequate
<b>Packing Press Inspection</b>	5	“ ”	“ ”	“ ”	“ ”	“ ”
<b>Fabric Warehouse Cutting</b>	4	“ ”	“ ”	“ ”	“ ”	“ ”
<b>Finishing Warehouse</b>	1	“ ”	“ ”	“ ”	“ ”	“ ”
<b>Cafeteria</b>	3	“ ”	“ ”	“ ”	“ ”	“ ”

*e. Drinking Water*

Findings

Honduran law requires employers to provide potable water and ensure that workers have ready access to it.<sup>5</sup> The inspection found that the factory was in compliance with these standards.

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Article 216: Special measure required for locations that are at high risk for fire.

a) Will provide portable 15-pound extinguishers such that the maximum distance from any point in the location to an extinguisher will be fifteen meters. This distance will be ten meters when the risk of fire is very high . . . Fire drills will be established with regular recurrence, related to the existing risk, and at least once every six months.

<sup>5</sup> Article 68 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness: All workplaces will provide sufficient potable water supply, in proportion to the number of workers, which is easily accessible for all of them and distributed in places that are close to their work station.

Article 79 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness: In all cases workers will be provided with potable water in recipients that comply with all hygienic requirements.

Areas	Number	Is the water purified?		Surface		Physical condition of the filter or sink	
		Yes	No	Clean	Dirty	Good	Bad
Production	4	X		X		X	

*f. Production Floors*

Findings

Honduran law sets out basic standards for workplace flooring in order to ensure employee safety.<sup>6</sup> The inspection found that the factory was in compliance with these standards: the facility's floors are flat and were found to be clean.

Areas	Condition of the floor		Flooring material	Is the floor on one level?		Are there ramps?		Uneven floor (obstacle for disabled persons)	
	Clean	Dirty		Yes	No	Yes	No	Yes	No
Production	X		Cement	X			X		X

*g. First Aid Kits*

Findings

Honduran law requires that factories have well-marked first aid kits that are adequate for the size of the workforce and sets out the minimum requirements for the materials included in the first aid kits.<sup>7</sup> Article 424 of the "Regulation of the Preventative Measures of Workplace Accidents and

<sup>6</sup> Article 52 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness: The floor will be comprised of a homogenous total, flat and smooth, with no cracks or fissures; it will be made of solid material, it will not be slippery or susceptible to become slippery with use, and will be easy to clean. It will be at the same level and, if it is not, the difference will be compensated for by ramps that have an incline no greater than ten percent (10%).

<sup>7</sup> Article 9 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness: First aid kits will be installed in the factories or work centers which will at all times provide the medications and healing materials that are indispensable to providing first aid to workers that could be victims of a risk.

Article 73 #5 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness: Permanent or portable first aid kits will be provided in all of the work centers and they will be well marked and conveniently located and will be the responsibility of a person who has been designated and trained by the company.

Work-Related Illness” states that the kits should include the following materials:

- Hydrogen peroxide
- Alcohol
- Tincture of iodine
- Mercury-chrome
- Sterilized gauze
- Cotton
- Bandages
- Clinical thermometer
- Antiseptic soap
- Medical adhesive tape
- Sterilized gloves
- Antispasmodics
- Analgesics
- Tourniquet
- Rubber bags for hot water or ice (and/or hot water bottles)

The inspection found that the company does maintain first aid kits, but that the kits were lacking certain materials specified in the law.

Areas	# of Kits	Minimal medications		Missing items	Expired medication		Labeled medicine		Frequency of checks	Are kits marked?		Are kits locked?	
		Yes	No		Yes	No	Yes	No		Yes	No	Yes	No
<b>Production</b>	3		X	Cotton, Band Aids, Alcohol, Masks		X	X		Every month	X			X

#### Recommendations

The WRC recommended that Lion urge Alamode to include all materials required by law in the facility’s first aid kits.

#### Lion Response

Lion stated that it believed that the facility was substantially in compliance, but would request Alamode to augment its first aid kits to include a more complete list of supplies. It noted that Alamode also provides first aid services to its employees through the facility’s onsite health clinic.

#### WRC Verification

The WRC verified that the facility’s first aid kits contained appropriate materials. Workers interviewed were able to locate and access the kits. As noted elsewhere in this report, the facility’s Occupational Health and Safety Committee has become more active and reports checking kits during factory audits.

#### *h. Machinery and Furniture/Ergonomics*

#### Findings

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Article 424 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness: The company should own one or many first aid kits that have medications and first aid implements. [The list of required materials is included in the body of the report.]

Honduran law requires that factories provide adequate space around production machinery and appropriate furniture so that workers can do their work safely.<sup>8</sup> The law does not provide detailed guidance with respect to the provision of ergonomic furniture, although basic provisions in this area are considered a standard element of occupational health and safety.

The WRC inspection found that the production space was cramped with only minimal distance between workers' machines. Many of the sewing machines were located next to a table covered with large quantities of production materials, further limiting workers' movement and posing a potential hazard in the event of an emergency evacuation.

The inspection also found that many workers were using chairs that did not meet basic occupational safety and health standards, with most lacking adequate back rests (or back rests of any kind) or any means of adjusting their height.<sup>9</sup> Only a handful of workers had ergonomic floor mats. The height of the tables where employees worked also was not adjustable.

Areas	Are there ergonomic chairs?		Description	Chairs and tables		Do they use floor mats?		Height of machines	Space between machines
				Adjustable					
	Yes	No		Yes	No	Yes	No		
Production		X	Wood with flat back rest; benches with no back rest; and some chairs that are ergonomic but in poor condition (missing back rest or worn out)		X		X*	Adequate	Not adequate

<sup>8</sup> Article 83 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness:

- 1) The separation between machines will be sufficient such that the operators can carry out their work comfortably and without risk and will be based on:
  - a) The operators' range of movement that is necessary for the execution of the work.
  - b) In any case, the minimum distance between the most outer parts of the machinery and any other structure should never be less than eighty (80) centimeters.
- 2) A safety zone will be established between the aisle and the work station area, or if relevant, the most outer part of the machine should never be less than forty (40) centimeters. Said zone will be clearly and visibly marked for the workers.

<sup>9</sup> Adjustable chairs are a component of an ergonomic work environment in the context of manufacturing. *See, e.g.*, the following guidance documents: World Health Organization, "Protecting Workers' Health Series No. 5: Preventing musculoskeletal disorders in the workplace" (2003); and National Institute for Occupation Safety and Health, "A Primer Based on Evaluations of Musculoskeletal Disorders" (March, 1997). Scientific research has shown that adjustable-height chairs with ergonomically curved seats can significantly reduce neck and shoulder pain in garment workers. *See, e.g.*, David M. Rempel et al, "A Randomized Controlled Trial Evaluating the Effects of New Task Chairs on Shoulder and Neck Pain Among Sewing Machine Operators: The Los Angeles Garment Study," *Spine*, April 2007 (reported by UCSF Medical Center, "Adjustable Chairs Reduce Shoulder And Neck Pain In Garment Workers," April 2007).

\* There were roughly 15 workers using ergonomic floor mats.

## Recommendations

The WRC recommended that Lion urge Alamode to provide greater distance between sewing machines and establish a system to remove finished materials so that workers have sufficient space. Furthermore, the factory should provide workers with adjustable chairs that have back rests and meet other basic safety and health standards. Where necessary, the factory should provide tables with adjustable height.

## Lion Response

Lion responded that it believed the production space between machines met the normal standards of the garment industry. It stated that workers were able to move in their workspace and process their work in an ergonomically correct manner. Lion did recommend, and it reported that Alamode management agreed, to replace or repair substandard equipment and furniture and to provide appropriate floor mats where required.

## WRC Verification and Further Recommendations

The WRC found that many sewing machine operators continued to use non-adjustable desk chairs that do not meet basic ergonomic standards. It also found that adequate space still was not provided for some sewing machine operators. In particular, a group of sewing machine operators stationed along the front line of the factory were surrounded on all four sides by tables covered with apparel fabric, posing a significant hazard.

The WRC recommended that Lion request that Alamode provide workers with chairs that are adjustable, have back rests, and meet other basic safety and health standards. Where necessary, tables should be provided whose height is adjustable. In addition, the factory should maintain greater distance between sewing machines.

## Lion Response

Lion stated that it believes that the furniture currently provided to workers is in compliance with basic safety and health standards. The company's position is that if chairs have back rests, they meet those standards. Lion asserts that no evidence of ergonomic injuries has been thus far discovered and that therefore there is no basis for requiring chairs that are adjustable.

It should be noted that the problem the WRC identified with the chairs used by sewing machine operators at the plant is that they are in no way adjustable: many of the chairs are simple wooden desk chairs with flat backs. Others lack any back rest. The company's production furniture remains noncompliant with basic safety and health standards.

### *i. Emergency Signs*

## Findings

Honduran law requires that emergency escape routes, exits, and fire extinguishers be well-marked with visible signs.<sup>10</sup> With one exception, the inspection found no violations in this area. In the

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<sup>10</sup> Article 224, 226, and 228 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness:

one exception, the passageways in the production area were obstructed by chairs, tables, and production materials.

Areas	Are the signs visible?		What do the signs indicate?	Are the markings visible?		Are they adhered to?	
	Yes	No		Yes	No	Yes	No
<b>Production</b>	X		Emergency exit Exit route Extinguishers	X		X	

#### *j. Personal Protective Equipment*

##### Findings

Honduran law requires that employers provide workers with personal protective equipment (PPE) and ensure its proper usage in order to prevent work-related injuries.<sup>11</sup> The inspection found that, while some workers were using PPE, a substantial number of the factory's 500 workers were not. Workers testified during the offsite interviews that management only provides safety gear (such as masks and ear plugs) on days in which outside inspectors visit the plant. Most sewing machines observed by the inspectors lacked needle guards or had broken guards.

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Article 224: The markings should not be affected by the concurrence of other signs or circumstances that make their perception or understanding difficult.

Article 226: The means and mechanisms that mark this information should be kept clean, verified, repaired or substituted as necessary in order to conserve their purpose of functioning at all time.

Article 228: The health and safety markings should be made using safety colors, made on a notice board, should point out obstacles and dangerous areas, and should mark the traffic pattern, special markings, light or sound markings, verbal communications and hand signals.

<sup>11</sup> Article 269, 270, 271, 272, 273, 274, 275 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness:

Article 269: The use of personal protection measures will be obligatory when it is not possible to employ collective protection measures or if these measures do not guarantee a total protection of the work-related risks.

Article 270: In no case does the use of personal protective measures excuse the obligation to employ collective preventative measures if possible.

Article 272: The company owner is under the obligation to:

- Provide all of the workers with the necessary accessories for proper conversation with regards to personal protection or its components according to the respective characteristics and needs.
- Instruct their workers on the proper use and conservation of personal protection, provide them with precise training, and teach them about their limitations.
- Determine the places and work stations where some means of personal protection is necessary.

Article 273: It is the obligation of the worker to:

- Use these means of personal protection in their work according to the instructions that have been dictated by the employer or their representative.

Article 274: The means of personal protection should be approved. In the case that it has been produced in the country, the company will accredit this approval with the Secretariat of Labor and Social Security; if the personal protection garments are imported, this Secretariat will demand at a minimum that for the equipment to be used at the work center they be approved or certified in their country of origin.

Protective Equipment Observed	Yes (for all workers)	No	Type
<b>Production</b>			
Face masks	X		Very simple
Gloves		X	Mesh
Ear plugs		X	
Aprons	X		Dark blue fabric
Ergonomic floor mats	X		Insulated rubber
Needle guards		X	

### Recommendations

The WRC recommended that Lion request that Alamode ensure that all workers are provided with appropriate and high quality PPE, including face masks, gloves, ear plugs, aprons, and ergonomic floor mats, as applicable, and that all sewing machines are fitted with functional needle guards. Workers should be instructed that needle guards are mandatory and must not be removed.

### Lion Response

Lion stated that it recommended, and Alamode management agreed, to replace or repair substandard PPE and to provide ergonomic floor mats where required. Lion stated that management also agreed to enforce its protective equipment policy by requiring employees in the cutting room to wear safety gloves.

### WRC Verification and Further Recommendations

The WRC observed the following progress during its subsequent verification assessment: Workers in the cutting room using machinery were found wearing appropriate gloves. Masks were made available to workers, although management says workers do not wish to use them. The company's policy on PPE was posted on the factory bulletin board.

However, the WRC observed that some sewing machines continued to lack the required needle guard. Alamode management claimed that workers remove the guards in order to work more quickly. In some cases, however, the guards were clearly broken, making their use impossible. Other machines did not have necessary face protectors. The WRC also observed that some workers, particularly in the ironing department, who must stand while working for a sustained period of time, still did not have ergonomic floor mats.

The WRC recommended to Lion that it urge Alamode to do the following: provide adequate maintenance and periodic checks to ensure that all machines have needle guards and face protectors where appropriate; enforce a policy ensuring that protective equipment is not removed by employees; and provide floor mats to all workers who stand for more than a half hour at a time.

### Lion Further Response

Lion responded to the WRC's findings and recommendations as follows: "We agree that the facility is substantially compliant. Management agrees that greater efforts will be made to prevent workers from removing safety equipment." Lion's response did not acknowledge continuing noncompliance as verified by the WRC.

#### *k. Workplace Injury and Accident Log*

##### Findings

A workplace accident log is an essential feature of an effective occupational health and safety program and is required by Honduran law.<sup>12</sup> Factory management reported that it does not keep a formal accident log. It claimed that information in this area is maintained by the factory clinic's doctor; however, because the doctor was not in the plant at the time of the inspection, no records could be reviewed.

Management stated that there had not been any workplace injuries at the factory. Since the factory has been in operation since 1993, employs some 500 workers, and does not provide all necessary personal protective equipment, the WRC found the company's claim to be implausible.

##### Recommendations

The WRC recommended that Lion request that Alamode establish a log for all workplace injuries and accidents to record all incidents, including the names of the persons involved, the nature of the incident, the resulting health effects on workers, and what steps were taken to address the underlying cause of the incident.

##### Lion Response

Lion responded by indicating that it recommended, and management agreed, to maintain an injury/accident log as required by law.

##### WRC Verification

The WRC confirmed that a workplace accident log was created after the WRC communicated its findings on its June 19 audit and has been maintained daily since then.

#### *l. Occupational Health and Safety Committee*

##### Findings

An occupational health and safety committee, comprised of representatives of workers and management, is a basic component of an effective health and safety program. Such committees are required by law in Honduras.<sup>13</sup> In the case of Alamode, the committee should be comprised of four worker representatives and four managers (as the workforce falls within the range of 500-999, as specified in the law); its membership should be registered with the Ministry of Labor. The committee's responsibilities are to educate the workforce regarding health and safety issues, inspect the factory to identify potential hazards, design corrective measures and accident prevention programs, and carry out ongoing monitoring of OHS issues in the plant.

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<sup>12</sup> Article 9 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness.

<sup>13</sup> Chapter VI of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness.

Workers testified, and Alamode management acknowledged, that the factory does not have a functional OHS committee.

### Recommendations

The WRC recommended that Lion request that Alamode establish a functioning joint management-worker occupational health and safety committee,<sup>14</sup> comprised, as required by law, of four workers and four management representatives. The committee should perform all of the educational, oversight, and reporting functions described at length in the Honduran Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness; develop an ongoing program to ensure safety and health compliance in the facility; and keep a detailed log of its activities.

### Lion Response

Lion responded by noting that the company had established an OHS committee, though the committee had not met regularly: It met several times in 2005, and once in June 2008. Lion indicated that it obtained commitments from Alamode to ensure that the OHS committee perform safety audits on a regular monthly basis utilizing audit forms, meet regularly and maintain minutes that identify the health and safety issues discussed, and establish preventive safety and health programs within the facility.

### WRC Verification

The WRC verified that an occupational health and safety committee comprised of worker and management representatives as per the law is now in place and, based on a review of its records, has become more active in recent months. The committee's records include a checklist for conducting factory safety and health audits and other appropriate materials. Management stated that there are plans to provide safety and health training to general production employees.

In addition to carrying out general training for workers as management states is planned, the WRC also recommended that Lion urge Alamode to ensure the OHS committee is fully trained on workplace standards. The issues identified during our factory walk through indicate that further training is necessary.

### Lion Response

Lion responded by stating that the facility is now compliant, but agreeing that further training and improvements should be made.

## **2. Legally Mandated Health Care Benefits**

### Findings

Honduran law requires that employers enroll workers in the national government health care program, known as the Honduran Social Security Institute (Instituto Hondureño de Seguridad

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<sup>14</sup> It was later learned that the company had in the past established such a committee but it had since become dormant.

Social, IHSS). The program is jointly funded by mandatory contributions from employers, employees (through payroll deductions) and the government.<sup>15</sup>

The evidence gathered indicated that a significant portion of the workforce was not enrolled in IHSS. In offsite worker interviews, workers reported that only a fraction of the plant's workers are enrolled in the program. Some workers reported that they were asked whether they wanted to be enrolled in IHSS, and they replied that they did not, because they would prefer not to have the fees deducted from their paychecks and would rather utilize private health care services instead. Enrollment, however, is mandatory under Honduran law.

The general manager of the factory claimed that all of the factory's workers are enrolled in IHSS. The factory's human resources manager acknowledged that short-term workers, to whom the factory assigns normal production work responsibilities, are not enrolled. Such workers are not exempted from the legal requirement that all employees be enrolled in IHSS. Unfortunately, at the point in our audit when investigators requested to view the registry of IHSS enrollment, factory management informed them that their time was up and that they would need to leave the factory. Review of these records was necessary to determine exactly how many workers were not enrolled in the program. EMIH estimated that as much as a third of the workforce may not be enrolled.

### Recommendations

The WRC recommended that Lion ensure that all Alamode workers are enrolled in the IHSS system, including short-term employees.

### Lion Response

Lion indicated that it had found that 209 of 513 workers were enrolled in the IHSS system – representing 41% enrolled and 59% not enrolled. Lion also asserted that workers chose voluntarily not to enroll in IHSS and preferred to not have dues deducted because there was not an IHSS clinic in the town of Siguatepeque. Lion also stated that factory management claimed that employees obtain health care services from an onsite doctor at the factory's own health clinic. Lion reviewed a letter from this doctor indicating she provides 6 hours per week of clinical services to employees and their families. However, Lion acknowledged that the law requires that workers be enrolled, regardless of any other services the company may provide. Enrollment in IHSS is necessary for workers to access hospital-based medical care.

### WRC Verification

Based on factory payroll records, the WRC confirmed that all current employees had been enrolled in IHSS since the previous assessment. The progress achieved in this area is significant, representing a substantial improvement in respect for workers' legal rights at the facility.

## **3. Wages and Hours**

### *a. Hours of Work*

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<sup>15</sup> Legislative Degree No. 140; Regulation of the Application of Social Security Law, Decree No. 193-1971 Article 9 of the Regulation of the Preventative Measures of Workplace Accidents and Work-Related Illness.

## Findings

Honduran labor law establishes that regular working hours shall not exceed eight hours per day or forty-four hours per week, with at least one day of rest per week.<sup>16</sup>

Alamode workers testified in the offsite interviews that they regularly work from 7:00 am until 6:00 pm Monday through Saturday, although the punch cards that the factory uses to record working hours for official purposes indicate that workers leave at 4:30 pm each day. Thus, workers reported, the company's time card system did not accurately reflect the actual period of labor performed by the workers. The WRC determined that, while it is clear based on the detail and credibility of this testimony that workers were sometimes not paid appropriately for their overtime work, further research would be necessary to reach more definitive conclusions regarding the extent of underpaid overtime.

Workers stated that the overtime they perform is mandatory. Although there are signs posted on a factory wall stating that overtime is voluntary, workers testified that they felt pressured to work overtime and had, in some cases, been told by their supervisors that if they did not work overtime, they should not bother returning to the factory the following day (i.e., they would be fired). On one of the days that EMIH interviewers were in Siguatepeque to interview workers, which was a Saturday, the interviewers observed that workers did not leave the factory until 6:00 pm. Workers testified that they are sometimes required to stay at the factory until 9:00 pm and that Sunday work is not uncommon when the factory is busy with orders.

## Recommendations

The WRC recommended that Lion press Alamode to ensure that all overtime hours are compensated at the legally mandated overtime premium rate and that all such hours are performed voluntarily.

## Lion Response

Lion stated that "absent any firm evidence that overtime is not being paid appropriately, Lion Apparel is not making any recommendations in this area at this time." It stated that management assured Lion it will ensure that overtime hours will be worked on a voluntary basis and paid in accordance with Honduran law.

## WRC Verification

Regarding payment of overtime compensation, the WRC found that the company had implemented a new system for accounting for overtime hours: Whereas previously management in some cases swiped workers' cards for them upon the end of work hours (which management claimed was due to crowding by workers in the relevant area of the plant), now workers swipe the cards themselves. This measure should address to some degree either the reality or the perception by workers that employees are performing work "off the clock," thus giving workers greater confidence in the company's compensation practices.

The factory's official policy is that overtime is not mandatory. Management has implemented a system by which workers voluntarily indicate in advance their willingness to work overtime by signing a form to this effect. Nevertheless, workers continued to report offsite that they feel

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<sup>16</sup>Articles 322 and 300 of the Honduran Labor Code and Article 128 No. 1 of the Honduran Constitution.

pressured by their supervisors to perform overtime and that they fear reprisal for repeated refusal to perform overtime.

#### Further Recommendations

The WRC recommended that Lion urge Alamode to reinforce the company's policy of voluntary overtime with verbal and written statements communicating the company's policy to the workforce. This should be repeated periodically (every 3 months) to ensure that all workers understand the policy and that it is followed by supervisors. Training should be provided to supervisors on the company's voluntary overtime policy.

#### Lion Further Response

Lion stated that it agrees the company is in compliance and that additional training for employees and supervisors in this area is a good idea. It subsequently stated, "Lion will make sure that Alamode continues to have effective policies in place against forced overtime. Under Honduran law, workers cannot be fired for refusing to work overtime." Lion does not accept the WRC's finding that some underpaid overtime occurred and considers the findings reviewed above to be merely allegations.

#### *b. Payment of Minimum Wage*

#### Findings

On December 31, 2007, following the recommendations of a tripartite commission, the Honduran Government issued legislation revising the legal minimum wage for a variety of sectors.<sup>17</sup> The law took effect January 1, 2008. Under this law the legal minimum wage for employers in the export processing zone regime with more than 16 employees was set at 121.32 lempiras per day.

The investigators confirmed through worker and management interviews, and a review of company records, that the Alamode factory violated the applicable minimum wage requirement during the period January through May 2008.<sup>18</sup> The factory revised its payment practices in mid-May to conform to the new standard. During the WRC's site visit in June 2008, management did not contest that it did not pay workers in accordance with the new minimum wage during the first period of the year. It also acknowledged that it had not, at that point, compensated workers for the underpayment during the prior period.

Alamode told the investigators that it planned to provide workers with this compensation during the last week of August 2008. Lion subsequently provided the WRC with a copy of an agreement signed in March 31, 2008 between management and workers of the plant, and stamped by the Ministry of Labor, agreeing to this timeline for the retroactive payment.<sup>19</sup> The company stated

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<sup>17</sup> Decree No. 258-STSS-07, December 31, 2007, published in the government Gazette No. 31,496 on December 31, 2007. The Gazette can be viewed at the following website:  
[http://www.ccichonduras.org/Tabla\\_Salario\\_Minimo\\_2008.pdf](http://www.ccichonduras.org/Tabla_Salario_Minimo_2008.pdf)

<sup>18</sup> The WRC initially believed and reported to Lion that the company was in non-compliance for only the period January – March 2008.

<sup>19</sup> The WRC does not have information regarding the origins and circumstances of the agreement. Whatever its origins, the agreement would appear to violate Article 3 of the Labor Code, which states "All acts or stipulations that imply the renouncing, diminishment, or distortion of the rights of the Constitution, the present Labor Code, their regulations or other labor laws or provision of social benefits to workers, even if they are expressed in a labor contract or any other

that it has been the company's standard practice to delay the issuance of retroactive payments when the minimum wage is increased.

#### Recommendations

The WRC recommended that Lion urge Alamode to promptly provide workers with back pay to account for the period during which the applicable minimum wage was not being paid.

#### Lion Response

Lion stated that it recommended to Alamode management that it adopt and implement a policy of paying wages retroactively to ensure compliance with increases in the minimum wage standard within 30 days after any increase is passed. It also stated that Honduran Ministry of Labor certified on September 18, 2009 that payment of the minimum wage increase had been properly corrected. Lion stated that it awaited further recommendations pending a report from the Ministry of Labor on this issue. Lion has not reported further on this issue to the WRC.

#### WRC Verification

The WRC verified that Alamode provided workers with a retroactive payment correcting for previous non-payment of the minimum wage on August 25, 2008, which made workers whole for the period from January 1 through the second half of May, 2008. Management also contacted workers who were dismissed or resigned between mid-May and August 25 to ensure those workers received appropriate payments. The WRC estimates that, in total, just over \$30,000 was paid to the plant's workers in the retroactive payment. This represents significant remediation of material benefit to workers.

### **3. Legally Mandated Terminal Benefits**

#### Findings

All employee work contracts at Alamode are terminated at the end of each calendar year and then renewed the following next year. When the company liquidates workers' benefits each year, it calculates them as if the worker had worked for just the past year – or more accurately, for just short of one full year. These calculations do not take into account, however, the seniority of workers who have worked at the plant for multiple years, for whom, under Honduran law, the benefits for a year of service must be calculated at a significantly higher rate. When workers ultimately leave the factory, i.e., their contracts are not renewed, they are not made whole for the loss of benefits as a result of not being able to accrue seniority.

This practice plainly violates Honduran law, which makes clear that, irrespective of the duration of the contract(s) under which a worker is employed, the worker's period of employment is considered continuous if the worker performs the job for the employer on a continuous basis. Thus, the date of employment from which accrual of benefits at termination must be calculated is the date upon which the worker began performing the job on a continuous basis, not the date of the worker's most recent contract.

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contract, are to be considered null and void.” (WRC translation from the original Spanish). Payment of the minimum wage is an explicit requirement of the Labor Code.

Article 47 of the Labor Code states in its entirety (WRC translation, emphasis added):

Contracts that are relevant to work that is, by nature, permanent or continuous are considered to be indefinite, even when a period of duration has been expressed if, at the time that said contracts expire, the circumstances which gave rise to the need for the employment or the purpose for the services or the execution of the same or analogous work still exists.

*The time of service is counted starting at the date that the labor relationship begins even if it does not coincide with the date on the written contract.*

As a consequence, contracts for a set period of time for a determined job are an exception and can only be drawn up in those cases which are determined by the accidental or temporary nature of the service that is to be done or of the job that is to be executed.

If, as at the Alamode factory, an employee works for the factory on a continuous basis performing the same or similar tasks, the worker is properly considered a permanent employee with an unbroken tenure regardless of whether successive contracts are employed during the course of the worker's employment at the factory. In sum, the worker's tenure is considered to have begun the date the worker commenced on the job, and this is the date from which benefits payable at termination should be calculated.

It is true that Honduran workers generally like the practice of annual liquidation because it has the effect of supplementing their regular salary. It has also become something of an expectation among workers, because many, if not most, *maquiladora* factories in Honduras practice annual liquidation. While the legality of the practice of annual liquidation itself is a matter of some dispute, there is no question that at termination, workers must ultimately be paid the entire remaining amount of accrued compensation due to them under law – even if some other portion of this compensation had been paid out previously under an annual liquidation arrangement.

The areas in which the company's practice results in workers being denied full payment of legally mandated benefits are as follows:

#### *Accrued Severance*

Under Article 120 of the Honduran Labor Code, workers are entitled to accrued severance if their employment ends without the worker having quit of his or her own accord,<sup>20</sup> or having been dismissed with just cause. The amount of severance is determined by the worker's tenure in the facility, as follows:

- After continuous employment of no less than three (3) months and no more than six (6) months, an amount equal to ten (10) days of salary;
- After continuous employment of more than six (6) months but less than one (1) year, an amount equal to twenty (20) days of salary;
- After continuous employment of more than one (1) year, an amount equal to one (1) month of salary for each year worked, and for any additional period of employment of less than one (1) year, a proportional amount;

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<sup>20</sup> Article 114 establishes a number of circumstances involving negligence on the part of the employer – such as failure to pay workers in accordance with the law – in which a worker who quits is entitled to severance benefits; in such case, the worker's departure is considered the responsibility of the employer.

- Up to a maximum limit of eight (8) months of salary.

When Alamode liquidates workers' accrued benefits each year, it calculates the severance portion of their accrued benefits at the rate which would apply had they worked for a period of between six months and a year at the facility (20 days of salary), rather than a rate which takes into account workers' actual length of service (one *month* of salary, i.e, roughly 30 days pay, for workers with one or more years of service). While this annual payout of 20 days of salary may be appropriate as an "advance" on their eventual severance payment upon leaving the company, it results in an underpayment of this benefit for which workers are not made whole when, after multiple years of employment, they later do terminate their service.

The total amount of underpayment for each worker with one or more years of service is equivalent to the difference between the 20 days of salary they are paid each year and the month of salary per year of service to which they are entitled – a sum of roughly 10 days of salary per year of service. A worker employed by the company for 5 years, for example, would thus be underpaid upon their permanent departure from the facility a total of roughly 50 days of salary.

#### *Accrued Vacation Benefits*

Under the Honduran Labor Code, workers are entitled to a fixed number of paid vacation days each year, with the amount determined by their years of service with the employer. Article 349 establishes that when a worker's employment with a company ends for any reason, the worker is entitled to a payout for any vacation days he or she has accrued that have not been used. Article 346 outlines the number of vacation days to which a worker is entitled per year of service based on his or her tenure as follows:

- After one (1) year of continuous service, ten (10) consecutive working days;
- After two (2) years of continuous service, twelve (12) consecutive working days;
- After three (3) years of continuous service, fifteen (15) consecutive working days; and,
- After four (4) years or more of continuous service, twenty (20) consecutive working days.

As in the case of severance payments, Alamode's practice of annually liquidating this benefit does not take into account the tenure of employees with the company, and, therefore, results in underpayment for unused vacation days.

#### *Mass Dismissal*

The WRC learned in late May 2009 that Alamode had announced plans to carry out a mass dismissal of employees. It was subsequently confirmed that the company terminated roughly 130 workers on or around May 30. Alamode applied the unlawful approach outlined above in calculating workers' terminal benefits, resulting in substantial underpayment. As a result of the mass dismissal, the factory's non-compliance in this area took on great urgency.

#### Recommendations

The WRC recommended in May and June 2009 that Lion request that Alamode take the following actions:

- Pay all workers dismissed from the facility the full amount of severance and vacation benefits owed them on the basis of their total unbroken tenure at the facility. If workers have received an advance on their accrued benefits under an annual liquidation arrangement, the company should provide them with the difference between what they have been paid to date and the full amount owed to them under Honduran law.
- For workers who are not being dismissed as part of the current downsizing, provide workers with a choice of whether or not they wished to be paid an advance on their terminal compensation each year. This option should be communicated to workers verbally and in writing. The WRC expects that most workers will opt to continue being provided the advance, but workers should be afforded this choice.

### Lion Response

Following the WRC's recommendation, the WRC engaged in substantial dialogue with Lion concerning the issue of underpaid terminal benefits. Lion indicated on July 17 that it would recommend that Alamode consider changing its policy such that workers' accrued seniority should factor into severance calculations as an incentive to retain workers and motivate them to do a good job.<sup>21</sup> It also indicated that it agreed with the WRC's recommendation that workers be given a choice of whether or not they wished to be paid an advance on their terminal benefits each year. However, Lion stopped short of stating that it considered Alamode's practice of failing to take workers' accrued seniority into account for severance benefits a violation of its code of conduct.

After further discussions with the WRC and after seeking advice from a Honduran lawyer, Lion revised its position concerning the terminal benefits issue. In a letter sent to Alamode management on September 30, Lion stated that "it is [Lion's] position that the policy of interruption of seniority by annual terminations is not in accordance with our worldwide code of conduct and best practices of ethnical business." Lion also stated that, according to its attorney, Alamode's actions violated Honduran law.<sup>22</sup>

Lion requested that Alamode take the following actions:

1. The factory should pay the 130 workers who were terminated on or around May 30, 2009 the balance of the severance and unused paid vacation time that would have accrued based on uninterrupted continuous employment under Article 47. The factory should do this as soon as possible, but in no case later than 6 months from the date of this letter.
2. Alamode should immediately change its seniority policy going forward so that continuous seniority is accrued for all current employees retroactive to their first date of employment.

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<sup>21</sup> Lion noted in the same communication that Alamode asserted that some workers only work part of the year, leaving in the early months of the year to work in agriculture during the coffee cutting season. Alamode asserted, and Lion agreed, that such workers could not be considered to have worked continuously at the factory and could only accrue pro-rated severance credits for each partial year worked.

<sup>22</sup> The basis of the attorney's reasoning was as follows: The fact that local Ministry of Labor representatives may have certified the dismissals, as Alamode has asserted, does not render them lawful. This is because Ministry representatives would need to be physically present each year for each termination for such certification to have legal effect. In the case of dismissal of the 130 workers in May 2009, Alamode claimed that it obtained a verbal certification after the fact by a local Ministry representative. However, the Ministry declined to issue a written certification or statement on the matter and stated that it would not consider it proper to have a Ministry representative present for the dismissals.

3. Alamode should include a clause in the annual termination and hiring agreements and policies stating that seniority, by virtue of continuous employment, is recognized.
4. Lion will monitor the implementation of the above steps to ensure timely compliance and will report on the results to the Worker Rights Consortium.

Lion also reported on September 30 that it had already requested that the factory cease the practice of requiring that workers who worked previously at the factory and are in good standing undergo a two-month probationary period.

It is the WRC's view that Lion is now pressing Alamode to take remediation actions which, if undertaken by the company, would effectively remediate the extant violations. The WRC will monitor the implementation of these recommended corrective actions.

#### **4. Gender Discrimination**

##### *a. Pregnancy Testing*

##### Findings

The issue of pregnancy tests and maternity leave has been the area of compliance where the findings of the WRC have been most disputed by Lion Apparel. As described in this section, the WRC has concluded based on both abundant testimonial and significant circumstantial evidence that Alamode has required workers to take pregnancy tests as a mandatory aspect of employment.

This conclusion represents a finding of serious noncompliance with both the City's code of conduct and Honduran law, both of which prohibit discrimination against workers on the basis of gender. Moreover, discrimination against workers in relation to their pregnancy is explicitly forbidden by Honduran law.<sup>23</sup>

Alamode workers testified in offsite interviews conducted in April 2008 that the factory conducts pregnancy tests in the first quarter of every year. Female workers consistently and repeatedly told WRC investigators that they themselves had been required to take such tests. Workers testified that the company requires all female workers to take a standard urine-based pregnancy test of the kind that can be bought in a pharmacy, with workers called in by groups to the factory clinic to undergo the testing during late February or March of each year. Workers were specific that the testing is presented by management as a requirement of all female workers, not as a voluntary program. Workers stated that this has been company practice for some time, with workers testifying that it has occurred every year for at least the past five years.

##### Recommendations

The WRC recommended that Lion ensure that Alamode cease the practice of requiring that workers undergo annual pregnancy tests. In addition, because pregnancy testing is a practice commonly associated with discrimination against pregnant workers and because, as described below, the WRC found evidence of such discrimination at the factory, the WRC also recommended that Lion ensure that Alamode provide maternity leave in accordance with Honduran law. Finally, the WRC recommended to Lion that Alamode issue a statement to the workforce in writing making clear that Alamode respects workers' right to maternity leave and that no worker will be subject to discrimination related to her pregnancy.

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<sup>23</sup> Article 46 and Article 51 of the Law for Equal Opportunity for Women and Article 144 of the Honduran Labor Code.

### Lion Response

Lion disputed the WRC's findings in this area, as well as in the related area of pregnancy discrimination, as discussed separately below. The company's response to the WRC's findings in this area were: 1) that Alamode has no policy concerning pregnancy tests or forced dismissals in its employee handbook; 2) that a firm hired by Lion to perform an audit of Alamode found a number of pregnant workers in the factory; 3) that Lion's review of the company's payroll records indicated that maternity pay is provided to workers on maternity leave. In conclusion, Lion stated that "Without evidence that contradicts these records, we do not accept these allegations to be true."

During a meeting with Lion representatives in Washington, DC on September 2, 2008, the WRC raised these issues in the hope of convincing Lion to undertake remediation of what the WRC considered a very serious area of noncompliance at Alamode. WRC agreed to undertake further investigation of this issue, report its findings to Lion, and make further recommendations.

### WRC Further Investigation

The WRC conducted further investigation into pregnancy testing at Alamode during December 2008, including additional offsite interviews with workers by WRC staff, and a review of relevant factory records during the verification inspection of Alamode. During this investigation, as during its previous investigation in April 2008, the WRC found substantial credible evidence that Alamode had carried out pregnancy tests of women workers on an annual basis as a mandatory aspect of employment.

### *Worker Testimony*

The WRC's findings are supported, principally, by repeated, consistent and detailed testimony to this effect from workers, taken during April 2008 and December 2008. This highly consistent, detailed testimony by workers who had no incentive to provide false information and, to the contrary, were extremely fearful that providing *any* testimony to outside investigators would result in management reprisal, constitutes substantial credible evidence that the company has conducted pregnancy testing of female workers and presented these tests to these workers as a mandatory requirement.

### *Additional Evidence*

Because, consistent with established practice in international labor rights investigations, the WRC regards testimony provided in worker interviews as sufficient to reach credible findings of fact,<sup>24</sup> the WRC's finding would stand regardless of whether it was supported by other corroborating direct or circumstantial evidence. In this case, however, such evidence is also present. During the WRC's onsite factory inspection on December 10, 2008, two WRC investigators (one staff investigator and one consultant investigator from EMIH) walked into the plant's health clinic.

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<sup>24</sup> See, e.g., Adrian Goldin, *Mission Report on Closure Process at Jerzees de Honduras* 3 (2008) (report for Fair Labor Association by ILO expert) ("Testimony is a decisive source of evidence in matters related to labor relations in general [...] [s]o much so that within the International Labour Organization, the organs that are responsible for freedom of association investigations rely without reservation on this source of evidence.")(parenthetical omitted); available at: [http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2008/NewsReleasesandStatements2009/jerzees\\_de\\_honduras\\_second\\_jdh\\_investigation\\_jan\\_2009.pdf](http://www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2008/NewsReleasesandStatements2009/jerzees_de_honduras_second_jdh_investigation_jan_2009.pdf).

After discussing various elements of the services provided by the clinic, the WRC investigator asked the nurse if the factory performs pregnancy tests of workers. The nurse replied in the affirmative. Surprised by this answer, the WRC investigator again asked the nurse to clarify that the factory itself performs pregnancy tests. The nurse replied in the affirmative again. The WRC consultant investigator asked if tests were voluntary or required of workers. The nurse replied they were required of all workers. The WRC investigator asked if the tests were conducted for all workers or only some workers for specific reasons. The nurse replied that the tests were carried out for all female workers, and described a process by which women workers were called into the clinic in groups to conduct the tests. The WRC investigator asked when the tests were conducted, making no mention of any specific month or period of the year. The factory nurse replied that they were conducted in late February. At this point, the WRC investigator asked a representative of Lion who was present in the factory to come to the clinic so that he could hear the nurse's testimony. In the presence of the Lion representative, the WRC investigator asked the nurse again whether the plant conducts pregnancy tests. She replied again that the plant does require workers to perform pregnancy tests. The WRC investigator then relayed this to the Lion representative, who does not speak Spanish.

The Lion representative then exited the clinic and spoke with the representative of Grupo Karim in the production area, who was present in the factory on the day of the WRC's verification assessment. The Lion representative indicated that he was surprised that any pregnancy testing would occur at the factory, indicating that Grupo Karim management had previously informed him that no pregnancy tests, whether voluntary or required, were performed at the plant.

A series of brief discussions then ensued between the WRC investigators and the representatives of Lion and Grupo Karim. The Grupo Karim manager initially challenged the account of the WRC staff investigator, suggesting the nurse had not stated that pregnancy tests were required and that the nurse had been misunderstood. The WRC investigators made clear the nurse had been utterly unambiguous in her statements.

The Grupo Karim representative then went to speak with the nurse in private in the factory clinic. When he returned he stated that the nurse would not be in any position to know the company's practices because she had only been employed at the factory for three months. Subsequently, during a wrap-up discussion among WRC, Lion, Alamode, and Grupo Karim representatives, a member of management sought to bring the nurse into the room to make a further statement. The nurse looked frightened and upset.

Given the coercive nature of the situation, and, therefore, the inherent unreliability of any information thereby elicited from the nurse, the WRC staff investigator deemed it inappropriate to require her to give new testimony in front of management and others, on a topic on which it had obviously been made clear to her that she had made statements of which management strongly disapproved. The WRC staff investigator so informed the representatives of Lion and Grupo Karim.

The WRC considers the nurse's statements to the WRC investigators to be a credible source of corroborative evidence on this topic. Like the Alamode workers themselves, the nurse had no motive to be dishonest in her initial statements to the WRC. Even given her relatively brief period of employment of the plant, she had reason, and would be expected, to be knowledgeable about the practices and policies of the factory health clinic where she was employed. Significantly, her statements to the WRC investigators were repeated several times, were not the result of leading questions, and corroborated in detail the information provided by the Alamode workers.

To suggest that the information the factory nurse provided to the WRC investigators was false is to suggest that, for some reason, she, along with a number of Alamode workers, all inexplicably provided the same incorrect, but detailed, information about the factory's practices in this regard. Nevertheless, as noted above, even if the statements by the nurse as described above are not credited in any way, the offsite worker testimony gathered by the WRC would be sufficient evidence to conclude that pregnancy testing carried out on an involuntary basis, or on a basis perceived by workers to be involuntary, occurred at the plant.

It is also important to note that, through the WRC's additional investigation, a plausible motive for the use of factory-wide pregnancy tests was identified. As discussed in the preceding section, Alamode liquidates all of its employees each year in December and then requires them to sign new employment contracts, as new employees, the following year. However, prior to signing new contracts, the workers are required to undergo a two-month probationary period during the months of January and February. Those workers whom the company chooses to keep on following this period then sign new contracts in March or early April. If the company's intention is to use the pregnancy tests as part of a strategy to remove pregnant workers from the workforce and thereby avoid the payment of maternity benefits, the timing of the pregnancy tests in late February or early March makes a great deal of sense: the company can simply opt to quietly not renew the contracts of workers whose tests results are positive. The process of terminating a pregnant worker (as opposed to simply not renewing her contract) would be significantly more cumbersome once an employment contract is in place, as the company would then be obligated to obtain prior government authorization to dismiss the worker.<sup>25</sup>

While further research would be necessary to determine whether or not the company has used the pregnancy tests as a means to discriminate against pregnant workers in this way,<sup>26</sup> the timing of the pregnancy tests in relation to the probationary period provides a logical explanation for why the company would require all female workers to take pregnancy tests at the same time every year. Nevertheless, as noted, the use of pregnancy tests as a mandatory aspect of employment is an illegal invasion of workers' privacy, regardless of whether it is established that the tests are used for discriminatory purposes.

### Further Recommendations

The WRC recommended anew that Lion ensure that pregnancy tests shall not be required of workers at Alamode going forward. The WRC also recommended, with emphasis, that no actions of reprisal be taken against the clinic's nurse, given the events described above. The WRC representatives spoke with the nurse before leaving, providing contact information in the case that any such reprisal was taken.

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<sup>25</sup> This requirement is stipulated in Article 124 of the Honduran Labor Code, which reads in its entirety (WRC translation): "The employer cannot terminate the work contract of a pregnant woman without prior authorization from a Labor Judge with respect to the causes enumerated in Article 112. In these cases, the employment relationship will continue until the post-natal leave has finished or until a sentence has been executed which declares that the contract has been terminated."

<sup>26</sup> The WRC estimates that roughly 400 of the plant's 500 workers are women, virtually all of whom are of child bearing age. Yet, as of July 2008, according to a document supplied by Lion Apparel, there were only seven (7) pregnant workers employed at the facility. Social science analysis beyond the scope of this investigation would be required to explore such questions as to whether or not a substantially larger number of pregnant workers would be expected in the absence of discrimination and whether or not the pregnant workers' due dates are consistent with a practice of dismissing some or all pregnant workers at the same every year.

### Lion Response

Following discussion concerning pregnancy testing during the December 10 verification inspection, Lion prepared a written notice stating that pregnancy tests were prohibited at the factory. The statement was posted at the factory on the same day.

At the same time, Lion has maintained the position that these WRC findings are in error and that Alamode has not required workers to take pregnancy tests. Lion's basis for its position relates mainly to two aspects of the WRC's investigation: the WRC's reliance on worker interviews in its fact-finding process and Lion's differing assessment of the significance of the statements of the factory nurse.

Lion asserted that: (1) the statements attributed to the nurse by the WRC are based on a conversation that was "only 1-2 minutes" and that did not adhere to the WRC's investigative protocols for evidence gathering; (2) Lion's representative, who does not speak Spanish, was not in fact present when the nurse made her statement and only heard a version of her statements second hand from WRC investigator; (3) the nurse, upon hearing from the Grupo Karim representative the statements attributed to her, vehemently denied having made the statements; (4) the WRC did not allow the nurse to clarify her statements; (5) the nurse and the factory's doctor stated subsequently that pregnancy tests are given only at the request of employees as part of the clinic's health services; (6) the nurse had only been employed at the factory for 2-3 months and therefore would have no knowledge of the alleged testing in February; and (7) the fact that, as discussed below, that the WRC did not find documentary proof that workers are terminated upon leaving the plant for the maternity period or denied maternity benefits, undermines the WRC's findings regarding pregnancy testing, as Lion claims, this indicates that Alamode lacks motive to discriminate against pregnant workers.

### Additional Discussion

As previously discussed, the WRC's finding that the Alamode factory has carried out pregnancy tests and that the practice has been presented to workers as a mandatory aspect of employment is supported by extensive and detailed worker testimony. The WRC's reliance on such testimony is consistent with standard labor rights and human rights investigation methodology, which recognizes that management admissions or documentary evidence of such practices are rare and that worker testimony is considered a credible source of evidence on such matters.<sup>27</sup> Lion questioned the WRC's investigative methodology because of its reliance on worker testimony, and attacked our crediting of the corroborative testimony by the factory nurse, because it was subsequently disavowed.

These criticisms lack merit. First, *contra* Lion, as one noted ILO labor rights expert has recently explained, it is methodologically unsound for any labor rights investigator to take the position that credible findings of labor rights violations cannot be reached unless the person testifying to the violations can produce documentary proof. While that approach may reveal the "formal truth" that exists in factory records, it obscures the "material truth" of what workers have actually experienced.<sup>28</sup>

Second, the evidentiary value of an employee interview depends on both its substantive content and the context in which it is conducted. As noted, the Alamode workers, who testified offsite as

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<sup>27</sup> See, e.g., *id.* at 3-4.

<sup>28</sup> See *id.* at 4.

to the practice of pregnancy testing at the factory, lacked any incentive to make false claims in this regard – and indeed, believed that they risked retaliation for speaking of such matters to investigators. Lion has offered no reason for believing that this information, which was corroborated both first hand – by workers who testified as to undergoing the testing – and second hand – by workers who reported that their co-workers were tested – should not be considered reliable.

Nor did the factory nurse who was first questioned by the WRC investigator have any reason to lie about the tests when she originally confirmed the practice. She gave specific details concerning the practice – such as the month of year in which pregnancy tests are carried out – which precisely matched those provided in offsite worker testimony. The fact, raised by Lion, that the nurse had only worked at the clinic for a few months does not explain why the information the nurse gave was so consistent with the testimony by the workers.

In contrast, any reported retraction made by the nurse, made *after* factory management had spoken with her regarding her conversation with the WRC investigator, must be viewed with great skepticism, in light of the motive and opportunity for coercion by factory management. It would be wholly inappropriate to credit an employee's disavowal of prior, freely given testimony, when that disavowal is presented in the presence of management and under patently coercive circumstances. Such an approach would fly in the face of the basic realities of labor rights investigation in the global apparel industry: where management coaching of onsite employee testimony is the norm rather than the exception, and where one of the primary obligations of investigators is to insulate the assessment process from evidence provided under coercion.<sup>29</sup>

As discussed above, contrary to Lion's assertions, there does exist a highly plausible motivation for conducting pregnancy tests of all female workers in late February or early March. The timing of these tests would enable management to selectively non-renew the contracts of workers who, at the point in the year, would be on probationary status and would not yet have signed annual work contracts. This would reduce the number of pregnant workers in the plant and consequently the cost of the company's maternity benefit obligations. As noted, the factory has workers sign new contracts each year shortly after the period in which workers are made to take the pregnancy tests. The presence of some pregnant workers in the factory does not disprove this possible motive: workers who become visibly pregnant before the tests are carried out each year could not be quietly dismissed through the non-renewal of their contracts without violating, in an obvious way, requirements under Honduran law that require employers to obtain prior government authorization to dismiss pregnant workers.

### WRC Verification

As noted, the WRC verified that on December 10, 2008 an announcement by Lion stating that pregnancy tests were prohibited was posted at the Alamode factory. The WRC's finding was that in previous years such tests had been conducted in late February or March. The WRC confirmed that no pregnancy tests were conducted in February or March, 2009. The WRC therefore considers the violation to be substantially remediated.

### *b. Maternity Leave and Benefits*

### Findings

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<sup>29</sup> See, e.g., T.A. Frank, "Confessions of a Sweatshop Inspector," *Washington Monthly* (Apr. 2008), available at <http://www.washingtonmonthly.com/features/2008/0804.frank.html>.

Honduran law prohibits discrimination against workers on the basis of pregnancy and stipulates that workers are entitled to paid maternity leave. Such leave is to be taken during the four weeks prior to and the six weeks following the delivery of a child, for a total of ten weeks' leave.<sup>30</sup> During this period, workers are entitled to compensation at their regular wage rate. Under the law, the worker's employer contributes one third of her regular wage for maternity pay, while the remaining two thirds of the benefit are paid by IHSS, assuming the worker is enrolled in the program.<sup>31</sup> Following maternity leave, workers are permitted to return to their previous position at the factory.

Alamode workers interviewed in April 2008 stated that the company had denied workers legally-required paid maternity leave. Workers stated that management has in the past told workers they are welcome to return to the factory after giving birth if they so desire, but they will not be paid maternity benefits in the interim period. The WRC consultant investigators who conducted the onsite audit in June 2008 were not permitted time to review the company's records in the area of maternity pay.

### Recommendations

The WRC recommended on the basis of the worker testimony that Lion request that Alamode ensure that all workers are provided with maternity leave in accordance with the law.

### Lion Response

Lion contested the WRC's findings and contended that Alamode was already in compliance with the law with respect to maternity leave payments. Lion stated that it reviewed Alamode's payroll reports and found that maternity pay is paid to personnel on maternity leave. In the hope of convincing Lion to undertake remediation of what the WRC considered a very serious area of noncompliance at Alamode, WRC agreed, during a meeting with Lion representatives on September 2, 2008, to undertake further investigation of this issue, including a review of payroll documents, report its findings to Lion, and make further recommendations.

### WRC Further Investigation

During the WRC's verification assessment, the WRC examined documents provided by the company on the maternity pay issue. The documents indicated that, in the cases the WRC reviewed, pregnant workers were paid a third of their salary during the maternity leave period, consistent with the company's legal obligations, and that during the period in question these same workers were enrolled in the IHSS system, through which they should be able to obtain the remaining two thirds of their maternity benefit. These documents corroborate, for the period examined, the company's claims that workers have not been subjected to discriminatory dismissal in regard to pregnancy at the time that they take maternity leave.

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<sup>30</sup> Articles 124, 135, 144, 145 of the Honduran Labor Code. Under Honduran law, any employer seeking to terminate an employment relationship with a pregnant employee must obtain prior authorization from a competent judge, or municipal mayor, and must provide the worker with prior notice of her dismissal.

<sup>31</sup> Article 43 of the General Regulation of the Law of the Honduran Institute of Social Security (IHSS), Accord No. 003-JD-2005.

However, workers testified, including in December 2008, to WRC investigators that the company has in the past not provided maternity benefits: specifically that workers were allowed to take maternity leave and later return to work but without being paid in the intervening period. This included first hand testimony from workers who experienced this denial of benefits themselves. The WRC's investigators considered the testimony credible and persuasive. The workers interviewed indicated that the non-payment of maternity benefits was a past practice, not a current one.

One explanation that would reconcile the documentary and testimonial evidence on this issue is that the company provides maternity leave now and has so done for the past 1.5 years, but previously did not do so. This scenario is consistent with the company's past unlawful failure to enroll workers in the IHSS system, the system through which the bulk of maternity benefits are typically paid. As noted above, the company had failed to enroll some 60% of the workforce in IHSS. If workers were not enrolled in the system, if they received maternity pay they would have to have been paid the full benefit directly by the company. The management provided the WRC with documents evidencing one instance in which the company had directly paid full maternity benefits to a worker in prior years. However, the documents available at the factory were only from 2006 onward; thus a comprehensive testing of this hypothesis was not possible.

In any case, the WRC confirmed that Alamode is currently enrolling all workers in IHSS and workers are receiving maternity leave benefits. Assuming that the company continues to enroll all workers in IHSS and continue to pay its share of maternity benefits, remediation in this area is complete.

#### **4. Harassment and Abuse**

##### *a. Verbal Harassment*

##### Findings

Honduran law prohibits verbal harassment and abuse of workers.<sup>32</sup> Workers in offsite interviews reported that managers and supervisors sometimes shout at them with foul language when they want them to work faster. While the extent of this problem is not clear based on the interviews, it is clear that some supervisors do address workers in an abusive manner.

##### Recommendations

The WRC recommended that Lion request that Alamode ensure that supervisors and managers treat workers with dignity and respect, refraining from shouting, yelling, or using demeaning language when communicating with workers. The company should establish a clear disciplinary policy with respect to verbal harassment. Any supervisor or manager who is found to have engaged in verbal harassment and abuse should be subject to disciplinary action, leading to dismissal.

##### Lion Response

Lion responded that it did not find through its own inquiries any evidence of abusive language or threats being used towards workers. Lion stated that without more definite first-hand evidence,

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<sup>32</sup> Article 95, #6 of the Honduran Labor Code: Give the workers due consideration, abstaining from mistreatment, in words or actions, or acts that could affect their dignity.

the company is not convinced that this is a significant problem at the Alamode facility. However, Lion stated that it agreed with the WRC's recommendation that Alamode should have a written disciplinary policy and a process for handling complaints and enforcing disciplinary measures against any abusive or harassing behavior.

#### WRC Verification

The WRC found in its follow-up offsite interviews with workers that there has been some progress on this issue. Nevertheless, there were continued reports of verbal harassment by supervisors. The WRC provided management and Lion with the names of supervisors whose behavior was identified as problematic and some specific examples of such conduct.

Management showed the WRC a copy of a disciplinary policy which makes general reference to appropriate treatment in the workplace. Alamode also had posted a statement from Lion dated July 25, 2008 which assures workers they will not be subjected to reprisal for making complaints. The WRC discussed with Alamode and Lion representatives the need for a better articulated policy for addressing worker grievances, in particular, in situations where conduct by a worker's direct supervisor is the source of the grievance.

#### Further Recommendations

The WRC recommended to Lion that it ensure that specific policies are implemented which address discipline of supervisor conduct, including a reliable grievance procedure allowing workers to bypass supervisors when necessary. Training should be provided to management staff and other employees on this policy.

#### Lion Further Response

Lion stated that it will continue to monitor these “allegations” and ensure that standard procedures are in place in this area.

### **6. Freedom of Association**

#### Findings

Honduran law establishes that workers have the right to freely join organizations of their choosing, including labor unions, and prohibits acts of interference by employers in workers' exercise of this right.<sup>33</sup>

The Alamode facility does not have a labor union. Workers interviewed offsite exhibited significant fear regarding potential retaliation by management if they were to organize a union. The investigative team did not gather significant details regarding any actions by management in recent years relative to labor organizing at the factory. The timidity of workers in speaking with investigators made discussion of this topic difficult. Indeed, as described earlier in this report, the level of fear exhibited by workers toward speaking candidly in offsite interviews was among the most pronounced the WRC has seen in any case in the region.

As part of this inquiry the WRC gathered information from former Alamode workers and a

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<sup>33</sup> Article 127 of the Honduran Constitution and Article 469 of the Honduran Labor Code.

Honduran labor rights advocacy organization known as Común, which publishes a magazine called *Vida Laboral*, concerning alleged prior violations of workers' associational rights by Alamode. These sources report the following:

Workers at the Alamode factory sought to organize a labor union at the factory in the year 2000. The union they attempted to form was affiliated with the national union federation FITH. The workers' efforts to organize were reportedly motivated by poor labor conditions in the factory, including allegedly unhygienic restrooms, poor quality drinking water, excessively high temperatures in the production areas, and failure to pay workers' compensation in accordance with the law, among other issues.

Alamode reportedly responded to the union's organizing by unlawfully dismissing virtually all of the members of the union's leadership committee. When the union was reconstituted in February 2001, the company reportedly responded by dismissing the president, vice president, and treasurer of the new union leadership committee. Shortly after, in March 2001, workers at the factory went on strike. During the strike, which lasted four days, some physical confrontations between workers and police called to the scene occurred. Eventually, with the intervention of the Ministry of Labor, some settlement meetings were held, resulting in the payment of severance to dismissed workers and several other measures. Following these events, the union ceased to have a meaningful presence in the factory.

The WRC ultimately recommended that the company take two actions regarding freedom of association and expression.

First, in view of the fear exhibited by workers regarding the exercise of rights of association in the plant, the WRC recommended that Lion recommend to Alamode that it issue a statement to the workforce, verbally and in writing, making clear that the factory will respect the right of workers to join any organization of their choosing and that no worker will be subject to retaliation or reprisal for the decisions that he or she makes in that regard. It was noted that even in the absence of concerns in this area, such an announcement would be an appropriate measure to take simply as a proactive step to ensure that workers understand their associational rights.

Second, the WRC recommended that Lion Apparel itself issue a statement on the issue of Lion's intentions vis-à-vis labor rights issues in the plant and the workers' right to report violations to monitors or Lion itself. This second recommendation was made in view of concerning developments which occurred in the weeks following the WRC's onsite inspection on June 19, 2008. Workers reported that factory supervisors had threatened that the plant was likely to close because brands would be withdrawing business as a result of the scrutiny the plant had received concerning the plant's labor practices. Workers further reported that supervisors were pressuring them to sign a statement ostensibly to the plant's buyers that the factory was in full compliance with the law and there were no problems.

Shortly afterward, during a WRC visit to Honduras to follow up on this and other cases, the WRC received additional reports from workers to the effect they were repeatedly being sent home on unpaid leave for periods of several days at a time. These developments raised very serious concerns that the predictions made to workers concerning the potential withdrawal of business in relation to the scrutiny of labor practices were being borne out. Such "cutting and running" by brands results in workers being punished with the loss of their job for speaking candidly about the abuses they are experiencing. Additionally, even if entirely unfounded, these threats and predictions serve to chill workers' exercise of their basic human right to speak freely and honestly about their working conditions, and, thereby, inhibit the ability of outside organizations like the

WRC to accurately assess the plant's compliance.

In order to address the issue, the WRC requested that Lion 1) confirm its intentions to continue doing business at the plant, and 2) provide a written communication, to be shared with the plant's workers, assuring the workers that Lion intended to maintain production at the plant, while working to address labor rights issues, and that workers were encouraged to submit complaints if they felt their rights were being violated. Lion responded positively on both points. WRC investigators shared the document with workers offsite and we have confirmed that it was issued by management to workers inside the plant.

### Lion Response

Lion responded promptly and positively to the WRC's concerns regarding the threats of closure. The company confirmed that it intended to continue a business relationship with Alamode, while working to ensure compliance with labor standards. Lion agreed to produce a letter to the workforce making the points noted above, doing so on short notice so that WRC consultant investigators could assure workers of the company's position during a previously scheduled offsite meeting. This measure was vital in enlisting workers' trust to speak candidly regarding the situation in the plant. Lion's letter is dated July 25, 2008. The key passage reads as follows:

We are reviewing the [WRC's] report that has been provided to us and we commit ourselves to working with WRC, EMIH and the factory to determine the veracity of the complaints and take steps to correct any violations that may have occurred.

Meanwhile, assuming that the factory will continue to provide high quality products at reasonable prices, *Lion Apparel* is committed to maintaining business relations with Alamode while also collaborating with all parties to understand the complaints and implement the corrective measures that may be necessary. *Lion Apparel* is glad to accept all suggestions and credible and sincere complaints brought forward by workers currently employed at the factory who believe their rights have been violated. *Lion Apparel* will maintain the confidentiality of any complaint or suggestion received and will not share them with anyone outside of the company. We will not reveal to anyone outside of the company the name of any person that wishes to assist us in a voluntary manner in our effort to check the veracity of these allegations. *Lion Apparel* will not respond to any complaint by withdrawing business, but instead will remain in the factory, while working to correct any violations. *Lion Apparel* also invites workers who have sincere positive feedback about conditions in the plant to communicate with us directly so that we have a fair picture of conditions in the factory.

### WRC Verification

The WRC received the letter from Lion regarding worker complaints on July 25 and its consultants promptly shared it with workers in an offsite meeting. The WRC also confirmed through worker interviews that the letter was read aloud to workers and posted throughout the plant. When the WRC visited the plant in December for the verification audit, the letter was still posted in various places at the facility. The WRC considered the letter a significant step toward the end of allaying worker fears regarding speaking candidly with auditors and management concerning workplace problems.

Nevertheless, the WRC found in follow-up monitoring that workers continued to report in offsite interviews a significant (and unusual by industry standards) level of fear of speaking candidly.

### Further Recommendations

In this light, the WRC recommended that Lion reinforce the message of the July 25 letter with periodic verbal readings to the workforce (every three months). The WRC also recommended that management make pro-active efforts to ensure that an individual recently appointed by the company as responsible for compliance issues successfully earn the trust of workers. The WRC also concurred with Lion's suggestion that the factory's suggestion box system be promoted and, where appropriate, the company should post anonymous worker suggestions and response of management for the workforce to review.

### Lion Further Response

Lion noted that between July 25, 2008 and January 30, 2009, Lion Apparel received no letters from any employees regarding any allegations of mistreatment. It stated that it will continue to reinforce the message that employees are welcome to provide Lion Apparel with concerns about violations of employment rights.

The WRC has noted to Lion representatives that, in light of the extreme degree of fear regarding speaking with outside parties, workers are unlikely to contact the brand directly in the case of complaints about company practice. However, we believe that repeated statements by Lion to the effect that it is concerned about compliance issues – and follow-up by the company in the areas described in this report – will over time help to make workers feel more secure and increase the likelihood that workers may seek assistance from labor rights advocates or monitors (such as EMIH) that are based in Honduras.

Lion further stated that it opposes any illegal activities that violate freedom of association and that the company will communicate this to employees of Alamode in written form.

### **D. Conclusion**

Although there has been disagreement concerning the status of compliance on some issues, and although the process of remediation has been an extended one, there has been progress at the factory in a number of areas. These corrective actions, undertaken by the factory at Lion's urging, have improved labor compliance, though problems remain.

The most pressing of the remaining issues is the facility's underpayment of workers for accrued severance and other legally mandated terminal benefits. Lion Apparel has requested that Alamode take measures which, if implemented, would bring the facility into compliance in this area. The WRC will continue to monitor progress on implementation and issue an update on this matter in the future.