



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
SMC, S.A. (DOMINICAN REPUBLIC)**

**FINDINGS AND RECOMMENDATIONS**

**September 28, 2013**

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## I. Executive Summary

This report details the findings and recommendations of the Worker Rights Consortium (WRC) concerning labor practices at SMC, S.A. (“SMC”), an apparel manufacturing facility in the Dominican Republic.

SMC is located in the Zona Franca Industrial La Vega (La Vega Free Trade Zone) in La Vega Province, which is in the central part of the Dominican Republic. At the time of the WRC’s visit to SMC in September 2013, the factory employed roughly 230 persons, including office and management personnel. SMC is a cut-and-sew apparel assembly facility that chiefly produces uniform shirts and other tops from synthetic and blended materials.

The WRC undertook its compliance assessment of SMC pursuant to its role as the independent monitor for the City and County of San Francisco, California (“the City”) under the City’s Sweatfree Contracting Ordinance (“Ordinance”) which sets labor rights standards for manufacturers of apparel supplied to the City by the City’s vendors.<sup>1</sup> SMC has been identified as a subcontractor to the Cincinnati, Ohio-based uniform company, Fechheimer Brothers Company (“Fechheimer”), which is a division of Berkshire Hathaway, Inc., the Omaha, Nebraska investment-holding firm headed by Warren Buffett.

Fechheimer is the prime contractor to City vendor Galls, Inc. (“Galls”) for manufacturing of uniforms to be supplied by Galls to employees of the City’s Municipal Railway Company (“Muni”), the public transit division of the San Francisco Municipal Transportation Agency. As a result, labor conditions at SMC are required to meet the standards established for producers of apparel supplied to the City under the Ordinance as a term of Galls’ contract with the City to supply uniforms for Muni employees.

The WRC’s assessment of SMC was conducted by the WRC’s Central America and Dominican Republic representatives, with the assistance of Enrique Medina, a certified industrial hygienist and safety professional based in San Diego, California, and the Fundacion Laboral Dominicana (Dominican Labor Foundation) (“FLD”), a nongovernmental organization based in the Dominican city of Santiago. The WRC’s representatives and Medina, the safety expert, inspected the factory on September 26, 2013, and reviewed records which SMC management made available for onsite examination. FLD, under the WRC’s supervision, conducted in-depth offsite interviews with SMC workers both before and after the inspection.

The City’s Ordinance requires manufacturers of apparel supplied to the City to comply with all applicable domestic labor and employment laws of the country where manufacturing occurs, as well as certain additional labor standards including payment of a non-poverty wage and specific protections for the rights of women workers.<sup>2</sup> The WRC’s assessment of SMC identified

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<sup>1</sup> *Codified as*, San Francisco, Cal., Administrative Code (“City Code”), Ch.12.U (2005), as amended, Feb. 11, 2010: <http://www.sfgsa.org/Modules/ShowDocument.aspx?documentid=6894>.

<sup>2</sup> *See*, City Code, Ch. 12.U.2 (j) (defining “Sweatshop Labor” as “work performed by any Worker under terms or conditions that seriously or repeatedly violate laws of the jurisdiction within which the work is performed governing: (i) wages; (ii) employee benefits; (iii) health and safety, including without limitation exposure to hazardous or toxic substances; (iv) labor, including without limitation collective bargaining rights; (v) environmental conditions; (vi) nondiscrimination, harassment, or retaliation,

noncompliance with the Ordinance's requirements in the following areas: (1) wages and hours, (2) statutory paid time off, (3) maternity benefits, and (4) health and safety.

As detailed in Section III of this report, with respect to each area where violations were identified, the WRC reached the following specific findings:

### ***Wages and Hours***

- **Non-poverty wage.** While compliant with the Dominican Republic's legal *minimum* wage standard, the average wages SMC employees receive for regular working hours provide less than half of the City's mandatory minimum *non-poverty* wage rate.<sup>3</sup> The City's non-poverty wage standard for manufacturers of apparel for the City in the Dominican Republic is a minimum rate of \$2.17/hour,<sup>4</sup> yet a review of payroll records provided by SMC management – which were generally consistent with wage information obtained through offsite interviews with SMC workers – revealed that workers receive on average a base wage rate of \$0.75/hour, and, even when including non-guaranteed production bonuses, wages average only \$0.90/hour, figures representing only 35% and 41% of the City's non-poverty wage.
- **Hours of Work.** The factory's daily schedule for regular (non-overtime) work, as confirmed by both workers and factory manager exceeds by forty-five minutes per day the maximum length permitted under Dominican law, and provides workers with a daily rest period that is only half the length the law requires – and, by virtue of exceeding these national standards, thereby violates the City's Ordinance as well.<sup>5</sup>
- **Mandatory Overtime and Underpayment of Overtime.** Because the daily work schedule that the factory maintains as a condition of its workers' employment exceeds the maximum length permitted for regular working hours under Dominican law, the excess hours that employees perform as under this schedule amount to overtime work (1) to which workers have not voluntarily acceded because it is a condition of employment and (2) for which they are not compensated at the mandatory overtime rate set by Dominican law. Because the City's Ordinance requires companies to comply with Dominican labor laws,<sup>6</sup> this working schedule additionally violates the City's Ordinance. Moreover, some, but not all, of the workers who were interviewed indicated that they also are required, under threat of

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including without limitation all laws prohibiting workplace and employment discrimination; (vii) freedom of association; or (viii) building or fire codes. . . [or] any work performed by any person contributing to the provision of Goods to the City and County under a Contract or Subcontract that constitutes Foreign Convict or Forced Labor, or Abusive Forms of Child Labor or Slave Labor.”) 12.U.3. (a) (“Each Contractor and Subcontractor, regarding any Worker, shall comply with all human and labor rights and labor standards imposed by treaty or law on the country in which the Goods are made or assembled, and shall not engage in Sweatshop Labor.”), (b) (requiring payment of non-poverty wages), (g)-(i) (prohibiting mandatory overtime, harassment and mandatory pregnancy testing or use of contraception).

<sup>3</sup> See, id. at 12.U.3.

<sup>4</sup> See, City and County of San Francisco, *Sweatfree Contracting Ordinance (Administrative Code Chapter 12.U), Current Wage Rates for Overseas* (Dec. 21, 2012), <http://www.sfgsa.org/modules/showdocument.aspx?documentid=8457>.

<sup>5</sup> City Code, Ch. 12.U.2.(j), 12.U.3.(a).

<sup>6</sup> Id. at Ch. 12.U.2.(j), 12.U.3.(a).

discipline, to perform additional overtime, beyond this regular work schedule – constituting an additional violation of the Ordinance.

### *Statutory Paid Time Off*

- **Paid Holidays and Annual Leave.** Dominican labor law requires employers to provide workers on an annual basis with a defined number of paid holidays, including the national Christmas and New Year’s holidays, and paid annual leave days. As discussed in this report, the payment SMC makes to workers for this statutorily mandated paid time-off underpays workers in the amount of two day’s wages. This failure to comply with national law violates the terms of the City’s Ordinance as well.<sup>7</sup>
- **Paid Breaks for Breastfeeding.** Dominican labor law requires that recent mothers receive daily break times for breastfeeding. Workers interviewed for this assessment, several of whom had given birth while employed at the factory, said that they did not receive and were not aware of this statutory benefit. The company’s management acknowledged that these workers did not receive this break time. Because failure to provide this break time violates Dominican law, it also violates the City’s Ordinance.<sup>8</sup>
- **Paid Sick Leave.** Dominican law requires that employers pay workers their wages for their first three days of absence from their jobs due to work-related illness or injury, and that workers be paid for longer absences by through the state social security system. Workers interviewed by the WRC, however, had little awareness of the availability of paid leave and reported having been unpaid for previous absences of this type. Company records showed minimal utilization of benefits for either work-related or non-work-related illness or injuries, suggesting the likelihood that incidences of both are not being properly reported, and workers are not receiving benefits they are legally due, a situation that, by violating Dominican law, would also violate the City’s Ordinance.<sup>9</sup>

### *Occupational Safety and Health*

- **29 Health and Safety Violations Identified.** The safety expert who inspected the factory for the WRC identified 17 issues that require immediate attention due to their potential to cause serious injury or illness to workers, ten other issues that poses potential health or safety hazards, though of a less immediate or serious nature, and two issues related to record-keeping. The 29 hazards identified violated Dominican statutory health and safety regulations and, therefore, the City’s Ordinance as well.<sup>10</sup>
- **Most Serious Health and Safety Issues.** The most serious health and safety risks found were related to the poor condition of electrical installations and lax management of hazardous materials, which are exacerbated by the large amount of cardboard boxes and fabric being stored in the building, raise the risk of fire at the facility with potentially

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

severe human and material losses. Other significant risks of injury are posed by the use of inadequate chairs and incomplete machine guarding.

- **Other Health and Safety Issues.** Other issues of concern that were identified include an absence of job hazard assessments and related employee training, and the lack of a written emergency response plan.

The violations of the City's Ordinance identified above, as well as the methodology by which the WRC reached these findings, are discussed in further detail in the body of this report. For each finding, the report also provides recommendations for how the identified violation can be remedied and/or corrected going forward. Although the violations identified here are significant, they are highly amenable to remediation and correction by SMC, with the assistance and involvement of its customers, including Fechheimer, and the City's vendor, Galls.

## **II. Methodology**

The WRC began gathering information concerning labor conditions at SMC in March 2013 as part of broader research concerning compliance with the City's Ordinance among factories involved in the production of apparel supplied to the City under the Muni employee uniform contract held by Galls, for which Fechheimer is the prime contractor. As part of this outreach, the FLD conducted initial outreach to and preliminary interviews with SMC workers.

In September 2013, the WRC conducted more in-depth research specifically focused on labor conditions at SMC, including extensive offsite worker interviews by FLD, and an onsite factory inspection on Sept. 26, 2013 which was performed by the WRC's Central America and Dominican Republic representatives with the assistance of certified health and safety expert Enrique Medina.

The WRC's assessment included 26 interviews with current factory employees. These interviews were conducted away from the factory site in locations where workers felt comfortable speaking with researchers. During the September 26 factory inspection, the WRC representatives and the health and safety expert also met with SMC's managers and representatives of Fechheimer who were present at the factory as well.

The WRC also reviewed company documents that were made available by SMC management on the day of the factory visit, including payroll records, company policies, social security records, and health and safety records. Finally, the WRC's assessment also included a review of Dominican labor laws and regulations implicated by the conditions found at SMC, including research concerning the application of these standards that had been obtained during previous WRC factory assessments in the Dominican Republic where similar issues had arisen. The WRC notes that SMC management cooperated with the investigation and provided full access to all documents and information requested.

The WRC's findings based on this evidence, and corresponding recommendations for corrective action, are outlined in the following section.

### III. Findings and Recommendations

This section details the WRC's findings of noncompliance with the City's Ordinance at the SMC factory and, for each finding, provides corresponding recommendations for remedying the violation of and ensuring compliance with the relevant terms of the Ordinance going forward.

#### A. Wages and Hours

##### 1. Nonpayment of the City's Non-Poverty Wage

###### *a. Findings*

Workers interviewed for this assessment reported being paid wages that ranged between 1,300 and 1,900 Dominican pesos (RD\$) per week, or roughly 30-45 U.S. dollars (USD) at current exchange rates (RD\$ 42.30 per USD). Among workers who were interviewed during the week that the WRC conducted its inspection of the SMC factory, the average wage workers reported having earned during the prior week was RD\$ 1,705 (USD 40.31).

The variance in wages among workers is due in part to the fact that these figures include, in most cases, both overtime pay and a production bonus that workers can earn by meeting a daily or weekly target number of pieces produced. For example, some workers reported that their base pay was RD\$ 1500 (USD 35.46) per week, but that they were paid an additional RD\$ 300 (USD 7.09) if they produced 4,000 pieces in a week, a quota they indicated could be met, assuming the employee did not have any absences from work. Review of payroll and workers' records indicated that when workers fail to meet the quota, they still receive a prorated portion of this production bonus based on the percentage of it that they have met.

The wage figures cited by employees during interviews were highly consistent with those presented in the factory payroll records that WRC representatives reviewed during the September 26 factory inspection. The WRC reviewed the pay records of a sample of 70 employees whose average weekly gross pay during the prior pay period, including overtime and production bonuses, was RD\$ 1728 (USD 40.85). The average weekly production bonus earned by these workers was RD\$ 289.37 (USD 6.84), a figure that, again, is consistent with the information that was gathered from worker interviews. Average weekly gross pay, *not* including overtime or production bonuses was RD\$ 1391.46 (USD 32.90), and including production bonuses, but *not* including overtime was RD\$ 1681 (USD 39.74).

As the statutory regular workweek in the Dominican Republic is 44 hours, the average weekly wage figure derived from this sample of the company's pay records yields figures for average hourly wage rates of RD\$ 31.62 (USD 0.75) per hour for base pay, and RD\$ 38.20 (USD 0.90) per hour for base pay plus production bonuses. As such, average pay at SMC, including production bonuses (but not the average base pay alone), exceeds the country's legal minimum wage for workers in free trade zones (including the La Vega zone), which is currently RD\$ 6320.00 (USD 149.00) per month,<sup>11</sup> or RD\$ 1458.46 (USD 34.48) per week and RD\$ 32.99 (USD 0.78) per hour.

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<sup>11</sup> Comité Nacional de Salarios, Resolucion No. 10-2011 (Sobre Salario Mínimo Nacional para

Yet, whether or not production bonuses are considered, these figures for average worker pay at SMC fall far short of the minimum non-poverty wage standard established by the City's Ordinance, which, for the Dominican Republic is USD 2.17 per hour.<sup>12</sup> The average wage at SMC, including production bonuses, therefore, provides only 41% of the non-poverty wage, while the base wage, without production bonuses, provides only 35% of the non-poverty wage.

#### *b. Recommendations*

The WRC recommends that the following steps be taken to remedy SMC's noncompliance with the City's non-poverty wage requirement:

- Increase workers' base weekly wages, exclusive of production bonuses,<sup>13</sup> by amounts sufficient to provide a pay rate that complies with the City's non-poverty wage requirement for the Dominican Republic.
- Provide workers with back pay for the period of time from the date when the City's non-poverty wage requirement became applicable to the factory's employees (or the relevant statute of limitations) up to the date when wages are increased to a sufficient degree to meet this standard, in amounts equivalent to the difference between the wages actually paid to employees and the amounts workers would have been paid had the factory complied with the non-poverty wage requirement at that time.

Should payment of such back wages and/or the non-poverty wage going forward not be financially feasible for SMC, the WRC recommends that Fechheimer and Galls assist SMC in achieving remediation of the prior violation of, and future compliance with, this standard.

## **2. Hours of Work, Involuntary Overtime and Underpayment of Overtime**

#### *a. Findings*

Workers interviewed for this assessment reported, and SMC's management confirmed that the factory's regular work schedule is as follows: Employees work from Monday through Friday, beginning work, each day, at 7:45 AM, and ending their regular work hours at 5:00 PM, except on Friday, when regular work hours end at 4:00 PM. During the workday, employees take a 30-minute meal break from 12:00 to 12:30 PM.

This work schedule violates Dominican labor law and, thereby, the City's Ordinance in several aspects. First, while the law limits the regular working day (exclusive of overtime) to eight

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los Trabajadores de las Zonas Francas Industriales) (Sept. 2011), <http://www.omlad.gob.do/ResolucionesSalariales.aspx>.

<sup>12</sup> See, City Code, Ch. 12.U.3.(b), and City and County of San Francisco, *Current Wage Rates for Overseas*, *supra*, n. 4.

<sup>13</sup> The Ordinance states that the non-poverty wage requirement applies to the "minimum wages" payable to employees, suggesting that bonuses, which are not necessarily a component of "wages," and whose payment is not legally guaranteed to employees, should not be counted toward compliance with this standard. City Code, Ch. 12.U.3.(b).



hours' duration,<sup>14</sup> the regular daily work schedule at SMC on Monday through Thursday is 9.25 hours long, and is 8.25 hours long on Friday.

Second, the law mandates that workers receive a one hour meal break,<sup>15</sup> but the break provided at SMC is only 30 minutes in length. However, most workers who were interviewed indicated that they preferred the shorter meal period because it allowed them to leave work earlier in the day and/or avoid working on Saturday. Nevertheless, the factory's practice in this respect is not consistent with Dominican law.

Third, under Dominican labor law, the additional period of time, beyond eight hours, that employees work as part of their regular daily schedule – which, excluding the 30 minute meal break, is 45 minutes long on Monday through Thursday – must be compensated as overtime, at 135% of employees' ordinary rate of pay.<sup>16</sup> Yet both interviews with workers and review of the company's wage records indicate that this additional time is paid at workers' regular rate of pay.

Fourth, Dominican law requires that any such overtime be performed “voluntarily” on the part of employees.<sup>17</sup> SMC's management acknowledged, however, that this schedule was adopted by the company without any formal or written consent from workers and subsequently, has been presented to workers as a condition of employment. Therefore, although, according to many of the employees who were interviewed, they favor this schedule (because it represents, in the Dominican context, a ‘compressed workweek’<sup>18</sup>), the additional 45 minutes per day that SMC requires them to work Mondays through Thursdays does not represent overtime that is performed “voluntarily,” as the law requires.

Finally, workers' testimony varied regarding whether the additional overtime they performed after the end of the formal workday was mandatory or voluntary. Some workers stated that they were never pressured to work additional overtime and did so voluntarily, while other workers reported that the company does pressure them to perform additional overtime, outside of the regular working hours discussed above, and issues them disciplinary warnings if they do not accede to such requests. Company managers stated that OT is voluntary, and that they circulate a form whereby employees can volunteer to work such hours. Involuntary overtime violates Dominican law, and, should it extend employees' workweek beyond 48 hours, directly violates the City's Ordinance as well.<sup>19</sup>

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<sup>14</sup> Dominican Labor Code (“Labor Code”), Article 147 (“The normal length of the work day . . . cannot exceed eight hours per day or forty four hours per week.”).

<sup>15</sup> Id., Art. 157 (“The work Schedule should be interrupted for a rest intermission, which can be no less than one hour, after four consecutive hours of work and an hour and a half after five hours.”).

<sup>16</sup> Id., Art. 203.

<sup>17</sup> Ibid. (“Overtime work is to be performed voluntarily, except in the case of extraordinary circumstances which threaten the normal functioning of the company or the safety of workers.”) (unofficial WRC translation). The City's Ordinance also requires that overtime be performed voluntarily, yet this restriction only applies to overtime that causes employees to work in excess of 48 hours per week. See, City Code Ch. 12.U.3.(g). However, as this practice violates Dominican law's broader restriction on involuntary overtime, it violates the Ordinance's requirement of compliance with local labor laws. See, id. at Ch. 12.U.2.(j) and 12.U.3.(a).

<sup>18</sup> The standard 44-hour workweek in the Dominican Republic is comprised of five-and-a-half eight-hour days – worked Monday through Friday and a half-day on Saturday.

<sup>19</sup> See discussion, *supra*, n.17.

## *b. Recommendations*

The WRC recommends that SMC take the following measures to remedy and prevent future occurrences of violations of Dominican labor law in the area of its regular weekly work schedules:

- Provide back wages to employees in the amount of the legally mandated premium compensation for overtime hours (35% of employees' ordinary rate of pay) that the company should have paid employees for working an additional 45 minutes per day, four days per week, beyond the maximum regular daily working hours. Such back-pay should be provided for the period of time backwards from the date when the practice is corrected backwards to the worker's date of hire or the statutory limit for such claims, whichever is shorter in duration.
- Discuss with employees and arrive at a weekly work schedule that is acceptable to company management and employees (as confirmed by vote of a majority of the nonsupervisory workforce) *and* consistent with the requirements of Dominican labor law, with respect to: (1) the length of the meal period, (2) the duration of the regular workday, (3) the voluntary nature of all additional time worked, and (4) the payment of the legally required premium rate for such additional time.
- Adopt, maintain and inform all supervisors and managers of an explicit policy that, going forward, performance of overtime must be voluntary on the part of employees and that no employee shall be discriminated against in any way for declining to perform overtime.
- Remove from employees' files and expunge any form of discipline applied because of employees' refusal to perform overtime, and inform employees in writing when this is done.
- Communicate, through a written and verbal announcement to employees, delivered on work-time and posted in the factory for no fewer than 30 days, that performance of overtime is strictly voluntary, and that no employee shall be disciplined or discriminated against in any way for refusal to work overtime.
- Continue the practice of when overtime is requested of employees by company managers obtaining the signature of employees on a record by which the employee can state whether or not that the overtime is worked voluntarily, and maintain such records for inspection by auditors, inspectors and buyers.

## **B. Statutory Paid Time Off**

### **1. Vacation and Holiday Pay**

#### *a. Findings*

Dominican labor law requires employers to provide workers whom they have employed for more than one year, but fewer than five years, with fourteen days of paid vacation leave per year. For

workers who have been employed for more than five years, the law requires them to be provided eighteen days of paid vacation.<sup>20</sup> The labor law also mandates, separately, that employers provide workers with paid time off for observance of national holidays, including Christmas Day and New Year's Day.<sup>21</sup>

SMC workers who were interviewed for this assessment indicated that they are paid their accrued vacation days prior to the holiday period in the amount of either fourteen or eighteen days' pay, depending on their length of service, but are not paid additionally for Christmas and New Year's Day. Because both the Christmas Day and New Year's Day national holidays fall during this period and, by law, these two national holidays should be compensated separately from employees' regular annual leave, the company's schedule, in fact, provides workers, with, depending on their seniority, only twelve or sixteen days of vacation pay – two days less than the law requires. While the company provided proof of payments to workers' for this vacation period, it was unable to provide proof of separate payments for Christmas and New Year's Day. This failure to comply with national law violates the terms of the City's Ordinance as well.<sup>22</sup>

### *b. Recommendations*

In order to remedy any prior violation of Dominican law in this area, and to maintain compliance with the law and the City's Ordinance going forward, SMC should:

- Extend employees' upcoming annual paid leave by an additional two days to ensure that workers receive the number of paid vacation days required by law.
- Determine whether such underpayment has occurred in prior years and, if so, correct the underpayment by compensating the affected workers for the period up to the statutory limit.

## **2. Paid Break Time for Breastfeeding**

### *a. Findings*

Dominican labor law establishes that recent mothers have the right to three daily 20 minute paid breaks during the workday for the purpose of breastfeeding.<sup>23</sup> Workers interviewed for this assessment, several of whom had given birth while employed at the factory, said that they did not receive and were not aware of their right to these breaks during the period of their eligibility. SMC's management also acknowledged that these workers did not receive the legally required break time for this purpose. Because failure to provide the break time violates Dominican law, it also violates the City's Ordinance.<sup>24</sup>

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<sup>20</sup> See, Labor Code, Art. 177.

<sup>21</sup> Id., Art. 165.

<sup>22</sup> City Code, Ch. 12.U.2.(j), 12.U.3.(a).

<sup>23</sup> Labor Code, Art. 240.

<sup>24</sup> Ibid.

### *b. Recommendations*

In order to remedy prior violations of Dominican law in this area, and to maintain compliance with the law and the City's Ordinance going forward, SMC should:

- Pay compensation to each female employee who previously has given birth while employed at the factory within the applicable statutory limit (as determined by the identification of employees who have taken maternity leave during this period) in the amount of one hour's wage (3 x 20 minutes) for each day worked in the period between her return from maternity leave and the end of (1) the average period of lactation, or (2) the worker's actual period of lactation should the worker submit proof thereof.
- Inform workers of the availability of this benefit and require supervisors to accommodate workers in the exercise of this right.

## **3. Paid Sick Leave**

### *a. Findings*

Dominican law establishes the rights of workers to receive compensation from the country's social security system for wages lost due to non-work-related injuries or illnesses after three days absence from work, once they have completed one year of service with an employer.<sup>25</sup> The one year requirement to receive such benefit is waived, however, if the injury or illness *is* related to employment.<sup>26</sup>

In the case of workplace accidents and illnesses, in order to receive such benefits an affected employee must report the ailment to his or her employer, who, in turn, must submit the necessary documentation to the Administradora de Riesgos Laborales (Workplace Risk Administration) ("ARL"). In the case of non-work-related illnesses or injuries, the employer must submit the claim to a different agency, the Tesorería de Seguridad Social (Social Security Treasury) ("TSS") in order for the worker to receive benefits.

Because there is no means for workers to apply directly to the ARL or TSS, employees are dependent on their employer's submission of their claim to access benefits, which can be quite substantial. In the case of a work-related injury or illness, employees are entitled to receive 75% of their average salary for the entire period of any absence from work from four days to fifty-two weeks. Moreover, the first three days of leave must be paid directly by the worker's employer. In cases of absence from work due to non-work-related injuries and illnesses, the value of the benefit is 60% of the worker's average pay during the six months prior to the onset of the injury or illness. These benefits are payable for the entire period of any absence from work from four days to twenty-six weeks.

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<sup>25</sup> Consejo Nacional de Seguridad Social (National Council on Social Security) ("CNSS"), Reglamento Sobre El Subsidio por Enfermedad Común (Regulation Regarding the Subsidy for Common Illnesses); Reglamento Sobre Subsidio por Discapacidad Temporal (Regulation Regarding Subsidy for Temporary Disability) (copies on file with the WRC).

<sup>26</sup> Ibid.

Workers interviewed for this assessment lacked awareness of the availability of benefits for injuries and illnesses from the ARL and TSS, or the process by which these are obtained. Nearly all workers who reported missing work due to injuries and illnesses indicated that they had lost wages as a result of their absences and did not receive benefits from any other source.

Records reviewed by the WRC during its inspection of the factory identified only three employees who have received social security benefits as a result of non-work-related illness or injury, thus far in 2013. In addition, SMC management stated that the reason there were no claims recorded for work-related injuries or illness was that no employee has missed work in relation to such an incident in the last five years.

The company's claim that no employee has suffered a compensable work-related injury or illness in the last five years appears implausible considering that: (1) such benefits are available even when an injury occurs while commuting to or from the workplace, which is an extremely dangerous activity in the Dominican Republic,<sup>27</sup> and (2) the mean annual injury and occupational illness rate for apparel factories of SMC's size, in the *United States*, is *eight* recordable injuries or occupational illness cases per year.<sup>28</sup> Based on these statistics, and on the WRC's extensive experience with the incidence of both work-related and non-work-related injury and illness claims in other Dominican apparel factories, it is reasonable to conclude that SMC is failing to report at least some compensable claims to the TSS and ARL, and workers, therefore, are not receiving benefits they are legally due – a situation that, by violating Dominican law, would also violate the City's Ordinance.<sup>29</sup>

#### *b. Recommendations*

In order to remedy prior violations of Dominican law in this area, and to maintain compliance with the law and the City's Ordinance going forward, SMC should:

- Offer and pay compensation to each employee who previously has lost income due to an absence from work for a documented injury or illness within the applicable statutory limit for which he or she would have been eligible to receive benefits from the TSS, the ARL or SMC, itself.
- Through verbal announcement and written posting in the factory inform employees of the availability of accident and illness compensation benefits through the TSS and the ARL going forward.
- Adopt a policy and practice of promptly reporting employee illnesses and injuries to the TSS or the ARL, as appropriate.

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<sup>27</sup> Ezra Fieser, "Dominican Republic Looks to Law to Curb Road Carnage," *Guardian* (Jul. 22, 2013), <http://www.theguardian.com/global-development/2013/jul/22/dominican-republic-road-safety-law>.

<sup>28</sup> See, U.S. Bureau of Labor Statistics, *2011 Industry Injury and Illness Data*, <http://www.bls.gov/iif/oshwc/osh/os/ostb3195.pdf>.

<sup>29</sup> *Ibid.*

## C. Occupational Safety and Health

The WRC's inspection of SMC on September 26, 2013, which was carried out with the assistance of safety expert Enrique Medina, identified a number of conditions in the factory that violated applicable Dominican law concerning safety and health in the workplace<sup>30</sup> and, thereby, the City's Ordinance as well.<sup>31</sup> We detail these findings below, in each case citing the relevant regulation that is implicated, and providing explicit recommendations for addressing the specific hazards noted.

### 1. Asbestos Exposure

#### a. Findings

The WRC's inspection noted that the thermal insulation on the top of the factories boiler is in a deteriorated state and appears to possibly contain asbestos creating an immediate potential exposure risk.<sup>32</sup>



*Potential asbestos-containing thermal system insulation on boiler.*

#### b. Recommendations

SMC should have the insulation examined further to confirm whether it contains asbestos, and, if so, should have professional asbestos abatement performed in this area.

### 2. Electrical Safety

#### a. Wiring

##### i. General Conditions

##### 1. Findings

The condition of the electrical wiring system at the facility presents immediate risks of electrocution, over-current, short circuits, and fires.<sup>33</sup> Bare or patched wires, and exposed conductors are evident throughout the facility and on some electrical devices, including electrical panels, overhead racks, the boiler water pump, the pattern cutting saw cable, and the air compressor.



*Exposed wires in PVC conduit elbow.*



*Jam on cord zip line that caused cord to break off.*

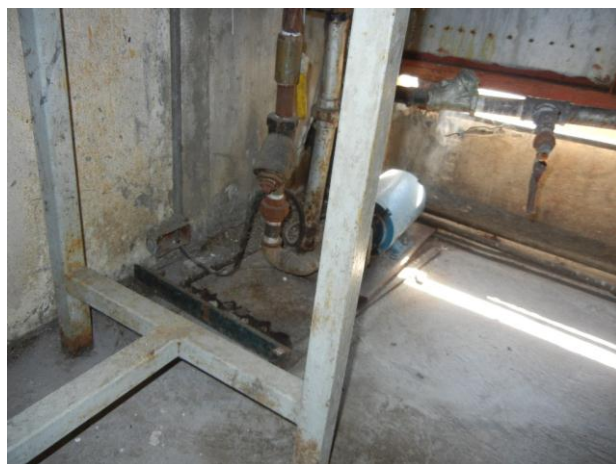
<sup>30</sup> Ministry of Labor, Reglamento 522-06 (Seguridad y Salud en el Trabajo) (Oct. 17, 2006); Resolucion 04/2007.

<sup>31</sup> City Code, Ch. 12.U.2.(j), 12.U.3.(a).

<sup>32</sup> Resolucion 04/2007, § 3.28.

<sup>33</sup> Id., § 1.41.1.





*Top left: Exposed wires in unlabeled electrical panel. Top Right: Exposed wires on electrical rack with fabric dust build up. Middle left: Loose outlet box with two exposed and ungrounded wires and water cooler plug. Middle right: Non-GFCI outlet next to boiler water drum. Bottom left: Open electrical junction box for boiler water pump power cable. Bottom right: Non-GFCI electrical outlet above boiler water drum.*

## 2. Recommendation

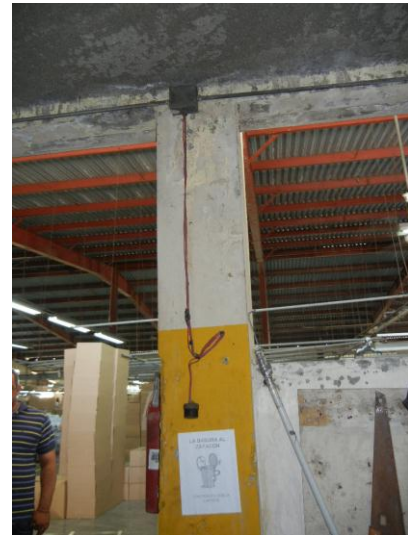
SMC should repair all deficiencies in its electrical installations to ensure that they comply with the electrical code and best practices.

### ii. Grounding

#### 1. Findings

The facility's 110 volt service for light fixtures, fans and portable tools does not have ground wiring, and the main ground wire is not actually grounded.<sup>34</sup> This represents an immediate risk of electric shock, over current, short circuits, and fire.

*Left: Disconnected grounding wire for building 110V electrical service.  
Right: Hanging exposed wires with no conduit for 110V outlet in maintenance shed.*



## 2. Recommendations

SMC should install grounded circuits in its 110 volt service and upgrade the wiring to comply with the electrical code and best practices.

### b. Tools

#### 1. Findings

The factory's portable pattern-cutting saw is not double insulated, and is plugged to a two-wire 110 volt system that is not grounded.<sup>35</sup> In addition, the facility's only portable ladder is made of aluminum, which also poses risks for electrical work.<sup>36</sup>

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<sup>34</sup> Ibid.

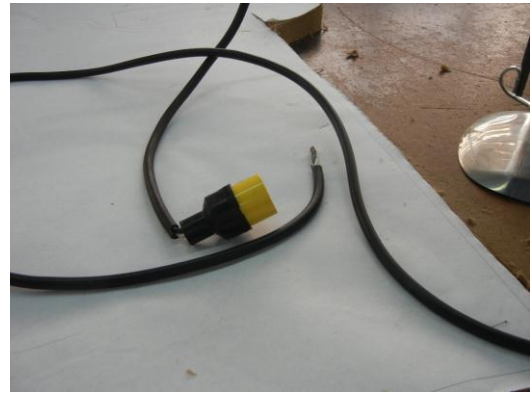
<sup>35</sup> Ibid.

<sup>36</sup> Id., Art. 7.15.





*Left: Energized electrical cord accidentally pulled off pattern saw.*



*Right: End of pattern saw cord with two wires and no grounding.*

## 2. Recommendations

SMC should ensure that all portable tools are connected to ground fault circuit interrupt (GFCI) connectors to reduce electric shock hazards until the wiring system is upgraded. SMC also should provide a fiberglass portable ladder for electrical work.

## 3. Fire Safety

### a. Storage of Combustibles

#### 1. Finding

A large quantity of combustible materials, including cardboard boxes and fabric is stored in the facility near egress corridors, and dust is built-up on the overhead pipes and racks, both of which contribute to a risk of fire, particularly as the building does not have a fire sprinkler system.<sup>37</sup>



*Fabric dust buildup on overhead steam line.*



*Left: Pattern cutting saw with no grounding that produces sparks when filing edge. Right: Large accumulation of stacked combustible cardboard and fabric.*

<sup>37</sup> Id., § 1.40.

## 2. Recommendations

SMC should conduct a fire risk assessment to determine if the amount and location of combustibles being stored in the building is acceptable for the type of occupancy, and make necessary changes to reduce the fire risk level of the facility.

### *b. Hot Work*

#### *1. Findings*

There is no established Hot Work permit system for welding in the facility.<sup>38</sup> Welding tasks are contracted out and are scheduled for non-work periods.

#### *2. Recommendation*

SMC should implement a formal Hot Work Permit system for all tasks that can generate heat or sparks, such as welding, cutting or grinding.

## 4. Emergency Preparedness

### *a. Emergency Action Plan*

#### *1. Findings*

The facility conducts annual fire drills under the direction of the fire department but does not have a formal written Emergency Action Plan for all contingencies with assigned roles for plant personnel.<sup>39</sup>

#### *2. Recommendation*

SMC should develop and implement an Emergency Action Plan as part of its Health and Safety Program.

### *b. Emergency Exits*

#### *1. Findings*

The emergency egress route to the plant's gathering point is blocked by a closed sliding fence at the side of the property.<sup>40</sup>

*Right: Closed sliding gate blocking emergency egress route.*

*Left: Shipping dock roll-up door is the only emergency exit on one side of the factory.*



<sup>38</sup> International Fire Code, § 105.6.24.

<sup>39</sup> Resolución 04/2007, Art. 7.1.

<sup>40</sup> Id., § 1. 1.4.

## 2. Recommendations

SMC should maintain all egress routes free of obstructions, and all gates leading to gathering points should remain open during business hours.

### c. Emergency Eyewash Station

#### 1. Finding

The generator room where lead-acid storage batteries are recharged with acid solution lacks an eye wash station.<sup>41</sup>

#### 2. Recommendation

SMC should install an emergency eyewash station where the batteries are recharged.

## 5. Ergonomics

### a. Seating

#### 1. Findings

Chairs assigned to sewing operators are not ergonomically appropriate.<sup>42</sup> These chairs lack casters, swivels, seat pan, height, and back adjustment, lumbar support and arm rests. Operators "fix" the chairs by raising the feet with shims, and by placing cushions on the lower back and seat.



*Top right: Chair with makeshift lumbar support added by sewing operator.*



*Bottom left: Chair with unsafe makeshift height adjustment by sewing operator.*



*Bottom right: Table used as chair with no back support or seat cushion.*

#### 2. Recommendation

SMC should provide ergonomically adjustable chairs for operators required to sit for most of the work shift.

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<sup>41</sup> Id., Art. 7.1.5.

<sup>42</sup> Id., Art. 7.1.4, § 1. 1.2.



## *b. Work Processes*

### *1. Findings*

Sorting operators attaching adhesive stickers on pieces are at risk for wrist and shoulder injury from repetitive motion, and workers in the inspection, ironing and packaging operations face ergonomic risk factors from prolonged standing – even with anti-fatigue mats.<sup>43</sup>

### *2. Recommendations*

SMC should conduct a job hazards assessment (“JHA”) of ergonomic risk factors for all operations involving repetitive or fine grip work or prolonged standing and modify the work processes to reduce the risks of musculo-skeletal injuries.

## **6. Hazardous Materials**

### *a. Right-to-Know*

#### *1. Finding*

The facility does not have an inventory of the chemicals stored onsite or material safety data sheets (MSDS) for the chemicals used in the plant, including diesel fuel, water softener, battery acid solution, mineral oil, and lubricants.<sup>44</sup>



*Left: Unlabeled open containers with oil and no secondary containment. Right: Incompatible acids and lubricant stored together.*



### *3. Recommendations*

SMC should prepare an inventory of chemicals used onsite, obtain MSDS in Spanish from all suppliers and place these in a location available to all workers. All workers should be trained on hazard communication.

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<sup>43</sup> Ibid.

<sup>44</sup> Id., Art. 9.

## *b. Exterior Storage*

### *1. Findings*

The diesel tank for the back-up generator and boiler located outside the building does not have the NFPA 704 hazard label, or indicate the content and capacity. The tank also has no secondary containment or diking to capture spills.<sup>45</sup>

### *2. Recommendations*

SMC should apply the required placarding and install secondary containment measures.



*Diesel fuel storage tank with no hazard placard or secondary containment.*

## *c. Interior Storage*

### *1. Findings*

Unlabeled open containers with oil were stored on the floor without secondary containment measures next to closed containers of mineral oil.<sup>46</sup> Corrosive battery acid solution is stored next to incompatible combustible lubricants in the compressor room.<sup>47</sup>

### *2. Recommendations*

SMC should label all chemical containers and keep them closed and in an approved storage area or flammable cabinet. SMC should store incompatible corrosives separately from flammables and combustibles.

## **7. Protective Equipment**

### *a. Personal Protective Equipment (PPE)*

#### *1. Findings*

PPE is not available for handling corrosive solutions or for using the plant's portable grinder.<sup>48</sup>

#### *2. Recommendations*

SMC should provide safety glasses and face shields for both tasks, and chemical resistant gloves and aprons for handling corrosive solutions.

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Id., Art. 7.15.

<sup>48</sup> Id., § 1.1.5.

## *b. Guarding*

### *1. Findings*

The tool grinder does not have a shield protector, and the tool rest is more than 1/8" from the wheel.<sup>49</sup> Missing or incomplete guards over the belt drives leave exposed hazard points, including the air compressor, boiler water pump, and the singer sewing machine with puller attachment.<sup>50</sup> Some sewing machines have missing needle guards or side covers.<sup>51</sup>

In addition, burn hazards from hot steam (ironing), and electric resistance (fusing) were identified. The operators have made adjustments to the irons and fusing machine to protect hands and arms from hot surfaces or vapors.<sup>52</sup>

*Top left: Sign indicating mandatory guards on sewing machines. Top right: Unguarded sewing machine with cover off to fix jams.*



*Middle left: Grinding wheel without tool rest or eye guard and loose wires. Middle right: Unguarded sewing machine. Bottom left: Unguarded sewing machine in use. Bottom right: Makeshift cardboard guard to protect against steam burns from iron.*



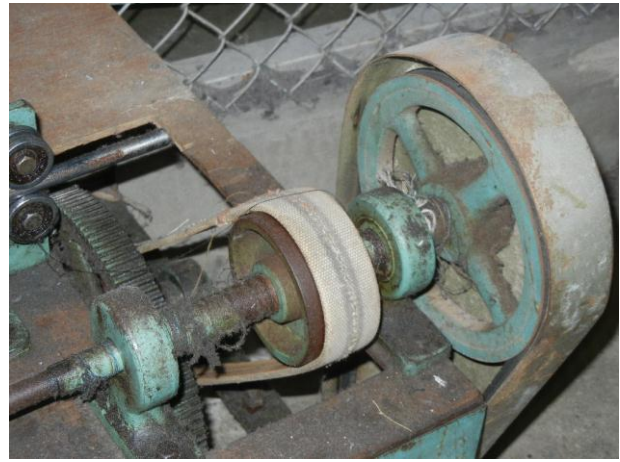
<sup>49</sup> Id., § 1.2.7.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Id., Art. 8.2.





*Top left: Tensioner hot surface with makeshift adhesive tape guard to protect against burns. Top right: Unguarded belt with exposed nip point on maintenance room machinery, Bottom left: Unguarded belt drive on sewing machine. Bottom right: Unguarded belt pulley on air compressor.*

#### 4. Recommendations

SMC should repair all defective guards in operating machinery, and, where missing, install appropriate guards to cover all hazard points from moving parts. SMC also should conduct a JHA of burn hazards from the ironing and fusing operations and implement engineering, changes in work practices and/or PPE usage to reduce these risks.

## 8. Restrooms

### a. Finding



*Insufficient restrooms for women workers*

The employee restrooms do not have sufficient stalls for the number of female employees working at the facility.<sup>53</sup>

*b. Recommendation*

SMC should provide the necessary number of toilets required by law.

## **9. Hazard Exposure Assessments**

*a. Heat Exposure*

*1. Finding*

The high temperatures and humidity in some work areas in the factory constitute a potential source of thermal stress for employees.<sup>54</sup>

*2. Recommendations*

The factory should conduct periodic monitoring of temperatures and humidity in work areas, and install the necessary engineering and administrative controls to prevent heat stress and ensure worker comfort. This measure is particularly important as a number of the workers who were interviewed complained of excessive heat in the facility.

*b. Job Hazard Assessments*

*1. Finding*

JHAs have not been conducted of the job functions performed by plant personnel.<sup>55</sup>

*2. Recommendations*

SMC should conduct JHAs for all job functions at the facility, and train employees regarding the hazards identified and means of controlling them.

## **10. Training**

*a. Findings*

The facility does not have an employee health and safety training program.<sup>56</sup> Employees receive an orientation during initial hiring, and participate in emergency evacuation drills. Topics not mentioned in the orientation include: hazard communication, PPE, blood-borne pathogens, machine guarding, ergonomics, and electrical safety.

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<sup>53</sup> Id., § 1.1.1.

<sup>54</sup> Id., § 1.1.5.

<sup>55</sup> Id., Art. 8.2.

<sup>56</sup> Id., § 1.9.3.



*b. Recommendation*

SMC should develop and implement a health and safety training program.

**IV. Conclusion**

Although the violations identified here are significant, they are highly amenable to remediation and correction by SMC, with the assistance and involvement of its customer, Fechheimer, and the City's vendor, Galls. This process, which should be initiated as soon as possible, should have as its immediate goal, the establishment of a corrective action plan, that is consistent with the recommendations in this report, and agreed upon by all these parties, with time bound commitments for its implementation.