

# Analysis of Fair Labor Association (FLA) investigative report on labour practices in three Foxconn factories in China

*Maquila Solidarity Network (MSN), June 4, 2012*

The FLA's investigation at three Foxconn factories was the largest investigation performed to date under the FLA's new Sustainable Compliance Initiative (SCI) methodology. It resulted in a lengthy report detailing a range of problems at Foxconn's factories and documenting corrective action commitments from Foxconn and Apple.

In general, the investigation confirmed that Apple's supplier is violating numerous labour laws and FLA Code standards. Remediation plans agreed to by Foxconn are included in the report, and their implementation will be verified by the FLA.

A subsequent investigative report by Students and Scholars Against Corporate Misbehaviour (SACOM) dated May 31, 2012, identifies continuing violations at Foxconn factories since the FLA investigation, some of which were also identified in the FLA report, and therefore should have been remediated, and others that were absent from the report and remediation plan.

Because the FLA's investigation has been such a prominent part of the public discussion about Apple, Foxconn, and the rights of the workers making their products, it is important to review some of the key issues identified in the FLA report and to summarize outstanding questions and concerns that have been identified by SACOM. The following brief analysis is an effort to do that.

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## Wages<sup>1</sup>

### **Findings:**

The FLA found that 64.3% of workers interviewed in the three factories thought that their salary was not sufficient to cover their basic needs. At the Chengdu factory, where wages are lower, 72% said their salaries did not cover basic needs.

In all three factories salary was the most frequently cited reason for those workers who wanted to leave their jobs in the next two months or so. Of those workers about 50% in all factories and over 82% in the Chendu factory cited wages as the number one reason they wanted to leave.

### **Remediation Plan:**

Although the report shows an obvious relationship between workers' desire to work additional hours to earn more money and their conviction that they are not being paid enough to meet their basic needs, it does not include specific recommendations to progressively realize a basic-needs wage. The FLA auditors did not do an assessment of whether Foxconn salaries (or total compensation) meet basic needs and provide some discretionary income. The FLA has pledged to do cost of living studies in Schenzhen and Chungdu "to assist Foxconn in determining whether workers' salaries meet FLA requirements for basic needs, as well as discretionary income."

### **Questions and Comments:**

- Why was a basic-needs wage study not done as part of the FLA investigation?
- Once the FLA studies have been completed, what steps will be taken to progressively achieve compensation that meets workers' basic needs and provides some discretionary income, and in what time period?
- Although Foxconn announced a pay increase following the FLA investigation, SACOM's May 2012 study shows that some Foxconn workers have experienced a decline in their total income since the FLA investigation, due to the reduction in overtime hours (see Working Hours below). What steps is Apple taking to ensure that workers do not suffer a decline in total income as overtime hours are decreased?
- What steps will be taken by Apple, in cooperation with the FLA, to ensure that its purchasing practices allow for Foxconn to able to progressively realize a basic-needs wage?

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<sup>1</sup> Under the FLA's revised code provision on Compensation, when compensation is not sufficient to meet workers' basic needs and provide some discretionary income, the employer "shall work with the FLA to take appropriate actions that seek to progressively realize a level of compensation that does."

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## Working Hours

### **Findings:**

The FLA found evidence of workers working more hours than is permitted under Chinese labour law (40 hours per week regular hours, 36 hours per month overtime) and the FLA Code.

The employer was also failing to pay workers their full overtime pay when overtime was a fraction of 30 minutes, and was not paying workers regular or overtime pay for the time when they were required to attend training sessions and meetings. The FLA investigation did not find evidence of involuntary overtime or, except for the above instances, failure to pay overtime premiums. During heavy production periods, workers sometimes work more than seven days in a row without one day off in seven. The FLA report emphasizes that 48% of worker interviewed believe their current working hours are reasonable and 33.8% would like to work more hours in order to increase their incomes. However, the report also shows that employees who more 52 hours or less per week scored highest on contentment, loyalty and relations at work, and those working 60 hours or more per week scored lowest on those job satisfaction issues.

### **Remediation Plan:**

Foxconn agrees to reduce total working hours to 60 hours per week immediately, and to further reduce overtime to what is required by Chinese law by July 1, 2013,<sup>2</sup> “as well as addressing compensation given the reduced hours.” In media reports this has been interpreted as meaning that overall pay will remain the same despite shorter working hours, although the commitment in the remediation plan is less clear: .

Foxconn has agreed to calculate overtime worked based on a fraction of 15 minutes, and to pay workers regular or overtime pay for mandatory attendance at work-related meetings and training sessions.

### **Questions and Comments:**

- The auditors appear to have based their assessment of compliance with the FLA hours of work standard on the previous provision rather than the revised provision. The report characterizes the FLA standard as being a 60 hour limit per week, whereas the revised provision clarifies that a normal workweek is the lesser of the legal work-week or 48 hours, and clearly states that the employer “shall not request overtime on a regular basis.” The FLA report, however, treats 60 hours as the regular weekly norm, rather than the exception.
- Workers interviewed by SACOM since the FLA investigation reported that they are still being forced to attend unpaid work meetings where they are lectured about low productivity, quality issues or disciplinary problems. The May 31, 2012 report also shows that workers producing the new iPad were working up to 80 hours per month

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<sup>2</sup> With the 36 hour legal limit on monthly overtime in China, if a worker works 60 hours in one week (40 regular hours +20 overtime), he/she would only have 16 hours overtime allowable for the balance of the month.

prior to its March release, far beyond the 60 limit Foxconn had agreed to meet immediately. In March and April workers were reporting overtime between 60 and 80 hours per month.

- Although the remediation plan commits Foxconn to paying workers in the future for all working hours, including at mandatory meetings and training sessions, as well as for all overtime, there is no mention of compensation for workers who have been denied these earnings in the past – even though the issue of excessive overtime has been recognized by Apple for some time.
- SACOM’s May 2012 report notes that although Foxconn pledged to reduce overtime hours, production targets have since been increased and that workers are working unpaid overtime to meet the targets.
- When assessing whether overtime was compulsory, did the FLA consider the findings of SACOM’s October 2010 that found workers were required to sign a “Voluntary Overtime Pledge”? The FLA Code states that overtime must be consensual. The practice of requiring overall releases at the time of hiring has been found to be in non-compliance with the FLA Code in other FLA investigative reports.<sup>3</sup> More recent reports by SACOM (September 2011 and May 2012) show evidence of workers being punished for refusing to work overtime.
- While the FLA report does recommend that Apple “continue to work with Foxconn to understand and resolve the causes of excessive overtime,” it does not spell out the actions Apple is expected to take to ensure that its purchasing practices, production volumes and timelines, as well as the prices it pays to the supplier, do not encourage excessive overtime and/or limit the supplier’s ability to pay a living wage for a normal workweek.

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## Interns

### **Findings:**

Interns were working overtime hours and night shifts despite regulations prohibiting these practices and a limit in regulations for interns of eight hours a day, five days a week.

Agreements that interns sign before working at Foxconn stipulate that they will live in factory dormitories, and if they later decide to live elsewhere, they are still charged for the dormitory space.

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<sup>3</sup> *Executive Summary and Independent Investigation: Ocean Sky Apparel*, February 8-12, 2011, and *Remediation Plan* available at <http://www.fairlabor.org/report/ocean-sky-apparel-factory-el-salvador>

**Remediation Plan:**

The company agreed to abide by regulations regarding interns, include procedures for resignations in agreements signed by schools, students and Foxconn, and coordinate with schools and colleges “to ensure that the job relates to the intern’s field of study.”

“Interns are to be given free choice of lodging and fees to be handled according to intern’s choice of lodging.”

**Questions and Comments:**

- The FLA auditors seem to accept at face value that all the interns working for Foxconn are there voluntarily, based on the fact that there are contacts signed by the company, the vocational school and the worker.

In contrast, research carried out by SACOM in 2011 found that many interns were coerced into working at Foxconn by the schools and/or the provincial government, which would constitute a form of forced labour. They also found that the assembly line work usually assigned to the interns is not relevant to their area of study.

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**Harassment and Abuse****Findings:**

All disciplinary actions and the names of workers disciplined are posted on the company website and notice board.

Disciplinary penalties and appeals processes are under the sole control of management and there is no oversight mechanism or means to appeal a disciplinary action.

**Remediation Plan:**

Discontinue the practice of including workers’ names in notices of disciplinary actions.

Apple is also expected to align its current policy, procedures and Code of Conduct with FLA’s standards and benchmarks, which require oversight and appeal mechanisms for disciplinary actions.

**Questions and Comments:**

- SACOM’s 2011 and 2012 worker interviews offer evidence of harassment and humiliation of workers by supervisors and other management personnel that go beyond the question of publicizing names of workers subject to disciplinary measures, including military-style training of new employees and workers being forced to sign “confession letters” and to read them aloud to their co-workers, or to copy the quotations of the Foxconn CEO. In at least one case, a confession letter was reportedly posted publically. Other workers reported being punished by being forced to clean toilets or sweep the lawn.

- The lack of oversight mechanisms or a means to appeal a disciplinary action is treated as a root cause of the problem, rather than a problem in and of itself. Shouldn't there be remedial action to change this situation?

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## **Industrial Relations:**

### ***Findings:***

40% of workers were unaware that the union represents them.

40 of the 42 members of the union committee were management personnel, and the other two were workers "nominated" by the employer. According to the FLA, the issue is not management interference in union elections, but rather that the nomination process did not result in workers being put forward as candidates for election.

Workers are not given copies of their collective bargaining agreement.

### ***Remediation Plan:***

"Labor Union to review formation of Labor Union committees according to the Shenzhen Municipal Implementing Regulations for the Trade Union Law; and to encourage the participation of worker representatives in the election of Labor Union committees without management's interference."

Apple will evaluate alternatives for independent monitoring of the election process.

Due to the number of workers in the factory, the employer will determine the optimal way to share the contents of the collective bargaining agreement with the workers.

### ***Questions and Comments:***

- Since the report clearly indicates that this is a company-controlled union, shouldn't the corrective action plan explicitly require an election for all members of the union committee without employer interference and that collective bargaining commence after the new committee has been elected and received training on unions and collective bargaining?
- There appears to be no specific commitment or timeline to hold new elections for worker representatives to replace management personnel that currently hold those positions, or for the election of worker representatives to health and safety committees.
- The method of making the agreement available to all workers has not been determined, so the implementation will have to be monitored to ensure that the chosen method is effective.

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## Health and Safety:

### **Findings:**

The FLA identified numerous and significant H&S violations at the factories, as well as a widespread failure to assess and manage health and safety risks.

It found a lack of knowledge of health and safety risks among workers, a lack of knowledge of the company's OHS policies, and, most significantly, a lack of involvement of workers and worker representatives in monitoring health and safety risks or development of policies regarding these issues.

Health and safety committees exist, but are inactive, and worker representatives are appointed by management rather than elected by workers.

### **Remediation Plan:**

There are numerous recommendations for very specific corrective action, the most important being that elections be held to elect worker representatives to health and safety committees, without management interference. However, the remediation plan is much less clear:

"Enhance procedures of HSE committee formation process to encourage the participation by worker representatives."

Apple will evaluate alternatives for independent monitoring of the election process.

### **Questions and Comments:**

- Despite the numerous findings and recommendations for corrective action, the language in the remediation plan makes it hard to determine what corrective actions Foxconn has agreed to take. Terms like "review," "enhance" and "encourage" are not very specific commitments.

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## Root Causes:

The FLA has identified what it sees as "root causes" of noncompliance at Foxconn. The FLA's root cause analysis in each section of the report focuses almost exclusively on lack of knowledge or awareness of the employer or the lack of a written policy.

### **Questions and Comments:**

- Because root cause analysis is a key element in the FLA new Sustainable Compliance Program, it will be important to assess whether the FLA has correctly identified the underlying reasons for noncompliance, and to verify in subsequent investigations whether addressing the "root causes" identified by the FLA has, in fact, prevented a recurrence of those violations.

- Little or no attention is given to power dynamics in the workplace or the responsibility of the buyer regarding its purchasing practices, including pricing, that can impact on wages, overtime and other issues.

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### **Transparency:**

Although the FLA report and remediation plan are publicly available, SACOM's May 2012 study found that the vast majority of workers were unfamiliar with the FLA and had no knowledge of the remediation plan.

- What steps will Apple and the FLA take to ensure that the workers who were the subject of the investigation have access to the investigative findings and remediation plan?