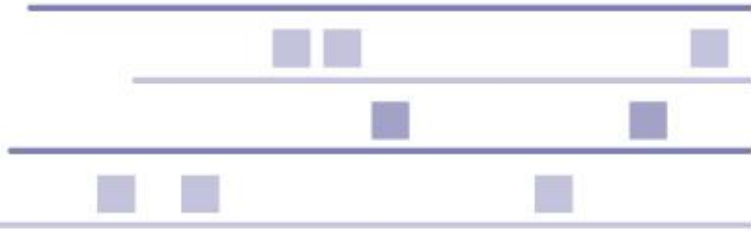




WORKER RIGHTS
CONSORTIUM



**WORKER RIGHTS CONSORTIUM ASSESSMENT
DONG THANH GARMENT JOINT STOCK CO.
(VIETNAM)
UPDATED FINDINGS AND RECOMMENDATIONS**

September 27, 2022



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I. Introduction and Executive Summary

A. Introduction

This 2022 report updates the findings and recommendations of the assessment by the Worker Rights Consortium (“WRC”) in 2019 of Dong Thanh Garment Joint Stock Co. (referred to by its owners as “Dong Thanh II” to distinguish it from a sister plant, “Dong Thanh I”, but referenced herein as “Dong Thanh”), a factory producing apparel in Quảng Ngãi, Vietnam, in the central region of the country. This report includes the findings and recommendations of the WRC’s original assessment of the factory in 2019; the subsequent response of the factory management in 2020 and 2021; and the updated findings of the WRC in 2022.

The WRC undertook this follow-up assessment of Dong Thanh for the US nonprofit organization Sweatfree Purchasing Consortium and the City of Madison, Wisconsin (“City”) of compliance by factories disclosed by City vendors as producing apparel purchased by the City and covered by the City’s Sweatfree Purchasing Ordinance (“Ordinance”). Under the Ordinance, contractors and subcontractors supplying apparel to City vendors must comply with “several minimum workplace standards which, if not followed, would mean that the contractor (or its subcontractors) are operating a sweatshop. [...] The standards are intended primarily for suppliers located outside the U.S. where the applicable law or practices do not already provide the minimum protections necessary. This is accomplished by making compliance with these standards a condition of doing business with the city.”¹

The WRC had conducted its initial compliance assessment of Dong Thanh in 2019 pursuant to the WRC’s role as an independent factory monitor for the City and County of San Francisco, California (“San Francisco”) under San Francisco’s Sweatfree Contracting Ordinance (“City of San Francisco Ordinance”) which likewise sets labor rights standards for manufacturers of apparel supplied to San Francisco by San Francisco’s vendors.² Dong Thanh was identified in disclosure data provided to the WRC by both the City of Madison and San Francisco (collectively, “the Cities”) as a subcontractor to 5.11 Tactical, the prime contractor to apparel vendor, Banner Uniform Center (“Banner”), for manufacturing of apparel supplied to the Cities’ respective employees.

Dong Thanh is a subsidiary of the Taiwan-based garment manufacturing conglomerate, NOA Group Corporation, which, as noted, also owns another factory in Vietnam, Dong Thanh I.³ At the time of the WRC’s initial assessment of the factory, in August through November 2019, Dong Thanh employed about 274 workers. The factory’s payroll in January 2022 showed that the company employed 268 workers.

¹ City of Madison, Ordinance No. 01665 (Dec. 12, 2005) (amending the Madison General Ordinances to create Section 4.25 relating to city procurement of items of apparel (sweat-free procurement policies)).

² *Codified as*, San Francisco, Cal., Administrative Code, Ch.12U (“Adm. Code”) (2005), *as amended*, Feb. 11, 2010, [http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter12usweatfreecontracting?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$anc=JD_Chapter12U](http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter12usweatfreecontracting?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Chapter12U).

³ NOA Group Corp., “About Us,” <https://www.thenoagroup.com.tw/about-us>.

Both Madison's Ordinance and the City of San Francisco Ordinance (collectively, "the Cities' Ordinances" or "the Ordinances") require manufacturers of apparel supplied to these cities to comply with all applicable national labor and employment laws of the country where manufacturing occurs and certain additional labor standards, including, in the case of San Francisco's Ordinance, payment of a non-poverty wage.⁴ As a result, the Ordinances require that 5.11 Tactical ensure that Dong Thanh complies with Vietnamese labor laws and regulations, as well as with those conventions of the International Labour Organization (ILO) that the country's government has ratified⁵ or is otherwise obligated by national and/or international law to enforce.⁶

B. Summary of Findings of 2019 Assessment

As detailed in Section III of this report, the WRC's initial assessment of Dong Thanh in 2019 found violations of Vietnamese labor law, relevant international labor standards, buyer codes of conduct, and/or the Cities' Ordinances in the following areas:

Wages and Hours

- **Excessive Overtime** – including, on occasion, unlawfully permitting workers to perform overtime in excess of the maximum permissible under Vietnamese law;
- **Non-provision of Breaktime** – including failing to provide workers with two legally mandated short break periods—one in the morning and one in the afternoon;
- **Non-poverty Wages** – including that, while complying with Vietnam's legal *minimum* wage standard, Dong Thanh failed to provide employees with a wage for regular working hours that met the City of San Francisco's *non-poverty* wage standard;
- **Punitive Wage Deductions** – including unlawfully deducting workers' entire monthly attendance bonus when workers take more than two days of statutory sick leave or family leave, even if this leave has already been approved, thereby restricting workers' access to this leave;

⁴ City of Madison, Ordinance No. 01665; City of San Francisco Adm. Code, Ch.12U.

⁵ Vietnam has ratified 21 Conventions of the ILO, of which 18 concern labor rights and working conditions (the remaining three address government employment policy and labor ministry administration). Six of these 18 are the ILO's "Fundamental Conventions": Conventions 29 (Forced Labour), 87 (Freedom of Association and Right to Organize), 138 (Minimum Age), 182 (Worst Forms of Child Labour), 100 (Equal Remuneration), and 111 (Discrimination (Employment and Occupation)). The remaining 12 are "Technical Conventions": Conventions 6 (Night Work of Young Persons (Industry)), 14 (Weekly Rest (Industry)), 27 (Marking of Weight (Packages Transported by Vessels)), 45 (Underground Work (Women)), 80 (Final Articles Revision), 116 (Final Articles Revision), 120 (Hygiene (Commerce and Offices)), 123 (Minimum Age (Underground Work)), 124 (Medical Examination of Young Persons (Underground Work)), 155 (Occupational Safety and Health), 187 (Promotional Framework for Occupational Safety and Health), and Maritime Labour Convention, 2006 (MLC, 2006). As an ILO member state, Vietnam is also obligated under the ILO Declaration on Fundamental Principles and Rights at Work (1998) to comply with all "Fundamental Conventions", which additionally includes Convention 98 (Right to Organize and Collective Bargaining), even though it has not ratified this convention.

⁶ Constitution of the Socialist Republic of Viet Nam, Article 12 ("The Socialist Republic of Vietnam shall consistently ... abide by the Charter of the United Nations and treaties to which the Socialist Republic of Vietnam is a contracting party..."),
<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94490/114946/F114201808/VNM94490>.

- **Inadequate Childcare Allowance** – including failing to provide a legally required allowance for childcare that complies with its buyer’s code of conduct;
- **Inadequate Pay Records** – including failing to comply with the City of San Francisco’s Ordinance by failing to maintain records of how certain workers’ wages are calculated;

Statutory Paid Time Off

- **Restrictions on Use of Sick Leave and Family Leave** – including, as noted, restricting workers’ use of these statutory benefits by deducting their entire attendance bonus whenever workers take more than two days of sick leave or family leave, even if this leave has already been approved;

Freedom of Association

- **Employer Domination of Factory Labor Union** – including by having the leadership of the factory labor union that represents its production workers entirely comprised of members of the management and office personnel;

Occupational Safety and Health⁷

- **Fire Safety Hazards** – including locked and otherwise obstructed exits, obstructed aiseways, and unsafe storage of flammable gases, combustible supplies, and waste materials;
- **Inadequate Personal Protective Equipment** – including failing to provide proper equipment to protect workers from exposure to chemical vapors and steam burns;
- **Machine Guarding** – including exposure to potential injuries from unguarded cutting and fan blades, belt-drives, and needles;
- **Electrical Hazards** – including hazards from spliced and hanging electrical cords and ungrounded outlets;
- **Ergonomics** – including seating machine operators on unpadded backless wood benches; and
- **Respiratory Hazards** – including exposure to chemical vapors and particulates from laser cutting machinery.

The WRC’s 2019 assessment of Dong Thanh also identified two other issues that, while they do not violate the Cities’ Ordinances or other legal or contractual standards to which the factory is subject, are discussed in this report, as they are inconsistent with basic principles of responsible business practice. The first, which was raised consistently by employees, was the inferior quality and inadequate quantity of food served to workers in the factory’s canteen as their mid-day meal, which workers relied on as a significant part of their daily nutrition. The second was the

⁷ It should be noted that, as the WRC’s health and safety assessment of the factory was conducted prior to the onset of the Covid-19 pandemic, the discussion in this report does not touch on the important infection control measures that are necessary for factories to adopt to protect garment workers from transmission of Covid-19. For discussion of such measures, see, WRC and Maquiladora Health & Safety Support Network, “Effective Infection Control Practices and Policies for Operating Apparel and Textile Factories,” April 2020, <https://www.workersrights.org/wp-content/uploads/2020/04/WRC-MHSSN-Infection-Control-04102020.pdf>.

factory's failure to provide workers with written wage statements, which made it difficult for employees to determine how their wages are being calculated and whether the company is properly paying them.

The violations and concerns that the WRC identified in the 2019 assessment, as well as the methodology by which the WRC reached these findings, are discussed in further detail in the body of this report. Finally, it should be noted that the fact that the WRC's 2019 investigation, as reported in this document, did not reach findings of violations in certain areas of the factory's labor practices should not be construed as a certification of the factory's overall compliance with respect to its practices in those general areas. Also note that, although this assessment included an overall safety and health inspection by a certified industrial hygienist, it did not include specialized fire, electrical, or structural safety inspections by engineers in those fields and should not be considered to denote the factory's compliance with respect to issues where only such specialists can provide such a certification.

C. WRC Recommendations for Corrective Action, Factory Response, and Current Status

As this report also details, for each violation found in the WRC's 2019 assessment, the WRC made recommendations to Dong Thanh for how the identified violations could be corrected. Dong Thanh, between February and July 2020, provided detailed corrective action plans in response to the WRC's findings, which were supported by documentation and photographs of steps it reported it had already taken to address many of the violations the WRC had identified.

The factory management's responses to each of the WRC's recommendations and the current status of the WRC's findings, as confirmed through the update conducted in 2022, are detailed in the body of this report. As discussed in detail, although a significant number of violations remain outstanding, in many areas, the factory committed to and has provided documentary evidence of having taken significant corrective actions to address the WRC's findings, to the substantial and ongoing benefit of the factory's workers.

Specifically, the WRC confirmed in 2022 that the factory had taken the following corrective actions:

- Adopting a policy permitting workers to take their two legally mandated short break periods—one in the morning and one in the afternoon;
- Increasing workers' pay allowances, and improving its policies associated with them, to provide employees with a wage for regular working hours that now meets the City of San Francisco's non-poverty wage standard;
- Ending its unlawful and punitive prior policy of deducting workers' entire monthly attendance bonus when workers take statutory sick leave or family leave;
- Improving transparency of its pay practices by maintaining more detailed records of how workers' wages are calculated;
- Reforming the leadership of the factory labor union so that it is primarily comprised of production workers rather than managers and office personnel;
- Removing fire hazards related to obstructed exits and aiseways and unsafe storage of flammable gases, combustible supplies, and waste materials;

- Providing workers proper equipment to protect them from exposure to chemical vapors and steam burns;
- Adding guarding to cutting and fan blades, belt-drives, and sewing machines;
- Eliminating electrical hazards from spliced and hanging electrical cords; and
- Reducing workers' exposure to chemical vapors and particulates from laser cutting machinery.

The WRC commends the factory's management for this progress and urges other stakeholders—including the factory's buyer, 5.11 Tactical, with the assistance and involvement of its contractor, Banner—to complete the corrective actions identified in this report as still outstanding.

II. Methodology

The WRC began the initial assessment of Dong Thanh in August 2019. The WRC's 2019 findings and recommendations with respect to Dong Thanh are based on the following sources:

- Interviews with Dong Thanh production employees conducted between August and November 2019, both offsite at locations away from the factory chosen by the employees and onsite at the facility during the WRC's October 14, 2019, inspection of the plant;
- Interviews with Dong Thanh managers, which were conducted at the factory premises;
- A physical inspection of the factory conducted on October 14, 2019, which included an occupational safety and health assessment by a certified industrial hygienist;
- A review of relevant company records; and
- A review of relevant Vietnamese labor laws, international labor standards, and the City's Ordinance.

The WRC's update on the current status of remediation of the 2019 findings were based on interviews with workers conducted between November 2021 and January 2022 and documentary evidence provided by Dong Thanh in March 2022.

III. Findings, Recommendations, Factory Response, and Current Status

The subsections below detail the 2019 findings and recommendations of the WRC with respect to working conditions and labor practices at Dong Thanh that violate Vietnamese labor laws, relevant international labor standards, the Cities' Ordinances and/or the code of conduct of the factory's buyer, 5.11 Tactical, which is the supplier to the Cities' vendor, Banner, of the goods produced in the factory that Banner provides to the Cities. The subsections also detail the factory's response to these findings and the WRC's assessment in 2022 of the extent to which the corrective measures the factory has taken have fully remedied the violations.

A. Working Hours

Dong Thanh has a single-shift schedule for production employees, who work from 7:30 a.m. to 4:30 p.m. six days per week. A review of the workers' employment contracts revealed that the

workers have a contractual right to a one-hour unpaid lunch break between 11:30 a.m. and 12:30 p.m.

Dong Thanh's wage policy stated, and workers confirmed that, as required under Vietnamese law,⁸ female employees may choose, for three days each month when they are menstruating, to take an additional half-hour paid break or, if they elect to forgo this break, to receive an additional one and one half hours' wages equaling around Vietnamese Dong ("VND") 28,000 (approximately US\$1.24). A review of the factory's payroll records revealed that most women workers at the factory choose the latter option and receive these additional wages. Also, in accordance with Vietnamese law,⁹ the factory permits employees who are pregnant, starting in the seventh month of their pregnancies, to leave work one hour before the end of their work shifts.

As discussed below, the WRC identified some instances of unlawful excessive overtime at Dong Thanh, however, both interviews with factory workers and company payroll records indicated that these violations were not highly prevalent across the facility.

1. Excessive Overtime

2019 Findings

Most of the workers interviewed by the WRC stated that they usually perform only a few hours of overtime per week. Workers cited the limited amount of overtime they are required to perform as an advantage of working at Dong Thanh rather than at other garment factories in the area whose workers are forced to work much longer hours.

Most, but not all, of the workers whom the WRC interviewed reported performing amounts of overtime that were within the limits set under Vietnamese law of 12 hours per week, 30 hours per month and 300 hours per year.¹⁰ A few of the workers whom the WRC interviewed, however, stated that during some periods they performed up to 40 or 60 hours of overtime per month, which was well in excess of the legal maximum.

The WRC reviewed the company's payroll records from May through August 2019, which indicated that workers did not perform overtime beyond the weekly and monthly limits. The WRC did find, however, that the records showed that, during this period, some workers performed on average 30 hours per month of overtime, a schedule that, if sustained for more than

⁸ Vietnam Decree No. 45/2013/ND-CP, Article 3 ("Periods included in paid working hours [...] A rest period of 30 minutes every day for menstruating female employees.").

⁹ Vietnam Labor Code ("Labor Code"), Article 155 (2) ("A female employee who performs heavy work, on reaching her seventh month of pregnancy, is entitled to be transferred to lighter work or to have her daily working hours reduced by 01 hour while still receiving her full wage.").

¹⁰ Labor Code, Article 106 (2b) ("[e]nsuring that the number of overtime working hours of the employee does not exceed 50 percent of the normal working hours in 01 day; in case of applying regulation on weekly work, the total normal working hours plus overtime working hours shall not exceed 12 hours in 01 week; [and] overtime working hours shall not exceed 30 hours per month and 200 hours in 01 year, except for some special cases as regulated by the Government, [where] the total number of overtime working hours shall not exceed 300 hours in 01 year").

10 months in a single year, would exceed the annual limit. In those cases, Dong Thanh failed to comply with the law in regard to the maximum number of weekly and/or monthly overtime hours employees can work per month and, by extension, was in violation of the Cities' Ordinances.

2019 Recommendations

The WRC recommended that, in order to comply with Vietnamese law, and thus the City of San Francisco's Ordinance, Dong Thanh should review its production scheduling to ensure that workers were not allowed to perform overtime in excess of the legal limits.

Factory Response and 2022 Status

In responding to the WRC's 2019 recommendations, the management of Dong Thanh explained that, as is not uncommon in the apparel industry, its business is highly seasonal, and workers perform significantly more overtime during the period from May through August than they do during the remainder of the year, when, the factory claimed, "there is hardly enough work for the workers and, normally, would not have any working overtime." As a result, the factory asserted, workers did not exceed the 300-hour annual maximum for overtime under Vietnamese law.

The management also claimed that, in addition—and in contradiction to workers' testimony to the WRC—none of its employees exceeded the 30-hour monthly limit for overtime under the law. By way of support for these assertions, the factory management provided a copy of its payroll record (with working hours) for May 2019 and sample records of monthly working hours for two of the factory's employees for all of 2019.

As the WRC's own review of the company's payroll records had, as noted, already found, the records provided by the factory management did not display particular instances of working hours that violated the legal limits. It must be noted, however, that it is not uncommon for garment factories to present to outside monitors time records that do not accurately depict their workers' overtime hours.

In addition, even the sample records provided in 2019 by the company showed that, contrary to the management's assertion, workers performed considerable amounts of overtime outside of the factory's peak production season. For example, the two employees for whom the company provided a year-round record of their monthly working hours both performed overtime near to or at the legal monthly limit (29 to 30 hours) in January, March, and April of 2019, all months outside the peak season of May through August that the company cited.

In 2019, the Vietnamese government revised the country's Labor Code, including the limits on overtime, which were changed to set a maximum limit of 12 hours per week, 40 hours per month and 300 hours per year.¹¹ A review of Dong Thanh's payroll records for the period from

¹¹ Labor Code (revised 2019), Article 107 (2b) ("The number of overtime working hours of the employee does not exceed 50% of the normal working hours in 01 day; in case of weekly work, the total normal working hours plus overtime working hours shall not exceed 12 hours in 01 day, and 40 hours in 01 month; c) The total overtime working hours do not exceed 200 hours in 01 year, except for the cases specified in Clause 3 of this Article.") and

November 2021 through January 2022 showed that workers were not working beyond the monthly legal maximum.

However, these records showed that several employees performed amounts of overtime near the legal monthly limit (34 to 36 hours) during these months, which were, again, outside the factory's peak season. Workers interviewed by the WRC in 2022 expressed that the factory had less work, in general, in 2021 due to the Covid-19 pandemic, and, thus, there were fewer requests made, in general, for employees to perform overtime.

2022 Recommendations

While worker interviews indicate that Dong Thanh likely did not violate overtime limits in 2021, the payroll review continues to show that the company remains at risk of violating the law going forward. For this reason, the WRC reaffirms its recommendation that the factory take measures to limit overtime work.

2. Failure to Provide Short Rest Breaks

2019 Findings

Vietnamese law requires employers to provide at least two short rest breaks per day,¹² in addition to a longer meal break. The law states that the timing and duration of these rest breaks should be stipulated in the factory's internal work rules, and the breaks must be paid. A majority of the factories in Vietnam whose labor practices the WRC has assessed comply with this requirement by providing employees two five-minute rest breaks, one of which is in the morning and the other of which is in the afternoon.

However, the workers at Dong Thanh whom the WRC interviewed reported that they were not given any such short breaks. Workers added, however, that the factory's supervisors did not maintain a strict requirement that they remain seated at their workstations throughout their shifts, so that they were able to stand, stretch, and walk briefly if they needed. While this testimony reflects positively on the company's supervisory practice, the company's failure to affirmatively grant employees at least two short rest breaks during the day still violated the law.

2019 Recommendations

The WRC recommended that, in order to comply with Vietnamese law and thus the City of San Francisco's Ordinance, Dong Thanh should introduce a practice of granting employees at least two daily short rest breaks of at least five-minute durations.

Article 107 (3a) ("An employer must not request an employee to work overtime exceeding 300 hours in 01 year in the following fields, works, jobs and cases: a) Manufacture, processing of textile, garment, footwear, electric, electronic products, processing of agricultural, forestry, aquaculture products, salt production").

¹² Labor Code, Article 108 (3) ("In addition to the rest break prescribed in Clause 1 and Clause 2 of this Article, an employer shall determine other short breaks, as stipulated in the internal work regulations.").

In addition, the WRC recommended that Dong Thanh provide compensation to workers for the statutory rest breaks which they had not been provided. As employees performed work in lieu of receiving these breaks, this compensation should be in the form of wages calculated at the premium overtime rates.

Factory Response and 2022 Status

Dong Thanh's management initially responded to the WRC's findings by claiming that the factory is in compliance with the law since the company's internal policies "offer" workers a daily 15-minute break, in addition to their one-hour meal break, from 3:30 p.m.–3:45 p.m., and that workers who spoke to the WRC must be "confused" about not receiving any rest breaks. The company also claimed that the labor law does not require two short rest breaks during the workdays.

However, the WRC noted that, unlike the one-hour meal break, the purported 15-minute break was not mentioned in the workers' employment contract, nor was it observed to be taken by workers on the day that the WRC visited the factory. Moreover, the relevant section of the labor law clearly refers to "breaks" in the plural.

Following this exchange with the WRC, Dong Thanh announced a new rest break policy dated September 9, 2020. This policy established daily short breaks from 9:30 a.m. to 9:45 a.m. and again from 2:30 p.m. to 2:45 p.m. However, workers interviewed explained that while the company did provide these breaks, and that it was possible to take them in the sense that they would not be admonished by their supervisors if they stopped working during these breaks, many employees still feel indirect pressure to work through the breaks in order to increase their earnings by meeting production targets.

2022 Recommendations

Accordingly, the WRC reiterates the recommendation that Dong Thanh should ensure that employees take the two daily short rest breaks provided by the company's updated policy. In addition, the WRC reaffirms that Dong Thanh should compensate workers for the statutory afternoon rest breaks which they did not receive prior to the factory's revision of their work schedule in September 2020.

B. Wages and Benefits

In Vietnam, the applicable legal minimum wage varies depending on the designated Economic Region in which the workplace is located.¹³ Dong Thanh is located in the Sơn Tịnh District of the Quảng Ngãi province, which is part of Economic Region III. In January 2019, the monthly base minimum wage in Economic Region III was set at VND 3,250,000 (US\$143.50).¹⁴

¹³ Labor Code, Article 91; Decree 157/2018/NĐ-CP; and Circular 33/2013/TT-BLĐTBXH.

¹⁴ The exchange rate used in this report is US\$1 = VND 22,650.

In addition, Vietnamese law requires that the wage rates employers pay must include a seven percent premium over the minimum wage for skilled workers;¹⁵ and an additional five percent wage premium for hazardous work.¹⁶ Vietnamese law has classified operating industrial sewing machines as work that is both “skilled” and “hazardous”,¹⁷ which means that the minimum legal wage for sewing operators at Dong Thanh is 12 percent above the regional minimum wage, or VND 3,651,375 (US\$157.70) per month.

Dong Thanh’s company wage scale states and a review of workers probationary contracts and regular contracts signed in 2019 confirmed that the starting monthly wage at the company is VND 3,652,000 (US\$161.24), which slightly exceeds the legal minimum.

A review of factory payroll records conducted by the WRC in October 2019 showed that all workers at the facility received the lowest wage paid to post-probationary sewing workers, which was VND 3,792,000 (US\$167.40) including bonuses for fulfilling production targets. The WRC confirmed these wage figures through interviews with factory workers.

In addition, payroll records showed, and interviews with workers confirmed, that Dong Thanh also provided employees with several monthly allowances to supplement their wages. These included a transportation allowance of VND 300,000 (US\$13.25), a housing allowance of VND 200,000 (US\$8.83), and a food allowance of VND 200,000 (US\$8.83).

Employees who were not absent from the factory on any workdays during the preceding month also received a bonus for perfect attendance of VND 300,000 (US\$13.25). In addition, as is customary for employers in Vietnam, the factory typically provides workers with an annual bonus for the Tết (lunar new year) holiday that is equal to one month’s base wages exclusive of allowances or bonuses.

In November 2018, Dong Thanh also established a wage scale which provides for all employees to receive annual five percent wage increases. The WRC’s review of payroll documents confirmed that workers received wages that reflected these increases.

Finally, as discussed below, Dong Thanh also provides women workers with children between one and six years of age with a childcare allowance of VND 50,000 (US\$2.21) per month. However, it should be noted that this amount was substandard among Vietnamese garment factories. The WRC confirmed, through interviews with workers, as well as review of the company’s payroll records, the payment to employees of this allowance.

¹⁵ Decree 49/2013/ND-CP, Article 7(3b) (“The lowest wage level of the work or title requiring labourers to have to be received vocational training (including labourers trained by enterprises themselves) must be at least 7 percent higher than the region-based minimum wage levels prescribed by the Government.”).

¹⁶ Decree 49/2013/ND-CP, Article 7(3c) (“The wage level of work or title with the heavy, hazardous and dangerous labour conditions must be at least 5 percent higher; work or title with the special heavy, hazardous and dangerous labour conditions must be at least 7 percent higher than the wage level of work or title having the equivalent complexity but working in normal labour conditions”).

¹⁷ Nguyen Hong Ha et al, *Guide to Vietnamese Labor Law for the Garment Industry* (International Labor Organization and International Finance Corporation, 7th ed, (2019).

While the wage practices above were consistent with and, indeed, went beyond the requirements of Vietnamese labor laws and regulations, as discussed below, the WRC did identify certain other wage practices at the factory that failed to comply with the law, the Cities' Ordinances, and/or the code of conduct of Dong Thanh's buyer, 5.11 Tactical. These were: (1) failure to pay wages that meet the City of San Francisco's Ordinance's non-poverty wage standard; (2) punitive deductions from workers' wages that are unlawful; (3) a childcare allowance that violated 5.11 Tactical's code of conduct; and (4) inadequate payroll records.

2022 Findings

In January 2020, the monthly base minimum wage in Economic Region III was increased to VND 3,430,000 (US\$151.43).¹⁸ As discussed above, because employees at Dong Thanh are considered to be performing hazardous and skilled work, under Vietnamese law, the minimum wage paid by the factory must be at least 12 percent above the regional minimum wage, i.e., VND 3,841,600 (US\$169.61) per month.

Dong Thanh reported in 2022 that its starting wage paid to employees was VND 3,854,000 (US\$170.18), slightly above the legal minimum rate. A review of the company payroll for November and December 2021 and January 2022 showed that workers received wages above this starting wage, with the lowest identified wage being VND 3,900,000 (US\$172) per month. The WRC also found in 2022 that Dong Thanh had increased the amounts of some of the allowances and bonuses that it provides employees to supplement their wages. While the transportation allowance provided to workers is still set at VND 300,000 (US\$13.25), the factory had increased the housing allowance it pays workers from VND 200,000 (US\$8.83) to VND 300,000 (US\$13.25) and raised the food allowance employees receive from VND 200,000 (US\$8.83) to VND 300,000 (US\$13.25).

More significantly, Dong Thanh has more than doubled the attendance bonus it pays workers from VND 300,000 (US\$13.25) per month to VND 800,000 (US\$35.32) per month. Equally important, as discussed below, the factory has changed its policy so that provision of this bonus is no longer contingent on workers having perfect attendance for the full month, but it is paid on a pro rata basis for each day that the employee is at work.

1. Compliance with the City of San Francisco's Non-poverty Wage Standard

2019 Findings

The WRC's finding in 2019 was that standard, the average wages Dong Thanh employees receive for their regular working hours, while compliant with Vietnam's legal *minimum* wage, fell short of the minimum *non-poverty* wage rate that the factory is required to pay workers under the City of San Francisco's Ordinance. In 2019, San Francisco had set its minimum non-poverty

¹⁸ Decree 90/2019/NĐ-CP.

wage rate for Vietnam at US\$1.10 per hour, excluding benefits, and at US\$1.32 per hour, including healthcare and retirement benefits.¹⁹

As discussed above, the WRC found, based on a review of the company's payroll records and workers' reported monthly wages, that the starting wage at the factory in 2019 was VND 3,652,000 (US\$161.24) per month. In addition to this amount, as noted, workers were paid a transportation allowance of VND 300,000 (US\$13.25), a housing allowance of VND 200,000 (US\$8.83), and a food allowance of VND 200,000 (US\$8.83), which, since their receipt is not contingent on the worker having perfect attendance, fulfilling production quotas, or being a mother to a young child, all could be considered part of the factory's minimum wage.

As a result, the WRC found that, for the purpose of determining compliance with San Francisco's non-poverty wage standard, applicable monthly minimum wages at Dong Thanh were VND 4,352,000 (US\$187.71) per month, or VND 4,656,000 (US\$200.83) per month if one included the annual Tết bonus, which did not include compensation that was paid on a contingent basis, such as the factory's attendance-based and production-based bonuses. These figures were the equivalent of US\$0.90 and US\$0.97 per hour, respectively,²⁰ or 82 percent and 88 percent of San Francisco's non-benefitted non-poverty wage in 2019.

Including the bonuses that were available to most workers, but paid on a contingent basis, such as monthly bonuses for perfect attendance (VND 300,000 (US\$13.25)) and fulfilling production quotas (VND 140,000 (US\$6.04)), but not the childcare allowance that is only paid to mothers of young children, increased these figures to VND 4,792,000 (US\$206.69) per month, or VND 5,096,000 (US\$219.81) per month including the Tết bonus. These figures were the equivalent of US\$0.99 and US\$1.07 per hour, respectively,²¹ or 90 percent and 97 percent of the City's non-benefitted non-poverty wage. As a result, even if one calculated the wages of workers at Dong Thanh by including monthly compensation that was not actually guaranteed to employees (as its receipt was contingent on the employees' attendance and productivity), workers' pay still fell short of the City's non-poverty wage standard.

Under the City of San Francisco's Ordinance, an employer can also comply with the non-poverty wage requirement by paying a base wage and providing healthcare and retirement benefits whose total value is 20 percent higher than the non-benefitted non-poverty wage, which, for Vietnam, was US\$1.32 per hour in 2019. In Vietnam, healthcare and retirement benefits are provided to employees through state-run social insurance and health insurance programs. Employers' mandatory contributions to these programs total 20.5 percent of workers' wages.²² As a result,

¹⁹ City of San Francisco Office of Labor Standards Enforcement, "Sweatfree Contracting Ordinance (Administrative Code Chapter 12U): 2019 International Wage and Benefit Rates," https://sfgov.org/olse/sites/default/files/2019_Wage_percent20Rates_percent20International_0.pdf.

²⁰ VND 4,352,000 x 12 months/313 working days = VND 166,850 per day. 166,850/8 hours = VND 20,856 per hour (US\$0.90 per hour). VND 4,352,000 x 13 months/313 working days = VND 180,754 per day. 180,754/8 hours = VND 22,594 per hour (US\$0.97 per hour).

²¹ VND 4,792,000 x 12 months/313 working days = VND 183,718 per day. 183,718/8 hours = VND 22,964 per hour (US\$0.99 per hour). VND 4,792,000 x 13 months/313 working days = VND 199,028 per day. 199,028/8 hours = VND 24,878 per hour (US\$0.97 per hour).

²² Nguyen Hong Ha et al, *Guide to Vietnamese Labor Law for the Garment Industry*, International Labor Organization and International Finance Corporation (5th ed. 2017): 32.

even if one includes both the value of these employer contributions, and the contingent bonuses discussed above, when calculating workers' wages, the compensation paid to workers at Dong Thanh in 2019 still did not meet the benefitted non-poverty wage standard under the City of San Francisco's Ordinance.²³

2019 Recommendations

The WRC recommended that Dong Thanh ensure compliance with the City's non-poverty wage requirement by increasing workers' base monthly wages, inclusive of monthly allowances and the customary annual bonus, but exclusive of contingent bonuses and childcare allowance, by amounts sufficient to provide a minimum pay rate that complied with the City's non-benefitted non-poverty wage standard for Vietnam. The WRC recommended that, should payment of the non-poverty wage not be financially feasible for the factory, 5.11 Tactical and Banner assist Dong Thanh in complying with this standard.

Factory Response and 2022 Status

Dong Thanh's management responded to the WRC's finding that the factory failed to meet the City of San Francisco's non-poverty wage requirement by affirming that the factory complies with the applicable legal minimum wage for all workers and pointing out that the total salaries for non-piece-rate workers was between VND 5,000,000 to 7,000,000 per month. The WRC noted that because the factory's existing wages were within 10 percent of the non-poverty wage standard it should be feasible, through cooperation between the management, 5.11 Tactical, and Banner, to raise the workers' wages to comply with the City of San Francisco's standard and urged that this be done.

In 2022, the WRC confirmed that, subsequent to the exchange just described, Dong Thanh made additional changes in its compensation policy, most notably to pay workers the monthly attendance bonus on a prorated basis, so that deductions are taken from the bonuses only in proportion to the number of days during the month when the worker is absent without permission (i.e., without taking statutory leave). As receiving the attendance bonus, therefore, is no longer contingent on perfect attendance, the WRC found that it is reasonable to consider this bonus as a guaranteed element of workers' monthly wages.

In 2021, the City of San Francisco increased its minimum non-poverty wage rate for Vietnam to US\$1.15 per hour excluding benefits and at US\$1.38 per hour including healthcare and retirement benefits.²⁴ The WRC found in 2022, based on a review of the company's payroll records and workers' reported monthly wages, that the starting wage at the factory is now VND 3,854,000 (US\$170.18) per month. In addition, as noted, workers are paid a transportation allowance of VND 300,000 (US\$13.25), a housing allowance of VND 300,000 (US\$13.25), and a food allowance of VND 300,000 (US\$13.25), which, since their receipt is not contingent on the

²³ 82 percent x 120.5 percent = 98.4 percent < 120 percent; 88 percent x 120.5 percent = 106 percent < 120 percent; 90 percent x 120.5 percent + 108 percent < 120 percent; 97 percent x 120 percent = 117 percent < 120 percent.

²⁴ City of San Francisco Office of Labor Standards Enforcement, "Sweatfree Contracting Ordinance (Administrative Code Chapter 12U): 2019 International Wage and Benefit Rates," https://sfgov.org/olse/sites/default/files/2021_Wage%20Rates%20International.pdf.

worker having perfect attendance, fulfilling production quotas, or being a mother to a young child, can be considered as components of the factory's minimum wage. In addition, since the factory has changed its policies to make payment of its attendance bonus no longer contingent on a worker having perfect attendance for the entire month, the attendance bonus of VND 800,000 (US\$35.32) can now also be considered as a component of the factory's minimum wage.

As a result, the WRC found that, for the purpose of determining compliance with San Francisco's non-poverty wage standard, applicable monthly minimum wages at Dong Thanh are VND 5,554,000 (US\$245.25) per month, or VND 6,016,833 (US\$265.69) per month if one includes the annual Tết bonus (but not including contingent production-based bonuses). These figures are the equivalent of US\$1.15 and US\$1.25 per hour, respectively,²⁵ or 100 percent and 108 percent of the City's non-benefitted non-poverty wage at current exchange rate.²⁶

Therefore, based on current wage data and factory policies, Dong Thanh is now in compliance with San Francisco's non-benefitted non-poverty wage standard. The WRC commends Dong Thanh on this development and on providing a non-poverty wage to its employees. However, it should be noted that, at the time of the preparation of this report, San Francisco's non-benefitted non-poverty rate has not been adjusted for 2022, and, given that the factory's wage rates are only slightly above the non-poverty threshold, this adjustment could bring the factory into non-compliance. Ongoing monitoring of wages paid at Dong Thanh is necessary to confirm compliance with the City's non-benefitted non-poverty wage rate.

2. Punitive Wage Deductions

2019 Findings

Vietnamese labor law prohibits employers from using wage deductions as a form of discipline or punishment.²⁷ In 2019, the WRC found that Dong Thanh violated this prohibition by penalizing workers for use of statutory sick leave. Workers whom the WRC interviewed related that Dong Thanh's policy, at the time, was to deduct the entire amount of the worker's monthly attendance bonus from the worker's pay if the worker was absent on more than two days during the month, even if the reason for absence was use of statutory sick or family leave (leave to care for an ill child)—and even if this leave had already been approved by the company. The monthly attendance bonus totals VND 300,000 (US\$13.25), or nearly seven percent of workers' ordinary monthly compensation, so its forfeiture inflicted a significant financial penalty on employees.²⁸

²⁵ VND 5,554,000 x 12 months/313 working days = VND 212,933 per day. 212,933/8 hours = VND 26,616 per hour (US\$1.15 per hour). VND 6,016,833 x 12 months/313 working days = VND 230,677 per day. 230,677/8 hours = VND 28,835 per hour (US\$1.25 per hour).

²⁶ For this calculation, the current exchange rate as of VND 23,126 per US\$1 is used, while for other calculations the rate used in the previous report of VND 22,646 per US\$1 is applied.

²⁷ Labor Code, Article 128: ("Prohibited Actions When Commencing Disciplinary Procedure: ... All forms of financial punishments such as withholding or diminution of salary....").

²⁸ Including wages and allowances, but not other contingent or occasional bonuses, such as the target bonus and Tết holiday bonus, workers' monthly compensation, including the attendance bonus equals VND 4,652,000. VND 300,000 / VND 4,652,000 = 6.4 percent.

The WRC's finding in 2019 was that, in such cases, the amount of this deduction was so disproportionate to the employee's actual absence from work—especially since this deduction was taken even if the absence had been approved by the company and consisted of leave to which the worker had a legal right—it was punitive and disciplinary in nature, which violated the prohibition on such deductions under Vietnamese law.²⁹ Moreover, as discussed further below, this forfeiture also imposed an unlawful restriction on workers' use of statutory leave.

2019 Recommendations

The WRC recommended that Dong Thanh revise its policy and practices concerning provision of the attendance bonus so that the use of statutory sick or family leave did not result in a deduction from or forfeiture of the attendance bonus and communicate this change in policy to all of the factory's workers. The WRC also recommended that Dong Thanh compensate employees for all attendance bonuses that were deducted from workers' pay on account of the employees' use of statutory sick or family leave.

Factory Response, 2022 Status and Recommendations

Dong Thanh's management responded to the WRC's 2019 finding in this area by asserting that since providing the attendance bonus was not required by law the company did not violate the statutory prohibition on punitive wage deductions by denying it to employees based on their use of sick leave or family leave. The factory's position, therefore, was not that the deduction was not punitive, but that the funds the company was deducting were not "wages" subject to the prohibition on such a deduction.

However, the prohibition under the Labor Code makes unlawful all punitive deductions of "salary", which the law explicitly defines as the "*amount the employer pays the employee under an agreement for a work performed by the latter*", including the employee's "*base salary plus allowances and other additional amounts*"³⁰ (emphases added). As attendance bonuses are part of the "amount the employer pays the worker", even if they fall under the category of "other additional amounts" rather than "base salary", they fall under the definition of "salary".

As such, attendance bonuses are subject to the legal prohibition on punitive deductions. The WRC reaffirmed to the factory in 2020 the finding that Dong Thanh violated this prohibition when it deducted workers' attendance bonus in punishment for their use of approved statutory sick leave or family leave, and the WRC reaffirmed the recommendation that Dong Thanh cease this practice and compensate workers for any such prior deductions it had made.

As discussed, subsequent to the WRC's initial engagement with Dong Thanh in 2020, the company changed its policy on how the attendance bonus is administered. Specifically, the company now calculates the amount that it pays workers as an attendance bonus on a prorated basis according to how many days during the month the worker was in attendance. If for instance a worker takes sick leave for two days, during a month where there are a total of 26 regular working days, the worker will receive 24/26ths (92 percent) of the full attendance bonus.

²⁹ Labor Code, Article 128.

³⁰ Labor Code, Article 90(1).

Furthermore, when the worker's absence is due to taking annual leave, the company now does not take any deduction at all from workers' wages. Given these changes in the company's policies, the WRC finds that the company is no longer using the attendance bonus to take punitive deductions from workers' wages.

The WRC commends Dong Thanh for this change in its policies but continues to urge the company to compensate workers for prior deductions that were taken from workers' attendance bonuses on account of their use of statutory leave.

3. Inadequate Childcare Allowance

2019 Findings

As mentioned above, Vietnamese law requires that employers promote access to childcare for their women employees who have small children, either by assisting and supporting the building of daycare facilities or by covering a portion of their childcare expenses.³¹ While the WRC in 2019 found that Dong Thanh provided such workers with a childcare allowance, the amount of this allowance was only VND 50,000 (US\$2.21) per month per employee. Compared to the actual expenses incurred by workers for childcare, this is not a substantial contribution.

The childcare allowances that garment factories in Vietnam provide to their workers in order to comply with this legal mandate vary in amount; however, among factories in Vietnam that the WRC inspected between 2015 and 2019, the average childcare allowance factories provided to workers was roughly VND 100,000 (US\$4.42), double the amount that Dong Thanh provided for this allowance. While failing to provide a childcare allowance whose amount is comparable to that paid by other factories did not violate the City of San Francisco's Ordinance, it did contravene the code of conduct of Dong Thanh's buyer (and the City of San Francisco's supplier), 5.11 Tactical, which requires that compensation paid to employers equal or exceed not just the legal minimum wage but the prevailing standards in the industry as well.³²

2019 Recommendations

To comply with the 5.11 Tactical's code of conduct, the WRC recommended that Dong Thanh ensure that workers are provided statutory childcare allowances at a level equal to or exceeding the industry standard, which, based on the WRC's experience, was no less than VND 100,000 per month.

Factory Response, 2022 Status and Recommendations

Dong Thanh responded to the WRC's 2019 finding by citing examples of childcare allowances paid by four other garment and textile factories in the area whose amounts were equal to or less than the allowance that it provides to its workers. In a follow-up communication in March 2022,

³¹ Labor Code, Article 154 (4) ("Employers shall assist and support in building day care facilities and kindergartens, or in covering a part of the childcare expenses incurred by female employees.").

³² 5.11 Tactical, Vendor Code of Conduct, <https://www.511tactical.com/vendor-code-of-conduct>.

the company confirmed that its practice was still to pay workers VND 50,000 per month for childcare allowance. The WRC urges Dong Thanh to obtain objective data as to currently prevailing practice in the local export garment manufacturing sector concerning payment of childcare allowances from, for example, the Ministry of Labor or the ILO.

4. Inadequate Payroll Records

2019 Findings

The City of San Francisco's Ordinance requires that factories supplying to the City of San Francisco and their contractors "maintain basic payroll and time records for each Worker" that include, for each day that an employee works, her rate of pay, the number of hours worked, the actual wages paid, and any deductions.³³ The WRC's 2019 assessment found that payroll records for employees in the plant's cutting section, which Dong Thanh presented for review during the WRC's inspection of the factory, did not identify these employees' applicable rates of pay or hours of work.

Specifically, the company's payroll records did not identify these employees' base wage, production bonuses, overtime rate or overtime pay but, instead, listed only their total daily wage.

As discussed further below, this lack of transparency was exacerbated by the fact that the company's failure to workers with written pay statements. These omissions not only violate the Cities' Ordinances, but also make it difficult for workers and outside assessors to determine whether employees are being paid correctly for all of the hours that they have worked.

2019 Recommendations

The WRC recommended that Dong Thanh maintain payroll records and issue pay statements to employees that provide details concerning the number of regular and overtime hours employees work, their rates of pay for these hours, and the amounts of all bonuses and deductions included in calculating workers' wages.

Factory Response, 2022 Status and Recommendations

Dong Thanh acknowledged in 2020 that it did not provide written pay statements to workers but stated that when workers receive their pay, they are given the opportunity to review the company's payroll record which shows how their wages are calculated. The company agreed that going forward it would provide a written record to workers when they are paid that would include their regular working hours, overtime hours, bonuses, and allowances.

In 2022, the WRC found that Dong Thanh has improved its payroll records, which now show employees' regular working hours, overtime hours, bonuses, and allowances. The company also shows the payroll record to workers when they receive their pay and has them sign a form to acknowledge having seen the record. While these are clear improvements in its practice, Dong

³³ Adm. Code., Ch. 12U.3.(d).

Thanh still does not provide each worker with a written pay statement to keep for their own records and to review at their leisure.

The WRC continues to recommend that Dong Thanh issue regular pay statements to each employee that details the number of regular and overtime hours they have worked, their rates of pay for these hours, and the amounts of the bonuses and deductions included in their wages.

C. Paid Statutory Leave

Vietnamese law requires employers to provide sick leave to workers when so directed, in writing, by the worker's physician.³⁴ Workers are paid for sick leave through the country's social insurance program.³⁵ Employees also have a legal right to take up to 20 days of paid family leave per year to take care of a sick child under the age of three, and up to 15 days of paid family leave annually to care of a sick child between the ages of three and seven.³⁶ The country's labor law also requires employers to provide workers in garment and textile factories 14 days of paid annual leave,³⁷ plus one additional day for every five years of service.³⁸

With respect to providing annual leave, Dong Thanh's practice, at the time of the WRC's 2019 assessment, was already consistent with the law's requirements. Workers interviewed by the WRC confirmed that employees who have completed fewer than five years of service receive payment for 14 days of such leave each year and that workers with five or more years of service receive 15 annual leave days.

However, with regard to sick leave and family leave, as already noted above and discussed further below, Dong Thanh's practices at the time, with respect to taking deductions from employees' wages, placed unlawful restrictions on workers' access to these statutory benefits.

1. Restrictions on Use of Statutory Sick Leave and Family Leave

2019 Findings

As noted, workers interviewed by the WRC revealed that Dong Thanh deducted their entire attendance bonus of VND 300,000 (US\$13.25) per month if the worker had been absent on more

³⁴ Law on Social Insurance of November 20, 2014, Law 58/2014/QH13 ("Law on Social Insurance"), Article 25 (1), available in English translation at: <http://vietnamlawenglish.blogspot.com/2014/11/vietnam-social-insurance-law-2014.html>.

³⁵ Law on Social Insurance, Article 25 ("[C]onditions for enjoying the sickness regime: 1. Employees who have to take leave due to sickness or accidents other than labor accidents, with the certification of a competent health establishment under the Ministry of Health's regulations.").

³⁶ Law on Social Insurance, Article 27 (1) ("Leave period upon sickness of children. The leave period upon sickness of a child in a year shall be calculated based the number of days of care for the sick child, which must not exceed 20 working days, if the child is under 3 years old, or must not exceed 15 working days, if the child is between full 3 years and under 7 years old.").

³⁷ Labor Code, Articles 111 and 112; Decree 45/2013/NĐ-CP, Article 7; Decision 1152/2003/QĐ-BLĐTBXH of the Minister of Labour, War Invalids and Social Affairs ("Decision") (establishing that textile manufacturing is heavy and hazardous work); Decision 1629/1996/QĐ-BLĐTBXH; also Guide to Vietnamese Labor Law for the Garment Industry at 33.

³⁸ Labor Code, Article 112.

than two days of the preceding month, even if the reason for the absence was use of statutory sick leave or family leave—and even if this leave had already been approved by the company.

As the amount of the attendance bonus that was forfeited—VND 300,000 (US\$13.25)— was substantial for the workers, the deduction of this bonus placed a significant financial penalty on workers accessing leaves that they had a legal right to use for their own health and that of their children. The conditions of the company attendance bonus policy, therefore, placed unlawful restrictions on workers’ access to paid sick leave and family leave through the country’s social insurance program.³⁹

2019 Recommendations

The WRC recommended that Dong Thanh rescind any policy that restricted or reduced workers’ eligibility for the company’s attendance bonus on account of their using paid leave to which they were legally entitled. The company should also compensate workers for the amount of any attendance bonuses that were forfeited by the employees on account of their having used sick leave or family leave during the preceding months.

Factory Response and 2022 Status

As noted above, Dong Thanh asserted that, since providing the attendance bonus was not required by law, the company did not violate the statutory prohibition on punitive wage deductions by denying it to employees based on their use of sick leave or family leave. As we also pointed out above, by asserting this, Dong Thanh was not actually arguing that the deduction of the attendance bonus was not punitive but, instead, simply claiming that the attendance bonus does not fall under the category of compensation for which punitive deductions are prohibited.

However, Dong Thanh’s assertion was incorrect, since the attendance bonus plainly *does* meet the legal definition of compensation that cannot be deducted as punishment (i.e., it is an “additional amount” that is included in the worker’s “salary”). Moreover, because, as Dong Thanh did not contest, the deduction of the attendance bonus for use of sick leave or family leave *was* punitive—it was a means of punishment used to disincentivize workers from taking such leave—it restricted workers’ access to this statutory benefit.

Dong Thanh was, in effect, making workers choose between forgoing benefits they have a legal right to use without penalty (paid sick and family leave), or suffering a penalty with respect to their compensation (the wage deduction). As such, Dong Thanh’s policy unlawfully denied workers their right to statutory sick and family leave.

As mentioned above, in 2020, Dong Thanh made changes in how it administers the attendance bonus, so that the bonus is calculated according to how many days during the month the employee is present at work. As a result, the workers are no longer penalized economically for taking sick leave and Dong Thanh no longer violates workers’ rights to take statutory sick and

³⁹ Law on Social Insurance, Articles 25 and 27.

family leave. However, Dong Thanh did not compensate workers for prior deductions taken from their attendance bonus on account of their having taken sick leave.

2022 Recommendations

The WRC reiterates that Dong Thanh should compensate workers for prior deductions it took from workers' attendance bonus on account of their having taken sick leave.

D. Freedom of Association and Collective Bargaining

Although an enterprise-level union has been established at Dong Thanh for a number of years, workers interviewed by the WRC in 2019 described it as serving mainly a social welfare function, including “giving gifts [to employees] during the Tết holiday and provid[ing] a small bonus on [International] Children’s Day [on June 1].” As discussed below, the union did not represent factory workers’ interests independent of the company’s management in matters such as employee grievances and bargaining over working conditions, due in part to the fact that the union’s leadership was comprised entirely office personnel and managers, themselves, a situation that constitutes a clear violation of workers’ rights of freedom association.

1. Influence over Factory Labor Union by Employer

2019 Findings

At the level of individual workplaces, many employers in Vietnam restrict freedom of association by dominating and/or influencing the enterprise-level unions inside their factories.⁴⁰ Human resource managers are often placed in union leadership, creating a fundamental conflict of interest on the part of the union and an insurmountable bar to unions adequately and independently representing workers’ interests and acting to correct violations of the labor laws.⁴¹

The WRC found that of the seven members of the governing committee of Dong Thanh’s union, at least three, including the union president, were managers, with the remainder being office staff from the human resources, shipping, and accounting sections. None of the union committee members were production employees.

When interviewed by the WRC, one of the union’s leaders stated that she understood the union’s role as bringing complaints from workers to the management, but that she did not consider the union to have any role to play in ensuring that the complaint was appropriately addressed by the employer.

⁴⁰ Bernadine Van Gramberg, Julian Teicher, and Tien Nguyen, “Industrial Disputes in Vietnam: the Tale of the Wildcat,” *Asia Pacific Journal of Human Resources* (2013): 4 (“It is common for human resource managers to be the union president in F[oreign] I[nvested] E[nterprises]...”).

⁴¹ Van Gramberg et al.: 5 (finding that “human resource managers [serving as] union president” at the same time that the union “is charged with monitoring breaches of the [Labor] Code” create “conflict [between] union leaders’ managerial interest in the success of the company and their capacity to engage in critical scrutiny of enterprise operations...”).

Having unions led by officials who are members of, or otherwise aligned with, the company management, as has been the case with the union at Dong Thanh, constitutes a clear violation of the right of freedom of association, whose observance, as established under ILO Convention 98, requires that “[w]orkers’ and employers’ organisations shall enjoy adequate protection against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration.”⁴²

2019 Recommendations

The WRC recommended Dong Thanh should ensure that the factory’s production workers have the opportunity to independently and democratically nominate and elect the union’s leadership and that no managers or supervisors play any role in the union.

Factory Response, 2022 Status and Recommendations

Dong Thanh responded to the WRC’s 2019 report by acknowledging that having a union committee that did not include production employees was a “mistake” and stating that the company had accordingly “reorganized the union”. The factory management sent the WRC a document that indicated that managers had been removed from the union committee and that employees from the factory’s production sections had been added to it, instead. A review of company records in January 2022 showed that at least six of the union committee’s 10 members were regular production workers.

Removal of the managers from the union committee is an important remedial action. Full respect for employees’ right of freedom of association, however, requires that workers be permitted to democratically select their own representatives. It appears that the production workers who are now members of the union committee were selected by the management rather than by the employees, themselves, indicating that, in this regard, workers’ associational rights are still not fully respected at the factory. The WRC recommends that the management facilitate the workers holding democratic elections for the union committee.

E. Occupational Health and Safety

The WRC’s assessment of Dong Thanh included, as part of the October 14, 2019, inspection of the factory, a walkthrough of the facility’s interior and exterior, a review of company documents regarding safety and health trainings, prior inspections, accident and near-miss reports, and the meetings of the factory’s health and safety committee. The WRC also interviewed factory employees and supervisors to obtain information on safety and health management practices, procedures, and internal reporting.

The WRC’s safety and health assessment of Dong Thanh in 2019 was conducted by a certified industrial hygienist who was formerly employed in this capacity by the University of California

⁴² ILO Convention 98 (Right to Organise and Collective Bargaining Convention, 1949) Article 2(1), (2) (“Acts which are designed to promote the establishment of workers’ organisations under the domination of employers or employers’ organisations . . . with the object of placing such organisations under the control of employers or employers’ organisations, shall be deemed to constitute acts of interference within the meaning of this Article”).

at Davis. He identified health and safety hazards in the factory which violate applicable Vietnamese laws and regulations in the following areas: fire safety, personal protective equipment, machine guarding, electrical hazards, ergonomic hazards, respiratory hazards, temperature levels, crushing and pinching hazards, toilets, and noise levels.

The factory provided responses to the WRC's findings, including photographs of corrective actions the factory had taken in February 2020. It should be noted that, as this research was conducted prior to the onset of the Covid-19 pandemic, the discussion in this report does not touch on the important issues that arose subsequently related to infection control measures for factories in the global garment industry.

1. Fire Safety

a. Locked, Lockable, and Obstructed Fire Exits

2019 Findings

During the WRC's 2019 inspection of Dong Thanh, the exit doors on the perimeter of the factory were unlocked, allowing for emergency egress, although some of the doors were fitted with hasps, which would allow them to be locked. Indeed, the WRC noted, at approximately 10 minutes prior to the end of the workday, that one of the exit doors (see location circled in red in Figure 1) had been locked with a padlock fitted to a hasp (see Figure 2) in a manner that would have prevented workers from escaping from the factory via that exit in the event of an emergency.

Additionally, the WRC found that, earlier in the day, the same exit door had been fixed in a partially open position, by inserting a metal pin attached to the door into a hole in the concrete flooring, which, in case of emergency, would hinder the ability of employees to rapidly fully open the door to permit workers to exit the factory (see Figure 3).

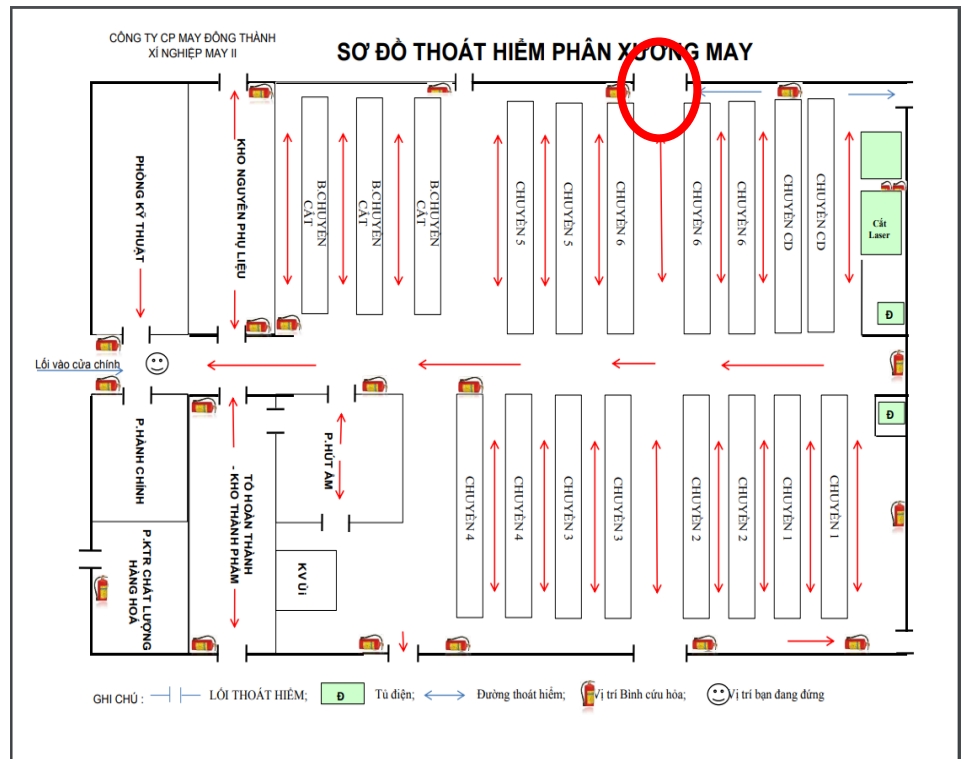


Figure 1: Map of Factory Floor Showing Location of Locked Exit Door

These potential and actual obstructions to the factory's emergency exits violated Vietnamese workplace safety regulations.⁴³

2019 Recommendations

The WRC recommended that all exits remain unlocked and unobstructed during working hours, and that, moreover, for all doorways that are designated as emergency exits, the factory should remove all lockable hasps and other equipment and install doors equipped with “panic bars” devices that cannot be locked from the inside.

Factory Response, 2022 Status and Recommendations

Dong Thanh committed to ensure that all exits remain unlocked and unobstructed during working hours. However, the company still has not committed to remove lockable hasps and other equipment or install doors equipped with “panic bars” devices that cannot be locked from the inside. The WRC repeats its recommendation that the company implement these measures.

b. Tripping Hazards at Emergency Exits

2019 Findings

The WRC's 2019 assessment found numerous locations at the emergency exits where broken and uneven flooring presented tripping hazards and could cause injury and delay escape in the event of an emergency (see Figures 4 and 5). One such tripping hazard was actually being repaired during the WRC inspection (see Figure 6). The presence of these tripping hazards at the emergency exits violated Vietnamese safety standards.⁴⁴



Figure 2: Locked Exit Door



Figure 3: Exit Door ‘Pinned’
Partially Open

⁴³ Decree 167/2013/ND-CP, Article 38, 2 (a) and 5; Circular 07/2010/TT-BXD, Articles 3.2.10, 3.3.1 and 3.3.5.

⁴⁴ Decree 167/2013/ND-CP, Article 38, 2(a) and 5; Circular 07/2010/TT-BXD, Article 3.2.10 of Clause 3.2, 3.3.1 and 3.3.5.



Figures 4 – 5: Broken Flooring at Exit Doorway



Figure 6: Employee Repairing Broken Flooring

2019 Recommendations

The WRC recommended that the factory ensure that the flooring at all exits is undamaged and does not present a tripping hazard.

Factory Response and 2022 Current Status

Dong Thanh reported to the WRC, and provided photographic evidence to confirm, that it had repaired the uneven flooring in the factory.

c. Storage of Combustible and Flammable Materials

i. Waste Storage

2019 Findings

Although the company claimed that it was emptied on a weekly basis, at the time of the WRC's 2019 inspection, the area on the premises where cardboard waste is stored was overflowing, suggesting that this waste had accumulated for some time (see Figure 7). The storage of copious amounts of combustible materials in this area posed a serious hazard because it is located next to the factory's hazardous waste storage area and violated applicable Vietnamese safety standards.⁴⁵



Figure 7: Overflowing Combustible Waste Storage next to Hazardous Waste Storage ("Kho Chứa Rác Thải Nguy Hại") Area.

⁴⁵ Law on Fire Prevention and Fire Fighting; Articles 14 and 20; Circular 20/2011/TTBLDTBXH; QCVN 01:2008/BCT, Article 67; Decision 12/2008/QĐ-BCT.

2019 Recommendations

The WRC recommended that the factory relocate its storage of combustible material to a separate location from its hazardous waste storage and ensure that combustible materials were disposed of regularly and not allowed to accumulate.

Factory Response and 2022 Current Status

The factory provided the WRC with photographs showing that it had disposed of the accumulated combustible material and relocated storage for these materials away from the hazardous waste storage area.

ii. Materials Storage

2019 Findings

The WRC found that the factory stored large quantities of cardboard for packaging finished products inside the factory (see Figure 8). Having large quantities of combustible materials stored within a building that lacks fire sprinklers created a potential fire hazard and violated Vietnamese safety standards.⁴⁶



Figure 8: Excessive Storage of Combustible Packaging

2019 Recommendations

The WRC recommended that the company reduce the amount of combustible materials stored inside the factory to the minimum required for immediate production needs.

Factory Response and 2022 Current Status

The factory committed to monitor the quantity of cardboard boxes needed for production purposes in order to avoid storage of excessive quantities inside the factory.

iii. Flammable Gasses Storage

2019 Findings

The WRC found that the compressed gas cylinders used for cooking in the factory's canteen were located in a separate room adjacent to the canteen kitchen. The gas cylinders were not secured to the wall with restraints to prevent them tipping over and potentially releasing flammable gas (see Figure 9).

⁴⁶ Law on Fire Prevention and Fire Fighting; Articles 14 and 20; Circular 20/2011/TTBLDTBXH; QCVN 01:2008/BCT, Article 67; Decision 12/2008/QĐ-BCT.



Figure 9: Unsecured Gas Cylinders



Figure 10: Gas Cylinder on Left Not Connected to Emergency Shut-Off

In addition, all but one of these cylinders were manifolded to a single supply line with a shut-off button, enabling the gas flow to be quickly shut-off in case of an emergency. However, one cylinder was connected to a gas line that was not connected to the manifold and, therefore, would not be shut-off when the button is pressed, so that its valve would need to be separately closed in case of emergency (see Figure 10). These conditions violated Vietnamese fire safety standards.⁴⁷

2019 Recommendations

The WRC recommended that the factory: (i) reconfigure the gas cylinder storage and supply lines so that all cylinders were connected to the manifold distribution system so that they can be turned off with the shut-off button; and (ii) ensure all the cylinders were secured to prevent unintended tipping and potential release of flammable gas.

Factory Response and 2022 Current Status

The factory supplied the WRC with photographs showing that it had secured the gas cylinders and connected all cylinders to the manifold distribution system and its shut-off mechanism.

d. Obstructed Aisleways

2019 Findings

The WRC found numerous aisleways in the factory that were obstructed as a result of storage of fabric, which would hinder employees from exiting these areas quickly in case of an emergency, thereby violating Vietnamese safety standards⁴⁸ (see Figures 11 and 12).

⁴⁷ Law on Fire Prevention and Fire Fighting; Articles 14 and 20; Circular 20/2011/TTBLDTBXH; QCVN 01:2008/BCT, Article 67; Decision 12/2008/QĐ-BCT.

⁴⁸ Labor Code, Article 138; Occupational Safety and Health Law (“OSH Law”), Articles 16 (1) and (2).

2019 Recommendations

The WRC recommended that the factory ensure that all boxes and rolls of fabric are stored in a manner that will prevent them from creating obstructions in the aislesways

Factory Response and 2022 Current Status

The factory provided the WRC with photographs showing that the rolls of fabric and boxes had been moved so that they no longer obstructed the aislesways.

e. Fire Extinguishers

2019 Findings

While almost all of the factory's fire extinguishers had pressure gauges which indicated that they had sufficient pressure to operate properly, two did not have such gauges, an apparent violation of applicable safety standards,⁴⁹

2019 Recommendations

The WRC recommended that the factory replace these fire extinguishers with new fire extinguishers equipped with pressure gauges.

Factory Response and 2022 Current Status

The factory explained that the fire extinguishers in question were of a type that because they are filled with liquified carbon dioxide, are not fitted with a pressure gauge but are, nonetheless, approved by Vietnamese government authorities. The WRC was able to confirm that this information was accurate and withdrew the recommendation that they be replaced.



Figure 11: Obstructed Aisleways



Figure 12: Obstructed Aisleways

⁴⁹ Law on Fire Prevention and Fire Fighting, Article 20; TCVN 7435-1:2004 (Fire Extinguishers), Article 5.

2. Personal Protective Equipment (PPE)

a. PPE for Steam Compressor Maintenance

2019 Findings

Dong Thanh operates a steam compressor, which is housed adjacent to the main production facility, to generate steam for pressing finished garments. The company provides employees who perform maintenance on the steam compressor with personal protective equipment (PPE) to shield them from steam burns in the form of protective gloves and safety glasses, which were kept just outside the entrance to the room where the steam compressor is housed (see Figure 14).



Figure 14: Steam Compressor with Only Safety Glasses and Gloves Provided for PPE

However, the safety glasses that were present on the day of the WRC's inspection in 2019 appeared to have not been removed from their original packaging, suggesting they were not consistently used. Moreover, safety glasses and gloves are inadequate to protect workers against a potential exposure of pressurized hot steam to the face or other portions of the body, with the result that the PPE that Dong Thanh provided did not meet the requirements of Vietnamese safety standards.⁵⁰

2019 Recommendations

The WRC recommended that, in addition to ensuring that basic safety procedures were followed (i.e., that employees who perform maintenance on the steam compressor are trained and qualified to do so and that the steam compressor is powered down while maintenance is performed), that the factory supply and require the use of additional PPE including a face shield, thermal resistant gloves, and an apron.

Factory Response and 2022 Current Status

The factory provided photographs showing that it had acquired and issued appropriate PPE for use while performing maintenance on the steam compressor.

⁵⁰ Labour Code, Article 149; OSH Law, Articles 16 (3) and 23; Circular 04/2014/TT-BLDTBXH.

b. Inadequate Respiratory PPE

2019 Findings

The factory issues PPE to employees who are exposed to respiratory hazards from machinery, including, as discussed below, the factory's laser cutter. However, the PPE that was issued at the time of the WRC's 2019 inspection consisted of antimicrobial surgical/dust masks that do not protect against airborne chemical vapors or particulates, thereby failing to comply with Vietnamese safety laws⁵¹ (see Figure 15).



Figure 15: Surgical/Dust Masks Improperly Issued for Chemical Exposure

2019 Recommendations

The WRC recommended that the factory obtain an assessment of the respiratory hazards associated with the use of the factory's various machinery and, where hazards cannot be mitigated through engineering controls, provide appropriate US National Institute of Occupational Safety and Health (NIOSH)-approved respirators.

Factory Response and 2022 Current Status

The factory informed the WRC that it would issue employees N95 masks to replace the surgical/dust masks and provided an assessment of respiratory hazards in the factory.

3. Machine Guarding

a. Unguarded Fan Blades

2019 Findings

Dong Thanh maintains a ventilation system which draws outside air through the factory's evaporative cooler using an axial fan. While the fan blades are covered with the dampers when the system is powered down, the WRC's 2019 inspection found that when the fan was operation, the dampers opened and exposed workers to risk of injury, in violation of Vietnamese workplace

⁵¹ Labour Code, Article 149; OSH Law, Articles 16 (3) and 23; Circular 04/2014/TT-BLDTBXH.

safety laws.⁵² The fan blades were unguarded, with the result that an employee could insert their hand into the path of the fan blades potentially resulting in serious injury (see Figure 16).

2019 Recommendations

The WRC recommended that the factory install adequate guarding, such as a grate between the dampers and the fan blades, to mitigate the risk of workers accidentally contacting the blades.

Factory Response and 2022 Current Status

The factory provided photographs showing the installation of grates that cover the dampers, preventing accidental contact with the fan blades.



Figure 16: Unguarded Fan Blades inside Dampers

b. Cutting Machine

2019 Findings

The WRC found that, in violation of Vietnamese safety standards,⁵³ a cutting machine in the factory not only had an unguarded blade but was activated by moving a handle that protruded into an aisleway (see Figures 17 and 18). As a result, a person attempting to navigate the aisleway could accidentally activate the cutting blade, exacerbating the risk of injury from the unguarded blade.



Figure 17: Unguarded Cutting Blade



Figure 18: Activation Handle for Cutting Machine Protruding into Aisleway

⁵² Labour Code, Article 138; OSH Law, Articles 16 (2)-(4).

⁵³ Labour Code, Article 138; OSH Law, Articles 16 (2)-(4).

2019 Recommendations

The WRC recommended that the factory reconfigure the handle so as not to protrude into the aisleway and to provide guarding around the cutting blade.

Factory Response, 2022 Status and Recommendations

The factory provided photographs showing the installation of guarding to prevent accidental contact with the cutting blade. However, the protruding handle has not been reconfigured, so the blade, while now guarded, could still be accidentally activated. The WRC reiterates that the handle should be reconfigured to remove this hazard.

c. Grinding Wheel

2019 Findings

A grinding wheel in the factory violated Vietnamese safety standards,⁵⁴ as it did not have shield protectors, tongue guards, or a tool rest and was not secured to the table where it is used, (see Figure 19) which, in turn, was not bolted to the floor.

2019 Recommendations

The WRC recommended that the grinding wheel be fitted with shield protectors, tongue guards, and a tool rest and be secured to the table where it is used, which should be bolted to the floor.

Factory Response and 2022 Current Status

The factory indicated that the grinding wheel in question would be removed from the factory removing the hazard.

d. Belt-Driven Machinery

2019 Findings

The WRC's 2019 inspection found several pieces of belt-driven machinery that, in violation of Vietnamese safety laws,⁵⁵ had exposed moving parts that could cause severe injury if they came into contact with workers' bodies or clothing (see Figures 20-22).



Figure 19: Unshielded Grinding Wheel

⁵⁴ Labour Code, Article 138; OSH Law Articles 16 (2)-(4).

⁵⁵ Labour Code, Article 138; OSH Law, Articles 16 (2)-(4).



Figures 20-22: Lack of Guarding on Belt-Driven Machines

2019 Recommendations

The WRC recommended that all machines that have a moving belt be equipped with guarding at the point of operation.

Factory Response and 2022 Current Status

The factory provided photographs showing the installation of guarding to prevent accidental contact with the moving belts.

e. Sewing Machines

2019 Findings

The WRC observed in 2019 that while many of the factory's sewing machines had guarding in place, there were several that did not (see Figures 23 and 24). The explanation that the company gave for this omission is that the latter used a lower gauge needle, which, they asserted, posed a lower risk of harm. However, even a small needle that unexpectedly breaks could become a projectile and cause severe injury to the eye or face, and, as a result, this lack of guarding violated safety standards.⁵⁶



Figure 23: Sewing Machine with Guarding



Figure 24: Lack of Guarding on Sewing Machines

⁵⁶ Labour Code, Article 138; OSH Law Articles 16 (2)-(4).

2019 Recommendations

The WRC recommended that the factory ensure all sewing machines are equipped with guarding, and, if this is not possible in some cases, provide employees operating those machines with approved safety eyewear.

Factory Response and 2022 Current Status

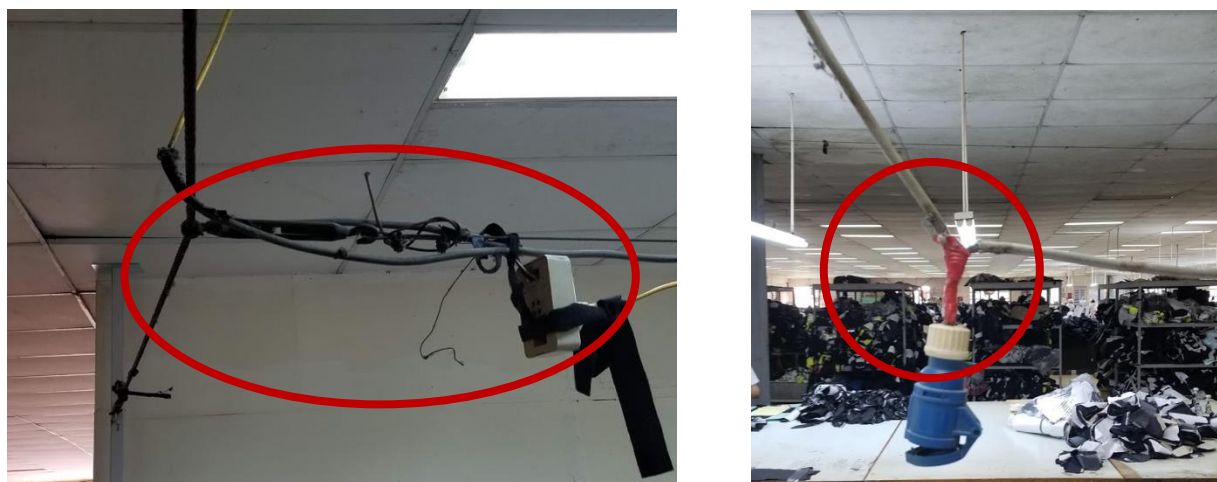
The factory provided photographs showing that it had installed additional guarding on sewing machines.

4. Electrical Hazards

a. Electrical Cords

2019 Findings

The WRC found in 2019 that Dong Thanh used flexible electrical cords that appeared to have been spliced and, in some cases, were suspended in a manner where, if pulled, pressure would be applied to fittings or terminals, creating risks of electrical shock or fire⁵⁷ (see Figures 25 and 26).



Figures 25 and 26: Suspended and Spliced Flexible Electrical Cords

2019 Recommendations

The WRC recommended that, if the company were to continue using flexible power cords, the existing cords must be replaced with cords that are un-spliced and, if suspended, are equipped with fittings that prevent pressure from being transmitted to fittings and terminals.

⁵⁷ Law on Fire Prevention and Fire Fighting, Article 5; Law on Electricity, Article 57; 11 TCN 19-2006; Clause TCXD 394:2007, Articles 3.2 and 4.1; TCVN 9208:2012, Article 4.2.

Factory Response and 2022 Current Status

The factory provided photographs showing the installation of un-spliced suspended cords which did not appear subject to pressure on their terminals.

b. Electrical Panel Maintenance

2019 Findings

The WRC found in 2019 that an alarm light (marked “ALARM”) had been triggered on one of the factory’s main electric panels, yet none of the personnel could explain the cause or how the factory was addressing this, indicating that legally required electrical maintenance was not being performed⁵⁸ (see Figures 27 and 28).



Figure 27: Main Electrical Panels

2019 Recommendations

The WRC recommended that the factory ensure that the electrical panels receive appropriate diagnosis and maintenance to ensure they were in safe working order.

Factory Response and 2022 Current Status

The factory provided photographs showing that the alarm was no longer triggered and that a record of regular maintenance of the panel was being kept.



Figure 28: Electrical Panel with
“ALARM” Warning Lit

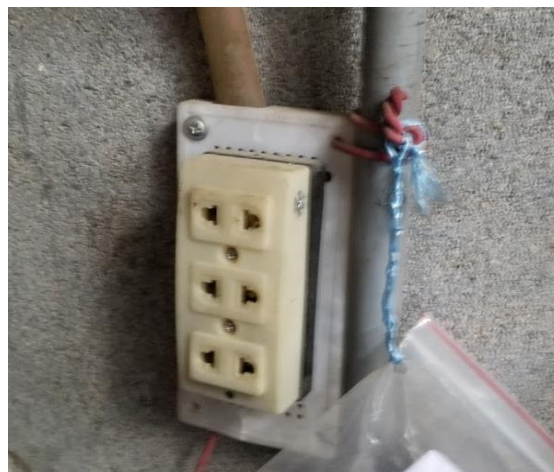
c. Ungrounded Outlets

2019 Findings

The WRC found in 2019 that numerous electrical outlets in the factory were ungrounded, creating shock risks for employees, which violated Vietnamese safety standards.⁵⁹ This hazard included, but was not limited to, ungrounded outlets in the room that houses the factory’s fire pump room and an electrical outlet that was not protected by a ground fault circuit interrupter (GFCI), which could pose an electrical shock hazard in the event of a water leak from the fire pump’s pressurized piping (see Figures 29 and 30).

⁵⁸ Law on Fire Prevention and Fire Fighting, Article 5; Law on Electricity, Article 57; 11 TCN 19-2006; Clause TCXD 394:2007, Articles 3.2 and 4.1; TCVN 9208:2012, Article 4.2.

⁵⁹ Law on Fire Prevention and Fire Fighting, Article 5; Law on Electricity, Article 57; 11 TCN 19-2006; Clause TCXD 394:2007, Articles 3.2 and 4.1; TCVN 9208:2012, Article 4.2.



Figures 29 and 30: Ungrounded Electrical Outlet in Fire Pump Room

2019 Recommendations

The WRC recommended that the factory ensure that a qualified electrician properly ground all outlets and install GFCIs.

Factory Response, 2022 Status and Recommendations

The factory provided photographs showing the installation of covers on the ungrounded outlets but did not indicate that these outlets have been properly grounded and fitted with GFCIs. The WRC reiterates the recommendation that it do so.

d. Lack of Lockout Tagout Program

2019 Findings

From discussions with factory personnel concerning procedures for servicing electrically powered equipment, the WRC found that, in violation of Vietnamese safety standards,⁶⁰ the factory lacked a formal “Lockout Tagout” program to mechanically ensure and provide visual notice that equipment needing maintenance is kept in a de-energized state from the time that the need for immediate maintenance is identified to when the equipment has been repaired and returned to operation.

2019 Recommendations

The WRC recommended that the factory formally adopt, provide training to employees on, and consistently implement a Lockout Tagout program.

⁶⁰ Law on Fire Prevention and Fire Fighting, Article 5; Law on Electricity, Article 57; 11 TCN 19-2006; Clause TCXD 394:2007, Articles 3.2 and 4.1; TCVN 9208:2012, Article 4.2.

Factory Response, 2022 Status and Recommendations

The factory stated that it would adopt a Lockout Tagout program, however, it has not provided evidence that it has actually done so. The WRC reiterates that the factory should adopt such a program and provide evidence of this to the WRC.

5. Ergonomic Hazards

2019 Findings

The WRC's 2019 inspection found several ergonomic hazards that violated Vietnamese safety standards,⁶¹ by posing risks to employees of musculoskeletal injuries. First, sewing machine operators worked seated on backless wooden benches that lacked any basic ergonomic features, such as back and lumbar support, padded seat pan, height adjustment, and swivel (see Figure 31). Moreover, employees who worked in a standing position on hard tile flooring were not provided with antifatigue floormats (see Figure 32). Finally, the heights of employees' worktables were not adjustable, causing some workers to resort to propping their tables up with bricks, which presented its own safety risks (see Figure 33).



Figure 31: Sewing Machine Operator Working Seated on Wooden Bench



Figure 32: Standing Work without Antifatigue Floormat

2019 Recommendations

The WRC recommended that the factory assess the ergonomic risk factors for all operations with prolonged standing or sitting and modify the work process to reduce the risks of musculoskeletal injury. The WRC also advised that the factory must also provide ergonomic chairs with a suitable backrest, seat, height adjustment, and swivel, as well as antifatigue floormats and height-adjustable workstations.

⁶¹ Labor Code, Articles 137, 138 and 148; Joint Circular 01/2011/TTLT-BLDTBXH-BYT.

Factory Response, 2022 Status and Recommendation

The factory provided photographs showing the installation of proper bases to replace the bricks that were being used to prop up worktables. However, the factory has not committed to replace the backless benches used by operators with ergonomic chairs or provide antifatigue floor mats or height-adjustable workstations. The WRC reiterates the recommendation that it do so.

6. Respiratory Hazards and Temperature Levels

a. Laser Cutting Machine

2019 Findings

The WRC found in 2019 that, in violation of Vietnamese workplace safety laws,⁶² workers operating the factory's laser cutter were exposed to chemical vapors and particulates from the application of heat to fabric during the laser cutting process. Despite the use of a fan to improve ventilation in the area of the laser cutter and a local exhaust venting system attached to the equipment, a strong chemical odor was still noticeable around this workstation. This respiratory exposure may be exacerbated by the factory's apparent practice of operating the laser cutter without lowering the unit's lid while the machinery is in operation, most likely for convenience and in order to maximize production speed (see Figure 34).

2019 Recommendations

The WRC recommended that the company ensure that the lid of the laser cutter be lowered and closed at all times while the unit is in operation and to ensure that the wages of the employees operating the machine were maintained after this change is implemented.

⁶² Labour Code, Article 138; OSH Law, Article 17.



Figure 33: Worktable Propped-Up on Bricks



Figure 34: Laser Cutter Operated by Worker with Lid in Raised Position

Factory Response and 2022 Current Status

The factory stated that the lid of the laser cutter would be kept closed at all times while the unit is in operation and that the workers operating it would be issued N95 masks.

b. Evaporative Cooling System

2019 Findings

Both the WRC's 2019 inspection of Dong Thanh and the most recent survey of the factory by local health authorities that Dong Thanh had on file at the time, which was conducted in 2018, found that temperatures in the factory at those times were below the applicable legal maximum of 32°C (89.6°F).⁶³ However, October and November are among the cooler months of the year in Vietnam, so it is unclear whether the factory complies with this limit during hotter months.

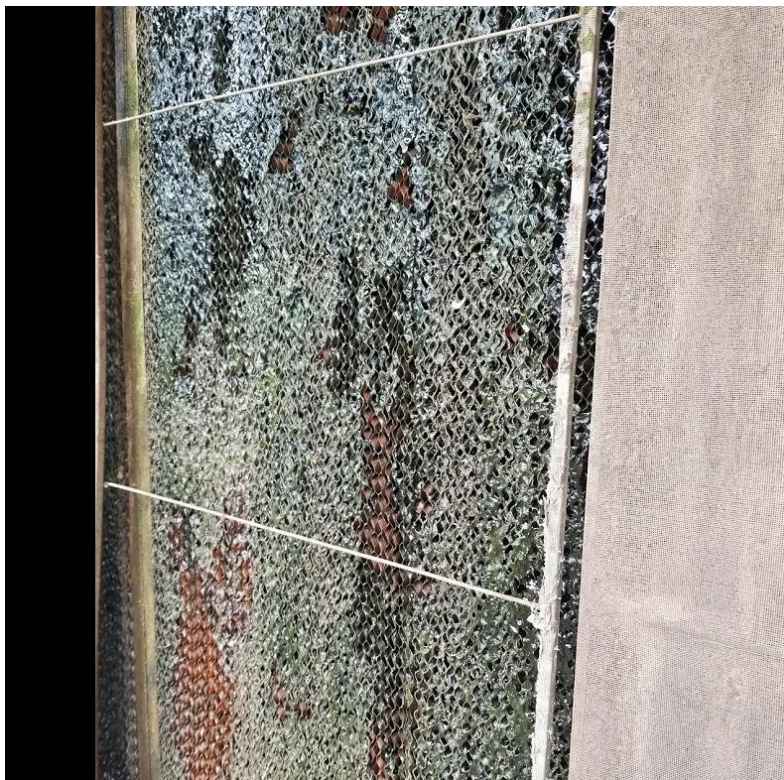


Figure 35: Biological Growth on Cooling Pad System

Although the factory is equipped with an evaporative cooling system, these systems are of limited effectiveness in humid climates like that of Vietnam, because they lower temperatures by increasing relative humidity, thereby failing to improve comfort levels in climates where humidity is already elevated.

Moreover, the WRC observed that the factory was failing to properly maintain the evaporative cooling system which, itself, created health risks for employees. Specifically, the evaporative cooler had a significant visible biological growth on its surface creating a risk of airborne transmission of microbial contaminants that could cause potentially serious respiratory illness, thereby violating basic workplace health standards⁶⁴ (see Figure 35).

2019 Recommendations

⁶³ Labour Code, Article 138; OSH Law, Article 16; Decision 3733/2002/QĐ-BYT, Section 7.

⁶⁴ Labor Code, Article 5 (1)(b)., Ministry of Health, Labour Hygiene Standards (Oct. 10, 2012).

The WRC recommended that the company maintain and/or replace the evaporative cooling pads to prevent microbial contamination. The WRC also advised that the factory should measure indoor temperatures at the facility in the hotter summer months to ensure that they are below the legal maximum and, if not, should install additional engineering controls to lower them.

Factory Response and 2022 Current Status

The factory provided photographs showing that the evaporative cooling pads had been cleaned and stated that such cleaning would be conducted on a weekly basis going forward. The factory agreed to keep a record of temperatures during the summer months in order to monitor whether heat levels exceed legal maximums.

7. Crushing and Pinching Hazards

a. Evaporative Cooling Pad System Sump Cover

2019 Findings

The WRC found in 2019 that the sump for the factory's evaporative cooling pad system was covered with a large, heavy concrete slab that was usually left open, propped against the side of the cooling pad housing (see Figure 36). The weight of the slab and the precariousness of this positioning (along with the fact that, due to the hot climate and/or their low wages, many employees wear minimally protective footwear) created a risk of a serious crushing injury should the covering fall on a worker's hand or foot, which violated Vietnamese safety standards⁶⁵ (see Figure 37).



Figure 36: Heavy Concrete Cover for Evaporative Cooling System Sump



Figure 37: Employee in Sandals Lifting Heavy Concrete Cover

⁶⁵ Law No. 84/2015/QH13, Articles 7, 15, 72, 73 and 74; TCVN 6713:2013, Article 5.2; Decree No.85/2015/NĐ-CP, Article 7.4; Law No. 84/2015/QH13, Article 7.

2019 Recommendations

The WRC recommended that the company replace the heavy concrete slab cover with a lighter covering of aluminum or plastic, with handles for easier accessibility.

Factory Response and 2022 Current Status

The company provided a photograph showing that the heavy concrete cover had been replaced with a lighter one made of wood.

b. Exit Doors

2019 Findings

The WRC found in 2019 that operation of factory's ventilation system subjected the facility's exit doors to substantial negative pressure which causes the doors, when closing, to occasionally do so with enough force to pinch or crush fingers if they were caught in the door, creating a hazard which violated Vietnamese safety standards.⁶⁶ This effect was especially pronounced because the doors were not equipped with hydraulic devices to prevent them from slamming shut.

2019 Recommendations

The WRC recommended that the exit doors be equipped with hydraulic devices to prevent them from slamming shut and crushing or pinching employees' fingers.

Factory Response, 2022 Status and Recommendation

The factory posted signs on the exit doors warning of the risk of injury but did not commit to install hydraulic devices to prevent their slamming shut. The WRC reiterates the recommendation that the factory install such devices.

8. Toilets

2019 Findings

The WRC found in 2019 that the men's restrooms lacked toilet paper, in violation of Vietnamese workplace laws and regulations.⁶⁷

2019 Recommendations

The WRC recommended that the company ensure that all toilet facilities are consistently supplied with toilet paper.

⁶⁶ Law No. 84/2015/QH13, Articles 7, 15, 72, 73, and 74; TCVN 6713:2013, Article 5.2; Decree No.85/2015/NĐ-CP, Article 7.4; Law No. 84/2015/QH13, Article 7.

⁶⁷ Labour Code, Article; OSH Law, Article 16; Decision 3733/2002/QĐ-BYT, Section I (4).

Factory Response and 2022 Current Status

The factory committed to have the restrooms checked every two hours during the workday to ensure that sufficient toilet paper has been supplied.

9. Noise Hazards

2019 Findings

The WRC found in 2019 that certain workstations in the factory which were located close to a ventilation fan, but were not being used on the day of the WRC's inspection, had noise levels that were measured in excess of 85 decibels, indicating a risk to the hearing of employees who might be assigned to work in these areas, and a violation of workplace safety standards⁶⁸ (see Figure 38).

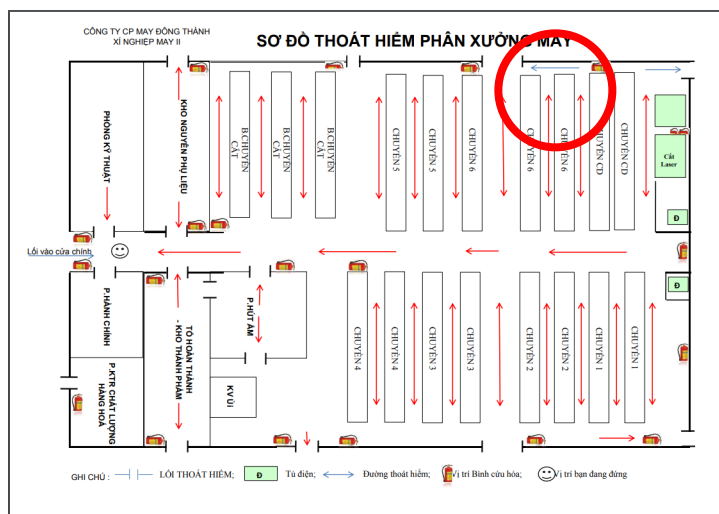


Figure 38: Location Where Excessive Noise Levels
Were Measured

2019 Recommendations

The WRC recommended that, should the company assign employees to work in areas of the factory located close to a ventilation fan, it conduct a noise survey to determine if engineering measures should be taken or PPE issued to protect workers from excessive noise volumes.

Factory Response, 2022 Status and Recommendation

The factory stated that the excessive noise levels were caused by a failure to lubricate the ventilation fan. The factory indicated that it would lubricate the fan, which should reduce the noise level to ameliorate the risk to workers' hearing. The WRC notes this measure but recommends that the factory conduct a noise survey to determine if additional measures are necessary.

IV. Other Issues of Concern

The WRC's 2019 assessment also identified two other areas where specific practices of the factory, while not in violation of Vietnamese law, the Cities' Ordinances, or the code of conduct of Dong Thanh's buyer and Banner's supplier, 5.11 Tactical, nevertheless, were inconsistent with prevailing standards of good business practice. The WRC's findings and recommendations concerning these issues—which involved workers' dissatisfaction with the meals provided to employees at the factory's cafeteria and the factory's failure to issue employees pay statements

⁶⁸ Labour Code, Article 138; OSH Law Article 16; Decision 3733/2002/QĐ-BYT, Section XII.

along with their wages—while they did not implicate legally or contractually binding obligations on the part of the factory, 5.11 Tactical, or Banner, are presented below so that they are brought to the attention of and can be addressed by these parties.

A. Quality and Quantity of Food Provided to Workers in Factory Canteen

2019 Findings

Nearly all of the workers who were interviewed by the WRC in 2019 stated that the food provided to them in the factory’s canteen was often poor in quality and was served in overly small portions. Due to time limitations during the WRC’s inspection of the factory, the WRC did not conduct an in-depth safety assessment of conditions in the canteen and, during a brief walkthrough, did not observe any obvious failure to meet legal hygiene standards.⁶⁹

It was clear, however, that the amounts and quality of the food served to employees in the canteen was a cause of widespread dissatisfaction among workers. Employees testified that the portions of food they were served often were so small that they brought food from home to supplement the canteen meals, so that they were not still hungry after eating. Workers added that the prices they believed Dong Thanh paid to its vendor for food for the canteen—reportedly between VND 8,000 (US\$0.35) and 10,000 (US\$0.44) per employee meal—was low compared to those paid by other factories for food for their workers.

The WRC found evidence to support the workers’ concerns, noting that in January 2019, the regional body of the Vietnamese General Confederation of Labour in Ho Chi Minh City reached an agreement with six garment factories in that area for the latter to pay VND 17,000 (US\$0.75) per employee meal for the food that those factories provided to their workers.⁷⁰ Although consumer prices are higher in Ho Chi Minh City than in Quảng Ngãi, where Dong Thanh is located, adjusting the VND 17,000 per employee meal price that the Ho Chi Minh factories reportedly agreed to pay for the difference in consumer prices between the two areas yielded an equivalent price for factories in Quảng Ngãi of VND 15,275 (US\$0.67) per employee meal⁷¹—roughly 50–90 percent higher than the amount Dong Thanh reportedly paid at that time.

While the payment of substandard prices—and provision of substandard meals—in relation to the food served in the factory’s canteen did not constitute a violation of Vietnamese law or the Cities’ Ordinances, it was arguably inconsistent with the general principle expressed in the code of conduct of Dong Thanh’s buyer, 5.11 Tactical, that workers’ pay should be consistent with not

⁶⁹ Labor Code, Articles 138 and 147; Law No: 55/2010/QH12, Articles 10, 11, and 12; Circulars Nos.: 15/2012/TTBYT, Articles 5 and 6; 30/2012/TT-BYT.

⁷⁰ Vietnam General Confederation, Institute for Workers and Trade Union, Newsletter, “Multi-employer Social Dialogue in Linh Trung Export - Processing Zone, Ho Chi Minh City,” Trade Union Reform for Workers’ Rights and Interests Newsletter No.3 Quarter IV/ 2018, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_667554.pdf.

⁷¹ The relative cost of living index in 2018 in Ho Chi Minh City was 101.47, while in Quảng Ngãi, the cost-of-living index was 91.18. General Statistics Office of Vietnam, “Table 270: Spatial cost of living index among provinces (Ha Noi = 100),” Price Index, 2018. Accordingly, an item costing VND 17,000 in Ho Chi Minh City would cost in Quảng Ngãi $17,000 \times 91.18/101.47 = \text{VND } 15,275$ (US\$0.67).

only legal minimum requirements but also prevailing industry standards.⁷² Since, given their low wages, Vietnamese workers rightly consider the midday meals provided by their employers to be a significant part of their overall compensation, the concerns expressed by the Dong Thanh employees regarding the amount and quality of food they were given at the factory's canteen appeared legitimate and well-placed.

2019 Recommendations

The WRC recommended that Dong Thanh increase the price it paid to the factories' canteen vendor for workers' meals to be in line with prevailing industry standards of good practice, which, in this case, would have been roughly VND 15,275 (US\$0.67) per employee meal.

Factory Response, 2022 Status and Recommendations

The factory stated its belief that the amount it paid for food for workers' meals was equivalent to that paid by neighboring factories, but the factory agreed to increase the amount it paid per meal on a daily basis, generally, to VND 10,000–12,000 (US\$0.43–0.51) and the amount it pays on Wednesdays, specifically, to VND 15,000 (US\$0.66). The WRC recommends, consistent with the discussion above, that the factory pay the latter amount for the meals on all days of the week.

B. Employee Pay Statements

2019 Findings

As noted earlier in this report, Dong Thanh does not provide its workers with a pay statement at the time they are paid their wages. Although neither Vietnamese law, the Cities' Ordinances, nor 5.11 Tactical's code of conduct explicitly require that employers issue workers pay statements at the time the latter receive their wages, the labor law does require that such wages are paid in full and in a timely manner.⁷³

Without a pay statement that provides the figure upon which the wages the employee is being paid have been calculated—i.e., the numbers of regular hours and overtime hours that have been worked, as well as the number of hours of employer-paid time off (for holidays, etc.) that have been taken and/or paid, the applicable rates of pay for all of these hours, the amounts of bonuses earned for good attendance and fulfilling production targets, and the additional allowances included in and the deductions made from the worker's pay—it is difficult for employees to determine whether the company is complying with its legal obligation to pay workers their wages in full and on time. For this reason, provision to workers of a statement explaining the calculation of their wages at the time these wages are paid is a basic element of responsible

⁷² 5.11 Tactical, Vendor Code of Conduct, <https://www.511tactical.com/vendor-code-of-conduct>.

⁷³ Labor Code, Article 96 (“An employee shall be fully paid on time as agreed and direct manner.”).

business practice and is mandatory under the laws of many other jurisdictions⁷⁴ and the codes of conduct of many other brands.⁷⁵

2019 Recommendations

The WRC recommended that Dong Thanh provide employees, at the time their wages were paid, with a written pay statement that provides the figures upon which the wages being paid have been calculated—i.e., the numbers of regular hours and overtime hours that have been worked, as well as the number of hours of employer-paid time off (for holidays, etc.) that have been taken and/or paid, the applicable rates of pay for all of these hours, the amounts of bonuses earned for good attendance and fulfilling production targets, and the additional allowances included in and the deductions made from the worker’s pay.

Factory Response, 2022 Status and Recommendations

As discussed earlier in this report, while the factory agreed to provide workers with written pay statements at the time they receive their wages, this has not been implemented as of the time of the WRC’s 2022 update. The WRC reiterates the recommendation that the factory issue such statements to workers.

V. Conclusion

Although Dong Thanh has taken steps to remedy many of the violations the WRC has identified, others are still outstanding. These outstanding violations, however, are amenable to remediation and correction by Dong Thanh and 5.11 Tactical, with the assistance and involvement of the Cities’ contractor, Banner Uniform Center. This process should have as its immediate goal the establishment of an updated corrective action plan that is consistent with the recommendations in this report and agreed upon by all parties, including the City of San Francisco and the City of Madison, Wisconsin, with time-bound commitments for its implementation.

⁷⁴ E.g., Cambodian Labour Code, Article 112(b) (“The employer must take measures to inform the workers in a precise and easily comprehensible fashion of: ... [t]he items that make up their wage for every pay period when there is a change to the items.”)

⁷⁵ E.g., Gap, Inc., Vendor Code of Conduct (“The facility shall ensure that for each pay period, workers are provided understandable wage statements that includes all relevant details written in a language they understand.”), https://www.gapinc.com/content/dam/gapincsite/documents/CodeofVendorConduct_FINAL.pdf.