

To: WRC Affiliate Universities and Colleges
From: Tara Mathur and Ben Hensler
Date: September 23, 2021
Re: WRC Issues Guidance to Licensees on New Wage and Hour Risks in El Salvador

At the beginning of this month, the WRC contacted university licensees to ensure compliance with university codes of conduct with respect to several wage and hour issues that have recently arisen in relation to garment factories in El Salvador, including those producing collegiate apparel. These issues are as follows:

- (1) Implementation of a recent 20 percent increase to El Salvador's legal minimum wage;
- (2) Provision of legally mandated paid time off to Salvadoran garment workers to receive Covid-19 vaccinations;
- (3) Recent legislation in El Salvador authorizing the use of the "bitcoin" cryptocurrency as legal tender, including for payment of wages to employees; and
- (4) Employers' potential misuse of a so-called "4 x 4" work schedule (a schedule where employees work four consecutive 12-hour days); which is prohibited under El Salvador's labor law and constitution.

We discuss below the guidance we have shared with university licensees concerning each of these issues, including factual background information and the relevant compliance standards in Salvadoran law and university codes of conduct for both licensees and their suppliers.

I. Emerging Wage and Hour Issues in El Salvador

A. Implementation of Recent Increase in Salvadoran Legal Minimum Wage

The Salvadoran constitution requires all employers to pay their workers the legally established minimum wage.¹ The country's minimum wage is periodically increased by its National Minimum Wage Council, which reviews data and determines the amount of the increase.

Recently, the National Minimum Wage Council approved an increase in the legal minimum wage in the garment industry by 20 percent from its previous level of US\$299.30 per month to US\$359.16 per month.² This wage increase took effect on August 1, 2021. Therefore,

¹ Constitución de la República de El Salvador, 1983, https://www.oas.org/dil/esp/constitucion_de_la_republica_del_salvador_1983.pdf.

² Constitución de la República, "Decreto No. 10," *Diario Oficial*, 432, no. 129, (2021): 26-29, <https://www.diariooficial.gob.sv/diarios/do-2021/07-julio/07-07-2021.pdf>.

Salvadoran law now requires that all garment factories in El Salvador pay their workers at least US\$359.16 per month.

The WRC has informed university licensees that all factories supplying collegiate apparel should now be paying their workers no less than this new minimum wage. Any factories that did not implement the new minimum wage on August 1, 2021, are required, under both Salvadoran law and by university codes of conduct, to not only increase their workers' wages but also to pay back wages for any period since that date during which they did not pay the increased minimum wage.

B. Provision of Legally Required Paid Time Off to Workers for Covid-19 Vaccinations

Transmission of Covid-19 continues to be an issue of grave concern for garment workers in El Salvador and their families. The U.S. Centers for Disease Control and Prevention currently classify the Covid-19 transmission level in El Salvador as "high".³

The Salvadoran government has now approved Covid-19 vaccinations for all Salvadorans aged 12 years and older.⁴ Vaccination appointments are available to all garment workers through a Ministry of Labor-sponsored online scheduling platform.⁵

Salvadoran law already requires that employers excuse employees' absence from work, without any deduction of wages, in order for workers to attend medical appointments.⁶ However, workers at some garment factories in the country have reported to the WRC that their employers have not been granting workers paid time off to attend appointments for Covid-19 vaccination.

In order to comply with the law, factories in El Salvador producing collegiate apparel should make paid time off available to any employee who seeks to be vaccinated against Covid-19. For those employees whose pay was deducted at the time of their vaccination appointments the employer should compensate them by paying the wages that were deducted for their having been absent from work in order to be vaccinated.

C. New Legislation regarding Use of Bitcoin for Wage Payments

The Salvadoran government has enacted a law, effective September 7, 2021, permitting the use of the cryptocurrency, bitcoin, for all financial transactions ("the bitcoin law"), including, potentially, payment of wages to employees.⁷ The use of bitcoin as legal tender in the country

³ Centers for Disease Control and Prevention, "COVID-19 in El Salvador," September 2021, <https://wwwnc.cdc.gov/travel/notices/covid-3/coronavirus-el-salvador>.

⁴ Marcos Aleman, "El Salvador ya vacuna mayores de 12 años y embarazadas," *Associated Press*, July 30, 2021, <https://apnews.com/article/noticias-793eb74c027f647b9c7847ff882c2e43>.

⁵ Ministerio de Salud, "¡Vacunate! Agenda tu cita en www.vacunacioncovid19.gob.sv," <https://www.salud.gob.sv/vacunate-agenda-tu-cita-en-www-vacunacioncovid19-gob-sv/>.

⁶ Código de Trabajo de la República de El Salvador, Article 203, 2010, https://www.ilo.org/dyn/travail/docs/1742/Cod_Trab_ElSalv%5B1%5D.pdf.

⁷ Government of El Salvador, "Decreto No. 57," *Diario Oficial*, 431, no. 110, (2021): 13-15, June 9, 2021, <https://www.diariooficial.gob.sv/diarios/do-2021/06-junio/09-06-2021.pdf>.

has been strongly promoted by El Salvador’s president, Nayib Bukele, but has faced fierce opposition from many sectors of Salvadoran civil society.⁸

In promoting passage of the bitcoin law, President Bukele stated that the Salvadoran government was not endorsing private employers using bitcoin for payment of wages to workers.⁹ However, the legislation does not include an explicit prohibition on employers doing this.

University codes of conduct, however, explicitly require that factories supplying university apparel maintain wage practices that are consistent with those generally prevailing in the local export garment manufacturing industry.¹⁰ Currently, the prevailing practice in the Salvadoran garment industry is to pay workers their wages in US dollars (which have been approved for use as legal tender in the country since 2001), not bitcoin.

For this reason, any factory producing collegiate apparel that would require workers to receive payment of their wages in bitcoin would be in violation of this provision of university codes of conduct. Therefore, the WRC’s guidance to licensees is that they require their suppliers of collegiate apparel in El Salvador to continue to pay their workers in US dollars, and to refrain from issuing workers their wages in bitcoin.

D. Factories’ Proposed Utilization of a 12-Hour Shift (“4 x 4”) Work Schedule

Many garment factories in El Salvador’s neighboring country, Honduras, have implemented a so-called “4 x 4” work schedule, under which factory employees work four consecutive 12-hour days and then rest for four days – during which time, a second shift of employees works for 12-hours per day for four consecutive days (and then has four days off, while the first shift works again). However, because both the Salvadoran constitution and the country’s labor laws limit an employee’s regular work schedule to a maximum of eight hours per day and 44 hours per week, use of the “4 x 4” work schedule, under regular circumstances, is clearly unlawful and unconstitutional.¹¹

Despite the clear legal prohibitions on the use of the “4 x 4” schedule in El Salvador, the WRC has received reports from the Salvadoran Ministry of Labor and from worker representatives in the country that there is a growing push from some garment factories in the country for its use. Recently, under the auspices of an emergency decree issued by the Salvadoran government to address the impacts of the Covid-19 pandemic, the Ministry of Labor approved at least one collegiate supplier factory’s *temporary* use of the “4 x 4” schedule. However, the government’s emergency decree authorizing this factory’s use of the schedule expires on September 29, 2021, and the factory in question (which has been disclosed as a supplier of collegiate apparel by both

⁸ “Bitcoin protests in El Salvador against cryptocurrency as legal tender,” *BBC*, September 16, 2021, <https://www.bbc.com/news/world-latin-america-58579415>.

⁹ “Presidente de El Salvador: el uso de bitcoin será opcional,” *Los Angeles Times*, June 25, 2021, <https://www.latimes.com/espanol/internacional/articulo/2021-06-25/presidente-de-el-salvador-el-uso-del-bitcoin-sera-opcional>.

¹⁰ CLC, Special Agreement on Labor Codes of Conduct, Schedule I, § II.B.1 (“Licensees shall pay employees, as a floor, at least the minimum wage required by local law or the local prevailing industry wage....”).

¹¹ Article 38(6) of the Salvadoran Constitution and Article 89 of the Salvadoran Labor Code.

Nike / Branded Custom Sportswear and Under Armour / Gear for Sports) acknowledged that its authorization from the Ministry to use the “4 x 4” schedule will end at that time as well.

The WRC has reviewed the issue of the “4 x 4” work schedule and confirmed that, absent the type of temporary authorization afforded to the one factory mentioned, by the government’s emergency decree, use of this schedule by garment factories violates Salvadoran law.¹² The Salvadoran Ministry of Labor also affirmed in written communications that employers’ use of the “4 x 4”, without such special authorization, is unlawful.¹³ Therefore, the WRC’s guidance to licensees is that any use of the “4 x 4” schedule, by any factory producing collegiate licensed apparel, after September 29, 2021, without such special authorization, contravenes not only Salvadoran law but also, by extension, university codes of conduct.

II. The WRC’s Initial Engagement with University Licensees

At the beginning of September 2021, the WRC contacted all licensees that are currently disclosing factories in El Salvador among their suppliers for production of collegiate licensed apparel. The WRC shared with these licensees the above guidance.

The WRC has asked each of these licensees to verify that their suppliers’ wage and hour practices with regard to these issues comply with Salvadoran law and university codes of conduct. Many of the licensees who were contacted have already confirmed that their suppliers are in full compliance with university codes of conduct and Salvadoran law with respect to all four issues discussed here.

The WRC is still awaiting responses to our guidance from some licensees but will be reporting further on these issues, including with respect to licensees’ responses. The WRC will continue to monitor the compliance of factories producing collegiate apparel in El Salvador with respect to these issues and will inform licensees and universities of any noncompliance we encounter.

¹² Article 38(6) of the Salvadoran Constitution and Article 89 of the Salvadoran Labor Code.

¹³ Letter from the Ministry of Labor to the union Federación de Asociaciones y Sindicatos Independientes de El Salvador (FEASIES), dated January 15, 2021, stating that a specific factory’s request to implement the “4 x 4” schedule is unconstitutional.