

Complaint – Jack Wolfskin, Schöffel Sportbekleidung GmbH – Vietnam

Status: Resolved

FWF is responsible for setting up a complaints procedure in production countries where FWF is active. The complaints procedure allows third parties to make complaints about the working conditions or the way the Code of Labour Practices is implemented in factories which supply FWF members.

The responsibility of FWF includes investigating the complaint, verifying whether the agreed corrective action plan is implemented and public reporting. This complaint report gives an overview of a complaint filed to FWF, the investigation and agreed corrective action plan as well as how the outcome is verified. For more information on the complaints procedure see the FWF website. FWF also publishes an overview of complaints received in its annual reports.

1. Member involved

Jack Wolfskin DEU (hereafter Jack Wolfskin) and Schöffel Sportbekleidung (hereafter Schöffel).

2. Accused party

A factory located in Vietnam supplying Jack Wolfskin and Schöffel.

3. Date of receiving complaint

The complaint was received by FWF through its local complaints handler in Vietnam on 7 July 2017.

4. Filing party

An employee that was employed by the factory until 1st of July 2017 and her co-worker.

5. The complaint

The complainant wishes to complain on behalf of herself (employed by the factory since 3 April 2016) and her co-worker (employed by the factory since 2014). According to the complainant were given 3 month contracts and their contracts were renewed every 3 months. They were not provided a copy of labor contract.

The complainant claims the factory only signs the 3-month-contract (seasonal contract) with employees who are over 35 years old. Both are over 35 years old when they worked at the factory.

- On June 28, they were informed their contracts were not renewed and they were laid off on 1 July 2017.
- The complainant said that she was resigned because another colleague had sent a complaint letter to the local authority. Local authority conducted an inspection at this factory and required factory to stop signing the seasonal contract.
- Factory signed the 3-month-contract but factory did not pay the extra 22% of basic salary as required by laws (as per Article 186.3 of the Labor code)
- She was not provided annual leave from April to December 2016. She was provided 1 day of annual leave per month since January 2017.
- She does not know if she will be paid severance allowance because the next payday is on the 10th of July.

(FWF's note: Severance allowance payment for the working time served when she did not pay unemployment insurance contributions as per Article 48 of the labor code and Article 14.3 of Decree No.05/2015/ND-CP).

She wants to continue working at the factory.

6. Admissibility

FWF decided that the case is admissible on 10th of July 2017.

The factory is an active supplier of Jack Wolfskin and Schöffel, members of FWF.

The case is relevant to the following labour standards of FWF's Code of Labour Practices:

- Payment of a living wage
- Legally binding employment relationship

7. Investigation

The FWF members immediately informed the supplier of the case and received a reply within one week. Factory management indicated to recruit seasonal workers to support in the cases of sick leave, maternity leave etc. According to management the seasonal term is stated in the contract and it is explained to the employees that the employment is terminated when the contract expires. Or in cases when the employee meets the production requirements of the factory, a fixed term contract can be signed.

A copy of the seasonal contract was sent for review. FWF's complaint handler noted this was a 3-month contract from 1 April - 30 June. The labor contract lacks specific information on salary rate, allowances and other additional payments. The contract mentions that the employee is paid piece-salary and a bonus is paid at type A, the start time and end time of every work day, overtime hours and overtime provisions, annual leave and holidays, personal protective equipment for the employee and insurances. The contract notes social insurance and health insurance are paid by employee. The



labor contract does not specify on the extra payment of social insurance, health insurance and unemployment insurance as per Article 186.3 of the Labor code¹.

Regarding the request of a re-employment of the worker, the HR department is open to talk to the complainant to explain the reason why the contract was not extended/renewed. Factory management sent over copy of labour contracts and the handover procedure for termination of employment which were reviewed by FWF's complaints handler.

FWF's complaints handler reviewed the feedback from the local authority inspection that was conducted by DOLISA (Department of Labor, War Invalid and Social Affair) of Dong Nai Province in July.

8. Findings and conclusions

Based on above investigation the complaint was found grounded. The local authority inspection concluded:

Factory signs seasonal contracts with 4 workers who work more than 1 year and 1 worker who work 9 months at the factory. This practice is not compliance with Article 24 of the labor code. The inspector of the local authority required the factory to comply with the local laws on signing the labor contract.

The factory is not in compliance with the labor code on signing the seasonal/temporary contract for doing regular work (as per Article 22.3 of Labor Code: It is prohibited to conclude casual labor contracts or regular labor contracts with terms under 12 months to do regular works from 12 months and above, except for temporary replacement of employees doing military service, taking maternity leave, suffering from sickness or occupational accidents, or taking other temporary leave).

The handover procedure for terminating employment that was submitted by factory management complies with the Vietnam Labor Code. It states the resigned employees must return the employee's card, the factory pays salary and allowances according to local laws, and the employees must compensate factory in case of unilateral termination by employees. The procedure complies with the local law.

9. Remediation

Factory must comply with Article 24 and 22.3 of the Labour Code for signing seasonal contracts. The factory should not terminate the seasonal workers who work at the factory from 9 months and above. The factory should sign the fixed-term labour

¹ For employees not subject to participation in mandatory social insurance, mandatory health insurance, unemployment insurance, in addition to payment by the work, the employer shall pay at the same time of the employee's payment period an additional amount equivalent to the rate of mandatory social insurance premium and mandatory health insurance, unemployment insurance and the amount of annual leave as prescribed"].



contracts to these workers. Leave and social insurance payments should be based on the contractual agreements.

The labour contract must specify exact information on social insurances, salary rate, allowances and other additional payments, the start time and end time of every work day, overtime hours and overtime provisions, annual leave and holidays, personal protective equipment for the employee as stipulated in the Vietnam Labour Code Article 4 of Decree 05/2015/ND-CP.

10. Verification

Factory has signed a fixed term contract with one of the complainants (17 July 2017 to 17 July 2018). The contract was verified by FWF's complaints handler who stated the contract does lack detailed information such as: start time / end time, rest time, overtime and overtime-related provisions, annual leave, holidays. FWF members are encouraged to follow up with factory management to ensure labour contracts fulfil the legal requirements as explained in the remediation chapter.

4 out of 5 seasonal workers have been signed the fixed-term contract.

The other complainant did not sign the fixed-term contract as offered by the factory. After many attempts to reach the complainant by phone, the complainant informed FWF on September 10 she had found another job in July 2017 before the factory contacted her. She does not want to return the sewing factory.

11. Evaluation by the complainant

One of the complainants stated she was very happy to sign a 1-year contract. She wanted to thank FWF and the clients for helping her and her colleagues. The employee who has found another job does not have any further complaints and also thanked FWF for their involvement.