



BetterWork

Annual Report 2017
An Industry And
Compliance Review

Vietnam

REPORTING PERIOD
October 2015 - December 2016



International
Labour
Organization



**International
Finance
Corporation**
WORLD BANK GROUP

ILO CATALOGUING IN PUBLICATION DATA

Better Work Vietnam: garment industry 8th compliance synthesis report / International Labour Office; International Finance Corporation. - Geneva: ILO, 2015

1 v.

ISSN 2227-958X (web pdf)

International Labour Office; International Finance Corporation

clothing industry / textile industry / working conditions / workers' rights / labour legislation / ILO Convention / international labour standards / comment / application / Vietnam

08.09.3

Copyright © International Labour Organization (ILO) and International Finance Corporation (IFC) (2017)

First published (2017)

Publications of the ILO enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to the ILO, acting on behalf of both organisations: ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org. The IFC and ILO welcome such applications.

Libraries, institutions and other users registered with reproduction rights organisations may make copies in accordance with the licenses issued to them for this purpose. Visit www.ifro.org to find the reproduction rights organization in your country.

The designations employed in this, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the IFC or ILO concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the IFC or ILO of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the IFC or ILO, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org

Visit our website: www.ilo.org/publns

Copyright © International Labour Organization (ILO) and International Finance Corporation (IFC) (2017)

First published (2017)

ACKNOWLEDGEMENTS

Better Work Vietnam is supported by the following development partners:

- ◆ Irish Aid
- ◆ Netherlands Ministry of Foreign Affairs
- ◆ State Secretariat for Economic Affairs (SECO), Switzerland
- ◆ United States Department of Labor
- ◆ Economic & Social Development Canada (ESDC)

The Global Better Work programme is supported by the following core development partners:

- ◆ Netherlands Ministry of Foreign Affairs;
- ◆ State Secretariat for Economic Affairs (SECO), Switzerland
- ◆ Australia (Department of Foreign Affairs and Trade, DFAT);
- ◆ United States Department of Labor

Additional funding is also provided by The UK Department for International Development (DFID), Government of France, Government of Canada, Irish Aid, the Garment Manufacturers Association in Cambodia (GMAC), Royal Government of Cambodia and private sector donors including The Walt Disney Company, Levi Strauss Foundation, Gap Inc. and FUNG (1937) Management Ltd.

This publication does not necessarily reflect the views or policies of the organizations or agencies listed above, nor does mention of trade names, commercial products, or organizations imply endorsement by them.

CONTENTS

Acknowledgements	1
Contents	2
Summary Findings	4
Section I: Introduction	7
Industry Overview	7
Better Work Vietnam	8
Industry Developments	9
Factories in the Sample	9
Section II: Findings	10
Compliance Situation	10
Detailed Findings	11
Thematic Focus: Publicly reported issues	21
Section III: Conclusions	26
Annex A: Factories covered in this report	28
Annex B: Methodology	32

IN FOCUS

In Focus 1: Hazardous Work and other Worst Forms	11
In Focus 2: Interference and Discrimination	13
In Focus 3: Collective Bargaining	14
In Focus 4: Overtime Wages	16
In Focus 5: Paid Leave	16
In Focus 6: Employment Contracts	17
In Focus 7: Leave	20
In Focus 8: Overtime	20
In Focus 9: Regular Hours	21

Summary Findings

This report draws on the findings of assessments conducted in 257 factories in Vietnam during the period October 2015 to December 2016. It presents a snapshot of non-compliance rates in a range of areas linked to working conditions and fundamental rights at work. It also provides factory-led insights into the key drivers of non-compliance based on Better Work's assessment and advisory work with enterprises.

In addition, the report also examines trend data for selected issues that are now subject to public reporting in Vietnam, which not only helps to build a picture of the compliance landscape over the last 6 years, but also offers an indication of the issues that will likely emerge for priority attention by factories as they face greater public exposure of their working conditions - and legal compliance - in the coming years.

Assessment results from factories covered in this report are largely consistent with the findings of previous Better Work reports, with non-compliance most heavily concentrated in the working conditions clusters, particularly Occupational Safety and Health, and Contracts and Human Resources. In terms of core labour standards, collective bargaining and management interference are the leading compliance challenges for factories.

ILO CORE LABOUR STANDARDS

Child Labour

No instances of child labour - i.e. workers under the age of 15 - were found in observed factories during the period under observation. However, there are two wider concerns which have been longstanding in the industry, namely: (a) inadequate documentation and protection of young workers (nine percent of factories noncompliant), which typically relates to unreliable age verification systems at recruitment and/or inadequate recordkeeping of workers under 18 years of age; and (b) young people being engaged in so-called "hazardous

work", which in this case means young workers working beyond their legally permitted working hours, including overtime.

Cases of child labour found in Better Work factories are now covered by a joint "Zero Tolerance Protocol" signed between Better Work Vietnam and the Ministry of Labour (MOLISA). The protocol requires immediate reporting to the relevant government agencies, together with a process of monitored remediation, to ensure that the safety and interests of the worker are protected.

Discrimination

Non-compliance with laws concerning discrimination is low across Better Work Vietnam factories; just under five percent of factories were found to practice gender discrimination, which typically involves stating a gender preference in job advertisements. At the same time, anecdotal evidence suggests considerable underreporting of discrimination across the industry, and as such Better Work Vietnam is investing in further training of its assessors to develop their skills to uncover such cases in the coming years.

Forced Labour

None of the observed factories were found to have restricted workers' movements around the workplace, including movement in and out of the premises; nor had they used coercive tactics to keep them at work. Better Work also finds that workers in its factories are free to terminate their employment with reasonable notice and at the end of their contracts, and that overtime is not extracted from workers under duress.

Freedom of Association and Collective Bargaining

The leading challenge for factories in Vietnam in terms of freedom of association is the longstanding practice

of management interference in the activities of the trade union, either through senior managers serving on the trade union executive committee or through management involvement in union activities and decision-making. Finding a solution to this is complicated by the fact that although Better Work uses the ILO's core labour standards as its legal reference for this issue, national labour law does not explicitly prohibit managers from serving on trade union boards¹. At the same time, while interference remains commonplace, Better Work finds no evidence of intimidation, harassment or termination of union officials in its factories.

Fifty percent of factories fail to comply with rules on collective bargaining, the major weaknesses being inadequate consultation between employers and unions, absence of an adequate vote to approve the collective bargaining agreement (CBA), and failure to make the CBA publicly available to workers. To varying degrees, all instances demonstrate an underappreciation of the value of bipartite dialogue and consultation in driving workplace improvements; something that although enshrined in both national law and the Better Work improvement approach, is not fully embraced or understood in the business culture of many garment enterprises in Vietnam.

WORKING CONDITIONS

Compensation

A significant minority of factories, 40 percent, were found to be paying workers incorrectly for ordinary overtime work (i.e. work that goes beyond ordinary working hours). Owing in many cases to gaps in understanding of the law, 23 percent of factories also miscalculate overtime pay on weekly rest days (Sundays), with smaller numbers (13 percent) making inaccurate payments for overtime at night and on public holidays.

Just under 60 percent of factories fail to meet legal requirements on paid leave, the main causes being the failure to settle sick and maternity leave claims within 3 working days (many factories settle on a monthly basis), and incorrect payment of legally required annual leave.

At the same time, compliance rates are very high in a number of other areas, including payments for maternity allowances, breastfeeding breaks and prenatal care, all of which are guaranteed by law and largely upheld by factories in practice.

Contracts and Human Resources

Non-compliance remains relatively high across this cluster, the biggest concern being the absence of full terms and conditions of employment in workers' contracts. 62 percent of factories fail to comply with this aspect of the law. Linked to this, 14 percent of factories do not ensure workers actually understand the terms and conditions of their employment.

Over half of factories (52 percent) do not comply fully with legal requirements on their internal work rules, while ten percent of factories failed to ensure that contracts comply with the labour law, collective agreement and internal work rules. In addition, fourteen percent factories don't ensure all workers have valid contracts at all times – a finding most commonly caused by gaps between the end of a worker's probationary contract and the beginning of his/her fixed term contract.

Occupational Safety and Health

The garment industry is characterized by wide ranging OSH challenges, and this is reflected in high overall non-compliance rates in Better Work factories. In line with previous years, one of the most common day-to-day OSH hazards found in factories is the obstruction of exits and escape routes, which affects just over half of Better Work enterprises in the sample and is usually found to be due to careless storage of production materials (and sometimes machines) in doorways and exits. Instances of factories actually locking exits, on the other hand, are now relatively rare.

At the same time, inadequate fire detection and alarm systems and absence of a properly functioning OSH collaborators' network are a problem for more than half of factories; while more than four in ten factories fail to comply with rules around the provision and use of personal protective equipment (e.g. masks, metal

gloves and glasses). Similar challenges are also observed in the case of unsafe equipment use (just over a third of factories are noncompliant), which mostly stems from workers removing or adjusting needle and eye guards on their sewing machines.

Areas where factories perform well, meanwhile, include worker training on evacuation procedures and the use of fire-fighting equipment, ensuring sufficient emergency exits, and compliance with OSH requirements for certain dangerous machines e.g. boilers and air compressors.

Working Time

The vast majority of factories do not meet legal requirements on overtime, which remains one of the industry's leading and most longstanding compliance challenges. In many cases, excessive overtime reflects the convergence of internal productivity and production planning weaknesses in the factory and external dynamics related to buyer behaviour and sourcing practices.

Although most factories now comply with daily limits on overtime, 77 percent still fail to meet monthly limits and 72 percent exceed annual limits, while 44 percent of factories do not provide at least four days of rest per month to workers. For the most part, overtime remains a voluntary choice by workers, however there are a small number of factories within which worker consent could not be verified.

Almost 70 percent of factories are non-compliant on regular hours, the most acute problem being inconsistent and inaccurate working time records – a problem particularly associated with boiler operators and other special groups who perform (unrecorded) work out of regular working hours. A significant minority of factories (13 percent) also fail to guarantee women workers the statutory right to daily breastfeeding and menstruation breaks.

BETTER WORK VIETNAM AT A GLANCE²



464
Factories



632,843
Workers
reached



1,210
Assessment
Visits



6,814
Advisory Visits



37,234
People trained
(workers,
managers,
factory staff)

Section I: Introduction

INDUSTRY OVERVIEW

The garment sector is one of Vietnam's largest industries and foreign exchange earners, generating exports worth in excess of \$22 billion per annum.³ This makes Vietnam the fifth largest garment and textile supplier in the world, and the second largest to the US market.

Garment factories are also the largest formal employer in the country, providing jobs for more than 2.5 million people, and supporting several million more through

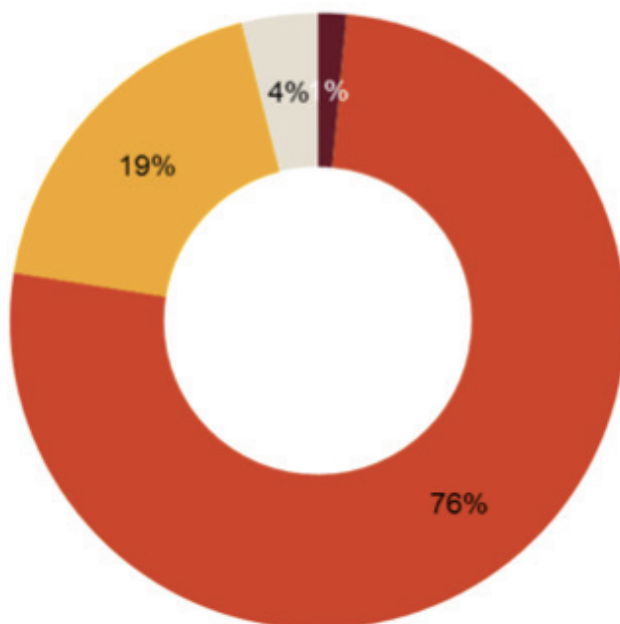
remittances sent by workers to their families back home. Economists have estimated that for every USD 1 billion increase in exports, the sector will create between 100,000 and 200,000 new jobs in the coming years (CBI, 2013).⁴

More than 80 percent of the factory workforce are female, mostly young and mostly migrants from poorer rural areas. This makes garment manufacturing a major force for national socio-economic development and poverty reduction in Vietnam today.

Industry Key Statistics

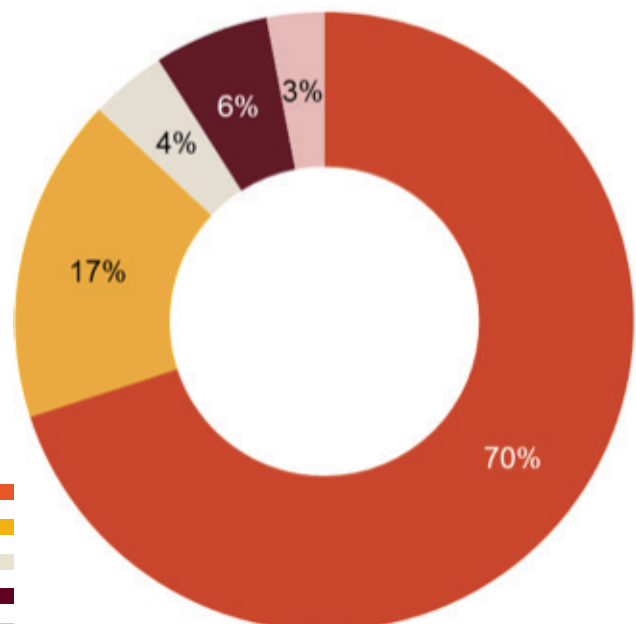
ENTERPRISE OWNERSHIP STRUCTURE

(Number of enterprises: ~4,000 (incl. Textiles))

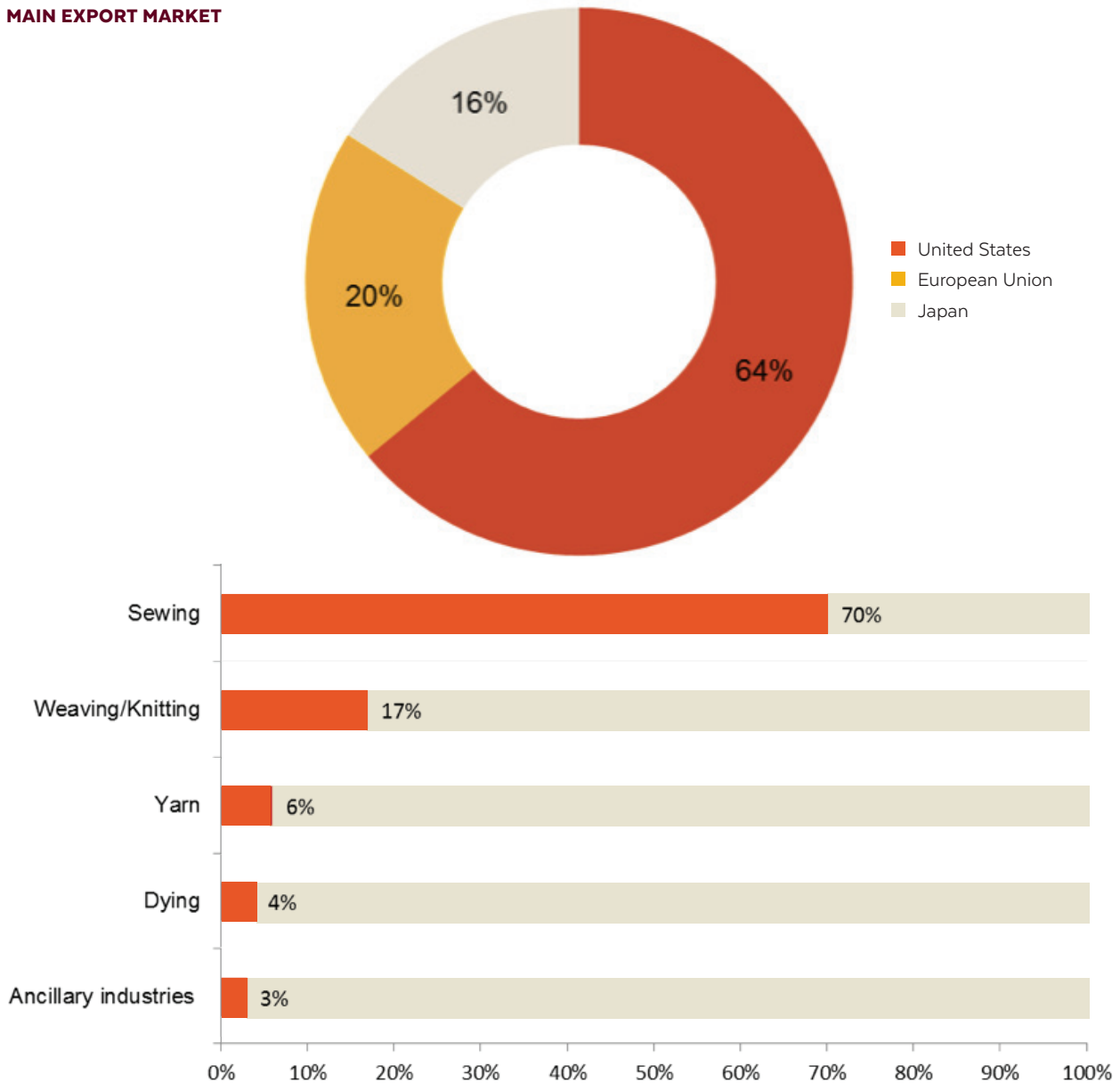


■ State-owned
 ■ Private
 ■ FDI
 ■ Co-operatives

KEY PRODUCTION FUNCTIONS



■ Sewing
 ■ Weaving/Knitting
 ■ Dying
 ■ Yarn
 ■ Ancillary industries

MAIN EXPORT MARKET**BETTER WORK VIETNAM**

Better Work Vietnam is a unique partnership between the International Labour Organization (ILO) and the International Finance Corporation (IFC) which aims to improve labour standards and business competitiveness in global apparel supply chains. It does so by assessing compliance with the national labour law and international core labour standards, and offering

integrated training and advisory services that support continuous improvements in working conditions.

Better Work began operations in Vietnam in 2009, and has since expanded rapidly to become the largest voluntary programme in the global portfolio. Assessments in Vietnam involve two assessors spending two days onsite at a factory, during which time they conduct interviews with management, union represen-

tatives and workers, review and analyse documents and observe factory conditions. Assessments establish a baseline of performance against which Better Work works with factories to make ongoing improvements to their working conditions and business performance.

Better Work produces annual reports like this one in all participating countries. Reports provide insight into the state of working conditions and labour compliance in member factories, as well as offering deeper explanation and analysis of the key factors driving non-compliance in the industry relevant to policymakers and stakeholders throughout the global supply chain.

This Better Work Vietnam Annual Report 2017 illustrates the findings of assessments conducted in 257 Better Work factories in Vietnam between October 2015 and December 2016.

INDUSTRY DEVELOPMENTS

The revised Labour Code and Trade Union Law, both enacted in 2013, marked an important step forward in the modernization of labour market governance in

Vietnam, and in the government's efforts to build a legal and policy environment that is conducive to both business growth and sustainable economic development.

The changes enshrine greater protections for fundamental principles and rights at work, including non-discrimination and gender equality, the prohibition of forced labour and child labour, and collective bargaining and the right to organize.

However, significant gaps remain between national law and international labour standards, and accordingly, the Vietnamese government has also set out a roadmap for further labour reforms in the coming years that will not only expand rights and protections for workers (through closer alignment with global norms), but also help the country to reap the full benefits of a number of upcoming trade agreements in which improved labour standards are requisite for improved market access.⁵ By 2020, Vietnam also expects to ratify the three remaining ILO Fundamental Conventions of the core list of eight, namely C105 (Forced Labour); C87 (Freedom of Association and Right to Organize);

and C98 (Right to Organise and Collective Bargaining).

After adjusting the legal framework, Vietnam will face a number of implementation challenges, both in terms of specifying the operational guidelines for the law for businesses (i.e. decrees and circulars) and in promoting enterprise and industry compliance through a combination of incentives and enforcement (i.e. labour inspection). Better Work is well placed to assist this process both by continuing to offer direct services to factories (i.e. its advice, training and assessment activities) and by translating its substantial industry experience and knowledge of industry best practices into practical, evidence-based guidance for policymakers.

FACTORIES IN THE SAMPLE

There are two sets of data in this report. The first is snapshot compliance data for the period October 2015 to December 2016. The second is a compliance trends dataset measured across multiple Better Work assessments. Both datasets are representative samples of the wider factory membership of Better Work Vietnam.

Section 2.2 of this report presents snapshot compliance data, giving average non-compliance rates from a representative sample of current Better Work factories.

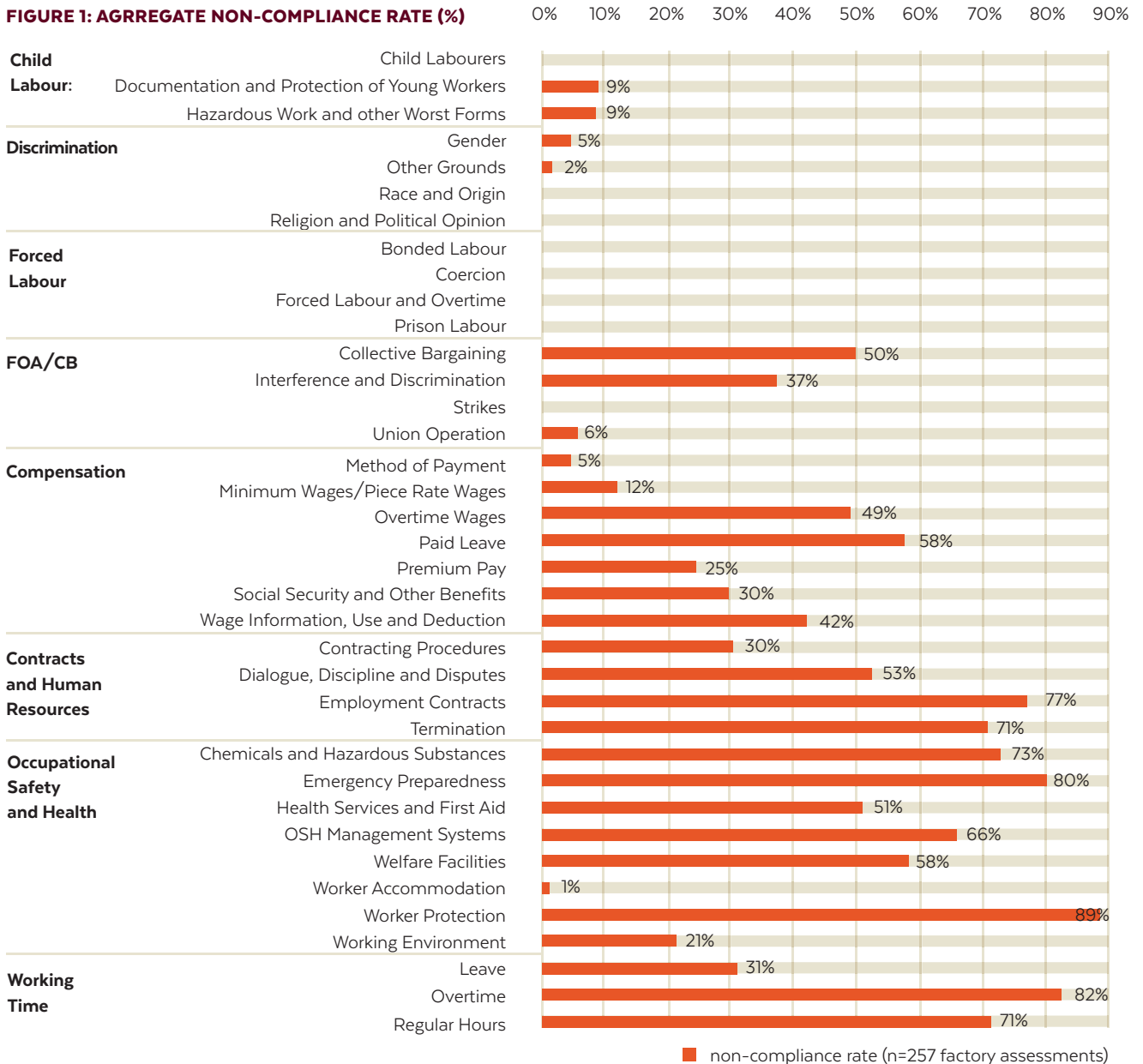
The data reflect findings of assessments carried out between October 2015 and December 2016 in 257 factories in Vietnam.

Section 2.3 of this report is a thematic chapter, the subject of which changes each year. This year, the analysis examines compliance trends over time in a number of key compliance issues soon to be subject to "public reporting" and due to be published on Better Work's new online Transparency Portal. The data used tracks the compliance performance of 339 current Better Work factories in every assessment they have undertaken since joining the programme. For the small number of factories who have been in the programme since its launch in 2009, this means six assessments (i.e. six years with the programme). But for all other factories it means between one and five assessments.

Section II: Findings

COMPLIANCE SITUATION

Figure 1 below shows non-compliance rates in 257 Better Work factories assessed between October 2015 and December 2016.



DETAILED FINDINGS

Child Labour

No instances of child labour - i.e. workers under the age of 15 - were found in observed factories between October 2015 and December 2016, although this is not to say all factories are free of underage workers at all times. However, when cases are uncovered, they are now subject to a recently approved “Zero Tolerance Protocol”, which involves immediate reporting to the relevant government agency (usually the Child Protection Department of MOLISA), followed by investigation and a course of remediation whereby the factory agrees to pay for a child worker’s return to education and guarantees him/her a job upon reaching the legal age of employment.

However, while cases of outright child labour are few and far between in Better Work factories, risk factors remain, not least because nine percent of firms still lack adequate documentation and protection procedures for young workers. Problems in this regard are captured by two main sub questions in the Better

Work assessment: one concerning the presence of a reliable system to verify workers’ ages upon recruitment, and another capturing whether there is a record of workers under 18 years of age (who are subject to certain legal conditions on the duration and type of work they perform). As the question level data shows (In Focus 1), seven percent of factories were non-compliant on both of these questions.

At the same time, nine percent of factories failed to ensure workers between the age of 15 and 18 were doing appropriate (i.e. non-hazardous) work with an adjusted working time that precludes overtime. Based on the question level breakdown, it is clear that the primary driver of non-compliance here is the working time of young workers, rather than the type of work they are doing. While only two factories were found to have engaged under-age workers in work that is hazardous by nature, nine percent (22 factories) allowed them to work more hours than permitted by law, including overtime. This typically stems from young workers being put to work alongside their older peers in the same types of jobs, which then results in them being subject to the same working time patterns, which typically also involve overtime.

IN FOCUS 1: HAZARDOUS WORK AND OTHER WORST FORMS

QUESTIONS	# OF FACTORIES FOUND NC (OUT OF 257)	NC RATE BY QUESTION
Are any workers under age 18 subjected to the unconditional worst forms of child labour?	0	0%
Are any workers who are under age 18 doing work that is hazardous by nature?	2	7%
Do workers who are under age 18 work overtime, at night, or allow to work more hours than allowed by law?	2	9%

Discrimination

Non-compliance with laws concerning discrimination is low across Better Work factories, and this is partly related to the racial, religious and political homogeneity of the factory workforce.⁶ In this reporting period, just under five percent of factories were found to practice gender discrimination, which usually comes in the form of stating a gender preference in job advertisements (usually female, for sewing positions).

At the same time, Better Work Vietnam is currently investing in further training of its assessors to develop their skills and techniques so they are better able to uncover hard-to-reach cases of discrimination. Anecdotal reports and external research suggests various forms of discrimination, particularly against pregnant women, do exist and are underreported throughout the industry. Examples include hiring female workers on short fixed term contracts which enable them to be terminated easily (and without maternity benefits) if they fall pregnant, and the use of physical “fitness” tests such as jumping on the spot, as a means to screen out already-pregnant workers from the recruitment process.

Similarly, sexual harassment of workers remains likely under-reported in garment factories as elsewhere in society, with no cases of non-compliance found in Better Work factories in the current reporting period. While Better Work Vietnam periodically hears anecdotal and unconfirmed reports of harassment in its factories, these remain inherently difficult to prove, as workers often lack both awareness of their rights and the confidence to come forward with their complaints. In recent years, Better Work Vietnam has used both formal training and innovative advocacy campaigns to raise awareness, challenge stigmas, and build more effective workplace policies to combat sexual harassment in garment factories. As such, it has trained scores of factory managers on systems to manage and prevent harassment, while focusing its worker outreach on rights based education and building their confidence and understanding of the process for reporting complaints.

Forced Labour

No cases of forced labour were found in the reporting period. This means that none of the observed factories were found to have restricted workers’ movements around the workplace, especially in and out of the premises, nor had they used coercive tactics to keep them at work (e.g. threats of violence, intimidation, disciplinary measures, withholding of wages, and the like). Better Work also finds that workers in its factories are free to terminate their employment with reasonable notice and at the end of their contracts, and that workers are not forced (involuntarily) to work overtime that is excessive or unpaid under threat of penalty.

In previous years, isolated cases have been found of workers being restricted from moving around the factory premises, e.g. by locking access doors during working hours and preventing workers from taking toilet breaks.

Freedom of Association and Collective Bargaining

FREEDOM OF ASSOCIATION

The leading challenge for factories in Vietnam in terms of freedom of association is the longstanding practice of management interference in the activities of the trade union. Typically, this comes in the form of senior managers serving on the factory’s trade union executive committee (30 percent of factories) and/or through management involvement in union activities and decision-making (34 percent of factories). Although Better Work uses the ILO Convention No. 98 (the Right to Organise and Collective Bargaining Convention) as its legal reference for this issue, factories often still challenge assessment findings on the grounds that the national law does not prohibit managers from serving on trade unions. Despite this, recent years have seen a gradual decline in both the prevalence of this practice and the resistance to Better Work’s recommendations, i.e. that factories develop realistic and practical roadmaps to remove management from the trade union and allow full autonomy of union operations. As discussed later in this report, the main factor driving this improvement is likely to

be the expected launch of public reporting in Vietnam (expected in July 2017), which has prompted many factories to take action to remove management from their grassroots trade unions, often at the request of buyers and in expectation that they can avoid public exposure on this issue.

Although many enterprise unions are still not free of management interference, Better Work finds no evidence of intimidation, harassment or termination of union officials in its factories.

IN FOCUS 2: INTERFERENCE AND DISCRIMINATION⁷

QUESTIONS	# OF FACTORIES FOUND NC (OUT OF 257)	NC RATE BY QUESTION
Are workers free to meet without management present?	1	0%
Has the employer terminated a union official without the written agreement of the union board or the higher-level union?	1	0%
Has the employer tried to interfere with, manipulate, or control the union(s)?	11	4%
Is senior management serving on the union executive committee?	79	30%
Is the employer involved in union decision making, the formation of the constitution and rules, in union activities, administration, finances or elections?	88	34%

COLLECTIVE BARGAINING

Almost 60 percent of factories fail in some way to comply with rules on collective bargaining. Based on the non-compliance share by individual question (In Focus 3 below), it’s clear that the major weaknesses in this regard are threefold: inadequate consultation between employers and unions; absence of an adequate vote to approve the collective bargaining agreement (CBA); and the failure to make the CBA publicly available to workers.

Ninety five factories in the current sample were found not to have consulted workers on key issues required by law; the most common of which concerned the annual OSH plan rather than the collective bargaining

agreement per se. Concerning collective bargaining specifically, almost 20 percent of factories failed to ensure their CBA was approved by more than 50 percent of workers covered, most commonly because they either do not hold a worker vote to approve the agreement at all (which is a legal requirement), or there is reason to doubt the validity of the record of the vote. For example, some factories provide minutes of a vote, but when asked, workers – and even HR staff in some cases – do not have any recollection of the vote. Linked to this, almost one in five factories fail to make the content of their collective agreement public for workers to see, which typically results in workers having little or no knowledge about the agreement and the rights and responsibilities enshrined therein.

IN FOCUS 3: COLLECTIVE BARGAINING

QUESTIONS	# OF FACTORIES FOUND NC (OUT OF 257)	NC RATE BY QUESTION
Does the employer consult with unions where legally required?	95	37%
Does the employer refuse to bargain collectively in accordance with legal requirements, or refuse to bargain in good faith with the union, workers representation, union federation or confederation?	1	0%
Has the collective agreement in force been approved by more than 50% of workers covered?	52	20%
Has the employer implemented all provisions of the collective agreement(s) in force?	11	4%
Has the employer made the collective bargaining agreement publically available to all workers?	28	11%
If there is a collective agreement, does it provide more favourable terms and conditions for workers than the law?	12	5%
Is the grassroots level union in the factory involved in the bargaining process at the enterprise level?	1	0%

Compensation**OVERTIME PAY**

Nearly half (49 percent) of factories are non-compliant on some aspect of overtime pay. Question level data reveals that incorrect payment for ordinary overtime (i.e. work that goes beyond the ordinary working time) is the most common challenge, affecting some 130 factories.

Whereas in previous years, high non-compliance in this area was closely linked to factories using incorrect salary calculation formulas (which resulted in underpayment of overtime), this problem has receded in recent years following new legal guidance. Instead, what remains prevalent is the failure to record often short periods of overtime performed by supporting workers, i.e. those not in direct production jobs but supporting the production process. A typical example of this is when boiler operators come to their factory 30 minutes early each day to light the steam boilers,

which should be recorded as overtime but is often omitted from working time and payroll records.

Miscalculation of overtime pay on weekly rest days (i.e. Sundays) is another significant source of non-compliance. Affecting 22 percent of factories, this practice is most commonly linked to a lack of awareness and understanding among factory HR staff of the correct legal calculations for overtime on these days. Similar knowledge gaps also contribute to the miscalculation of overtime at night and on public holidays, albeit to a lesser degree, since work on these days is relatively infrequent.

It is also worth noting that in cases where factories fail to pay the legal minimum wage to certain workers, this typically results in non-compliance on overtime payments too, since the factory is using an incorrect base wage as the basis for the overtime calculation. Although Better Work has observed a decline in the prevalence of this issue in recent years, problems continue to be found particularly among piece rate workers.

Case Study 1. Incorrect payment for ordinary overtime (based on a real factory case, October 2016)

Question: Does the employer pay workers correctly for all ordinary overtime hours worked?

Finding: The factory does not pay workers correctly for all ordinary overtime hours worked, for the following reasons:

1. Some workers are paid less than minimum wage, and therefore receive less than they should for ordinary overtime (because that wage is used as the basis for calculating OT pay).
2. Workers who work for more than 10 hours per day are not given 30 minutes break counted as working time as per the law, and are not paid at the overtime rate for their hours beyond the standard 8 per day.
3. One boiler operator comes to the factory at least 30 minutes early every morning to start the boiler, but this extra working time is not reflected in the working time and payroll records. As such, assessors cannot verify whether or not he is paid correctly for these overtime hours.

PAID LEAVE

Almost 60 percent of factories fail to comply with legal rules concerning paid leave (see Table 6). While there are currently 12 questions in the Better Work assessment under this compliance point, most factories are found noncompliant for either or both of the following reasons: (i) failure to submit sick and maternity leave claims within the appropriate time period (40 percent); and (ii) failing to pay correctly for legally required annual leave (30 percent of factories).

Although prohibited in law, it remains relatively common for factories to settle worker claims for sick and maternity leave at a fixed time in the month rather than on a case-by-case basis, which many factories continue to argue places undue strain on their HR teams (who can typically process bulk claims more efficiently). In this respect, Better Work finds that the majority of non-compliance cases stem from purely practical considerations on the part of businesses, which in any given month may need to process scores of individual claims from workers, depending on the size of the workforce.

It's important to note also that rules surrounding leave claims were changed in January 2016 following the introduction of a new Social Insurance Law. Whereas previously factories were required to settle claims within 3 days, the new law requires only that enterprises submit claims to the Social Insurance Agency within 10 days, with no further specification on the period for settling payments to workers.

Regarding incorrect payment of annual leave, this often stems from factories failing to accurately calculate and/or pay unused annual leave to workers at the end of each calendar year, leaving certain workers underpaid relative to their legal entitlement. This is particularly true of workers doing hazardous and heavy forms of work, who in some factories are provided with 12 days of annual leave (which is the entitlement for workers doing ordinary work) instead of the statutory 14 days. Smaller shares of factories were found non-compliant for other violations, for example, not paying workers adequately for work stoppages caused by the employer or force majeure (10 percent), not paying workers for public holidays (4 percent), and not paying women for their daily menstrual breaks (5 percent).

At the same time, compliance rates are very high in a number of other areas, several of which reflect more positively in terms of women's rights at work. These include payments for maternity allowances, breastfeeding breaks and prenatal care, all of which are guaranteed in the Vietnamese Labour Law, and all of which appear to be upheld by the vast majority of factories in the Better Work programme.

IN FOCUS 4: OVERTIME WAGES

QUESTIONS	# OF FACTORIES FOUND NC (OUT OF 257)	NC RATE BY QUESTION
Does the employer pay workers correctly for all ordinary overtime hours worked?	102	40%
Does the employer pay workers correctly for all overtime hours worked at night?	20	8%
Does the employer pay workers correctly for all overtime hours worked on public holidays?	34	4%
Does the employer pay workers correctly for all overtime hours worked on weekly rest days?	58	23%

IN FOCUS 5: PAID LEAVE

QUESTIONS	# OF FACTORIES FOUND NC (OUT OF 257)	NC RATE BY QUESTION
Do entitled workers receive full average monthly wages and maternity allowance of two month's minimum wage?	5	2%
Do pregnant workers receive correct payment when they take time off for prenatal care?	5	2%
Do workers receive correct payment during sick leave and other types of leave that are covered by social insurance?	8	3%
Does the employer pay for paternity leave when required?	1	0%
Does the employer pay women workers for 30 minutes rest per day during their periods?	12	5%
Does the employer pay workers correctly for legally required annual leave?	78	30%
Does the employer pay workers correctly for personal leave?	3	1%
Does the employer pay workers during work stoppages caused by the employer or by force majeure?	25	10%
Does the employer pay workers for legally mandated paid public holidays?	10	4%
Does the employer pay workers for one hour breastfeeding break per day?	5	2%
Does the employer provide 1 hour of paid time off to elderly workers in their last year of work before retirement?	0	0%
Does the employer submit claims for sick leave and maternity leave to the social insurance agency within 10 days?	102	40%

Contract and Human Resources

Almost 86 percent of factories ensured that all workers had valid employment contracts; however this still means that a significant minority of factories fail to guarantee this basic right at work to all workers. In Better Work Vietnam's experience, non-compliance in this area often stems from gaps between the end of a worker's probationary contract and the beginning of his/her fixed term contract (during which the worker continues working without a contract), which itself is often symptomatic of structural failings in the factory's HR management system.

The biggest driver of non-compliance in this area however is the failure to specify the full terms and conditions of employment in the contract itself – a finding which is true of 62 percent of factories in the current sample. The precise details that are lacking from workers' contracts tend to vary by factory, but some of the most common are the process for wage increases and occupational training and skills improvement, specification of personal protective equipment to be used, and details on the form for wage payments. Working

hours for security guards and boiler operators in particular are also often omitted or stated incorrectly in their contracts – a finding which may be linked to the fact these workers are often required to work outside standard hours (which, when not properly managed, can lead to non-compliance in other areas such as overtime wages and time and payroll records).⁸

Similarly, over half of factories (52 percent) do not comply fully with legal requirements on their internal work rules, the most common manifestation of this being the failure to specify short breaks to be provided during regular working hours (as per the Vietnam

Labour Law). Incomplete or unclear disciplinary rules and processes and lack of specified working hours for specific groups of workers (e.g. security guards) are also common causes of non-compliance in this regard.

Linked to the above, 26 factories also failed to ensure that contracts comply with the labour law, collective agreement and internal work rules, while 14 percent of factories failed to ensure all workers understand the terms and conditions of their employment.

IN FOCUS 6: EMPLOYMENT CONTRACTS

QUESTIONS

	# OF FACTORIES FOUND NC (OUT OF 257)	NC RATE BY QUESTION
Do all persons who perform work for the factory, both on the premises and offsite, have a contract?	37	14%
Do the contracts comply with the labour law, collective agreement and work rules?	26	10%
Do the employment contracts specify the terms and conditions of employment?	160	62%
Do the internal work rules comply with national law?	134	52%
Do workers understand the terms and conditions of employment?	37	14%

Occupational Safety and Health (OSH)

The Occupational Safety and Health (OSH) cluster is the largest in the Better Work assessment tool, covering a diverse array of questions across eight compliance point groupings, including emergency preparedness, chemicals and hazardous substances, OSH management systems, and worker protection.

Data for the reporting period shows a number of areas in the OSH cluster where factories perform well, i.e. where non-compliance rates are low. These include emergency preparedness issues such as ensuring workers are trained on evacuation procedures and the use of fire-fighting equipment; ensuring sufficient exits for workers; safeguarding sources of ignition; and complying with legal requirements on machines subject to strict OSH requirements (such as boilers, air compressors, steam pipelines, and forklifts). In each of these cases, fewer than 10 percent of factories were found to be noncompliant in the most recent reporting period.

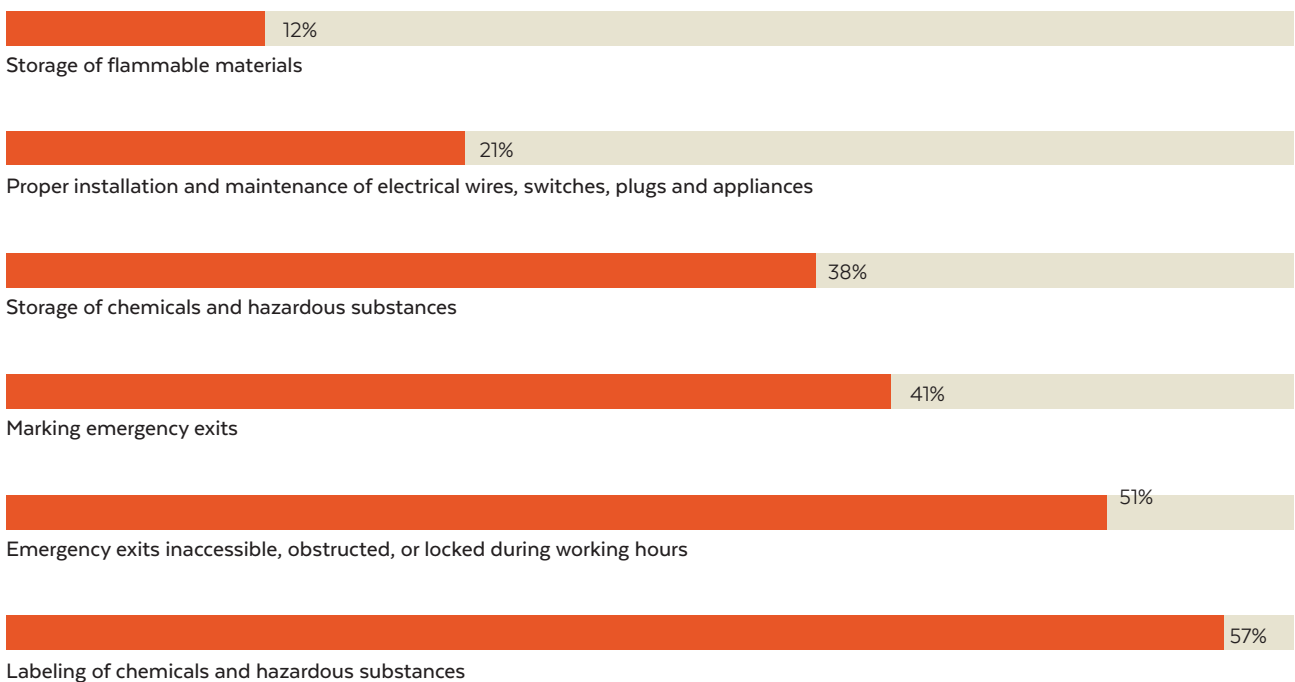
At the same time, non-compliance remains high in a

number of other areas, the most prominent of which are outlined in Figure 2. In this regard, the leading OSH violation found in Better Work factories is obstructed or inaccessible exits, which is most commonly caused by the careless storage of production materials (such as fabrics and carton boxes) in positions that block exits and escape routes. In a smaller number of cases, Better Work finds that it is machines themselves that are blocking these routes, while in fewer cases still, factories are found to have locked exits during working hours – a practice which is both illegal and potentially dangerous in the event of an emergency.

Linked to this, 44 percent of factories also lacked clear markings of emergency exits and escape routes.

In the case of obstructed exits, where systemic – rather than one off – root causes are identified, Better Work advises factories to comprehensively review workplace organization and production flows, although a number of smaller factories contend that space limitations in their workshop(s) prevent them from fully or permanently complying with this aspect of the law.

FIGURE 2: MAJOR COMPLIANCE ISSUES, OCCUPATIONAL SAFETY AND HEALTH (% OF FACTORIES IN NC)



Inadequate fire detection and alarm systems and the absence of a properly functioning OSH collaborators' network are also key compliance challenges for factories, with non-compliance rates of 44 percent and 35 percent respectively. In terms of fire safety, Better Work finds that while awareness of the risks has risen in recent years (in part due to a more stringent focus by Better Work in its assessments and advisory work), many factories still lack comprehensive coverage of their fire detection and alarm systems, i.e. they do not cover all production areas, while some also fail to check and maintain them regularly enough. Similarly, concerning OSH collaborator networks, the major cause of non-compliance is not the absence of the network per se but the lack of full compliance, either with the membership requirements (i.e. all members need to be direct workers) or the payment of monthly responsibility allowance due to all members.

Provision and use of personal protective equipment (PPE) such as masks, metal gloves and glasses are another area of weakness both in terms of compliance and wider worker safety, with 39 percent of factories non-compliant. Although it remains primarily the factory's responsibility to ensure workers receive and use their PPE, workers too have a responsibility to uphold company rules and protect their own safety. In reality, however, many continue to ignore rules on PPE (often for reasons of convenience and comfort), which creates difficulties for the employer in ensuring full and continuous compliance with the law. Similar challenges are also observed in the case of the unsafe use of machines and equipment (on which just over a third of factories are noncompliant), where violations mostly stem from workers removing or adjusting eye and needle guards from their sewing machines to enable a better view of the work they are doing.

Working Time

Non-compliance in the working time cluster is heavily concentrated in the area of overtime, which remains widespread, not just in Better Work factories but across the industry at large. While a majority of factories in the programme now comply with the daily

limit of four hours overtime, 77 percent still fail to meet monthly limits (30 hours) and 72 percent exceed annual limits (300 hours). In addition, and due to the high prevalence of Sunday work, 44 percent of factories fail to provide at least four days of rest per month to all workers.

Another concern is the failure of certain factories (4 percent of those observed) to ensure consent from workers for overtime work. In most cases, this relates to overtime being "automatically" applied to workers without their explicit written consent (on an individual basis), even though in the majority of cases, interviewed workers do appear to be comfortable with overtime (within reasonable limits) due to the additional income it brings.

Compliance with legal leave requirements is generally high among Better Work factories, with a number of exceptions, several of which relate specifically to women's rights at work. Some 12 percent of factories fail to grant female workers their statutory daily rest break during their period, while 13 percent deny workers from taking breastfeeding breaks (also guaranteed by law). In many such cases, Better Work finds cause in two main dynamics: factories wanting to minimize disruption to production, and workers themselves being unaware of their right to take such breaks.

Concerning rules on regular working time, there are two standout compliance issues for the industry: (i) non-compliance with daily break periods (which are often also omitted from internal work rules and not communicated to workers); and (ii) inaccurate working time records. Both violations affect workers in 51 percent and 43 percent of factories, respectively. Violations concerning working time records typically result from factories not recording extra periods of work by key workers, such as boiler operators arriving early in the morning to start the steam boilers (typically 15 to 30 minutes earlier than their contracted start time).

Just over one in ten factories fail to comply with shift work requirements, which often stem from security guards working consecutive shifts with insufficient rest time in between (12 hours, by law).

IN FOCUS 7: LEAVE

QUESTIONS	# OF FACTORIES FOUND NC (OUT OF 257)	NC RATE BY QUESTION
Are pregnant workers provided time off for prenatal visits?	8	3%
Does the employer allow workers to take 30 minutes rest during their period?	32	12%
Does the employer comply with the entitlement to maternity leave?	0	0%
Does the employer comply with the entitlement to paternity leave?	4	2%
Does the employer comply with the entitlement to sick leave and other types of leave that are covered by social insurance?	4	2%
Does the employer provide 1 hour off to elderly workers in their last year of work before retirement?	2	1%
Does the employer provide required annual leave to workers?	42	16%
Does the employer provide required leave for personal reasons?	3	1%
Does the employer provide required time off for breastfeeding breaks?	34	13%

IN FOCUS 8: OVERTIME

QUESTIONS	# OF FACTORIES FOUND NC (OUT OF 257)	NC RATE BY QUESTION
Does the employer comply with daily limits on overtime hours worked?	96	37%
	199	77%
Does the employer comply with the monthly limits on overtime hours worked?	186	72%
Does the employer comply with yearly limits on overtime hours worked?	114	44%
Does the employer ensure that workers have on average at least 4 rest days per month when weekly rest is not possible?	11	4%

IN FOCUS 9: REGULAR HOURS

QUESTIONS	# OF FACTORIES FOUND NC (OUT OF 257)	NC RATE BY QUESTION
Do regular working hours exceed 10 hours per day, or 48 hours per week?	1	0%
Do the working time records reflect the hours actually worked?	110	42%
Does the employer comply with daily break periods?	132	51%
Does the employer comply with shift work requirements?	25	10%
Does the employer give workers at least one day off per week?	3	1%

THEMATIC FOCUS: PUBLICLY REPORTED ISSUES

Background

In 2017, Better Work Vietnam will publish selected factory-level compliance information on a new online Transparency Portal, which will be available for public viewing through the Better Work website. The portal contains compliance information for 26 key issues covered by the existing Better Work assessment.⁹

Public reporting will apply to all factories that have had at least two assessments with Better Work Vietnam, and will involve publication of both the factory name and compliance status for each of the 26 identified issues.

Issues themselves were selected for public reporting based on number of key criteria which make up the essential pillars of a factory's compliance status:

- I. They may pose a direct or potential risk to the immediate health and wellbeing of workers (including risk to life);
- II. They represent violations of fundamental principles and rights at work;
- III. They reflect basic legal requirements relating to wages and mechanisms for workplace dialogue
- IV. They are potential symptoms of wider systemic issues that may threaten workers' rights, health and/or wellbeing.

TABLE 1: PUBLICLY REPORTED ISSUES IN VIETNAM

	CLUSTER	ASSESSMENT QUESTION FOR PUBLIC REPORTING
1	Child Labour	Have you found any workers under the age of 15?
2	Discrimination	Does the employer terminate or force to resign workers who are pregnant, on maternity leave, or breast-feeding a child under 12 months of age?
3	Discrimination	Is an applicant's gender a factor in decisions regarding conditions of work?
4	Discrimination	Is there sexual harassment of workers in the workplace?
5	Forced Labour	Are workers forced to work overtime under the threat of a penalty?
6	Forced Labour	Does the employer restrict workers from leaving the workplace?
7	FOA/CB	Is the employer involved in union decision making, the formation of the constitution and rules, in union activities, administration, finances or elections?
8	FOA/CB	Does the employer punish workers for joining a union or engaging in union activities?
9	FOA/CB	Has the employer terminated workers or not renewed their contract due to the worker's union membership or activities?
10	FOA/CB	Does the employer require workers to join a union?
11	FOA/CB	Has the employer implemented all provisions of the collective agreement(s) in force?
12	FOA/CB	Has the employer punished any workers for participating in a strike?
13	OSH	Does the employer conduct at least one emergency drill per year?
14	OSH	Are any of the emergency exits inaccessible, obstructed, or locked during working hours, including overtime?
15	OSH	Are there at least 2 possible exits for all workers, where required?
16	OSH	Does the workplace have a fire detection and alarm system?
17	OSH	Has the employer taken actions to assess, monitor, prevent and/or limit workers' exposure to hazardous chemicals?
18	OSH	Has the employer set up a properly functioning Unit in charge of OSH and/or Labour Protection Council?
19	OSH	Does the employer provide workers enough free safe drinking water?
20	Compensation	Does the employer pay at least the applicable legal minimum wage for ordinary hours of work to regular full time workers?
21	Compensation	Does the employer properly inform workers about wage payments and deductions?
22	Compensation	Do entitled workers receive full average monthly wages and maternity allowance of two month's general minimum wage?
23	Compensation	Does the employer pay workers correctly for all ordinary overtime hours worked?
24	Contracts and Human Resources	Does the employer sign more than two consecutive fixed term contracts with workers?
25	Contracts and Human Resources	Have any workers been bullied, harassed or subject to humiliating treatment?
26	Process Integrity	Does the employer deny BW access without a proper reason?

The following data is drawn as a sample of Better Work assessments in Vietnam. Table 12 demonstrates the number of factory assessments per cycle as of the end of 2016. The tables and graphs in this section refer to the non-compliance of factories during a given cycle. The trend analysis marks the aggregate non-compliance rates in various areas based on their time in the programme, regardless of what year a factory joined.

For the purpose of analytical accuracy, this chapter focuses on trends across four cycles since there is a sufficiently large sample (over one hundred factory assessments) to draw inferences about aggregate non-compliance.¹⁰

TABLE 2: NUMBER OF FACTORY ASSESSMENTS FOR EACH ANNUAL CYCLE

CYCLE	NUMBER OF ASSESSMENTS
1	390
2	288
3	168
4	121

The data focuses on a selection of key issues that will soon be publicly reported by Better Work in Vietnam. The data set is a compilation of average compliance rates for factories in assessment cycles one through four, which correlate to the number of years a factory has been in Better Work Vietnam. Because factories are added to BWV continuously, there are more factories in the earlier Cycles, and although compliance performance over this four year period cannot be tracked back for all 390 factories (the majority of factories joined the programme more recently, hence have had fewer than 4 assessments), there remains over 100 factories with 4 observation points to examine. This provides an instructive sample from which to assess recent developments via-a-vis public reporting issues, as well as a useful baseline from which to analyse future trends.

Compliance Overview

FIGURE 3: CORE LABOUR STANDARDS

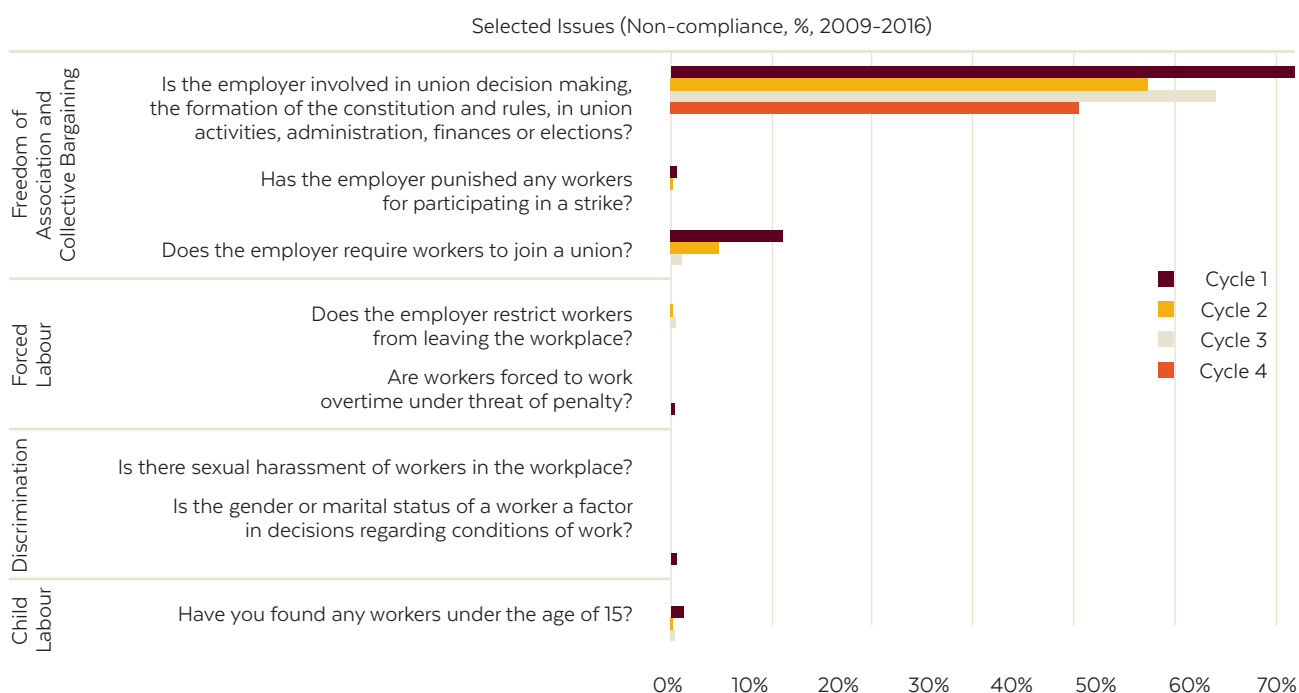
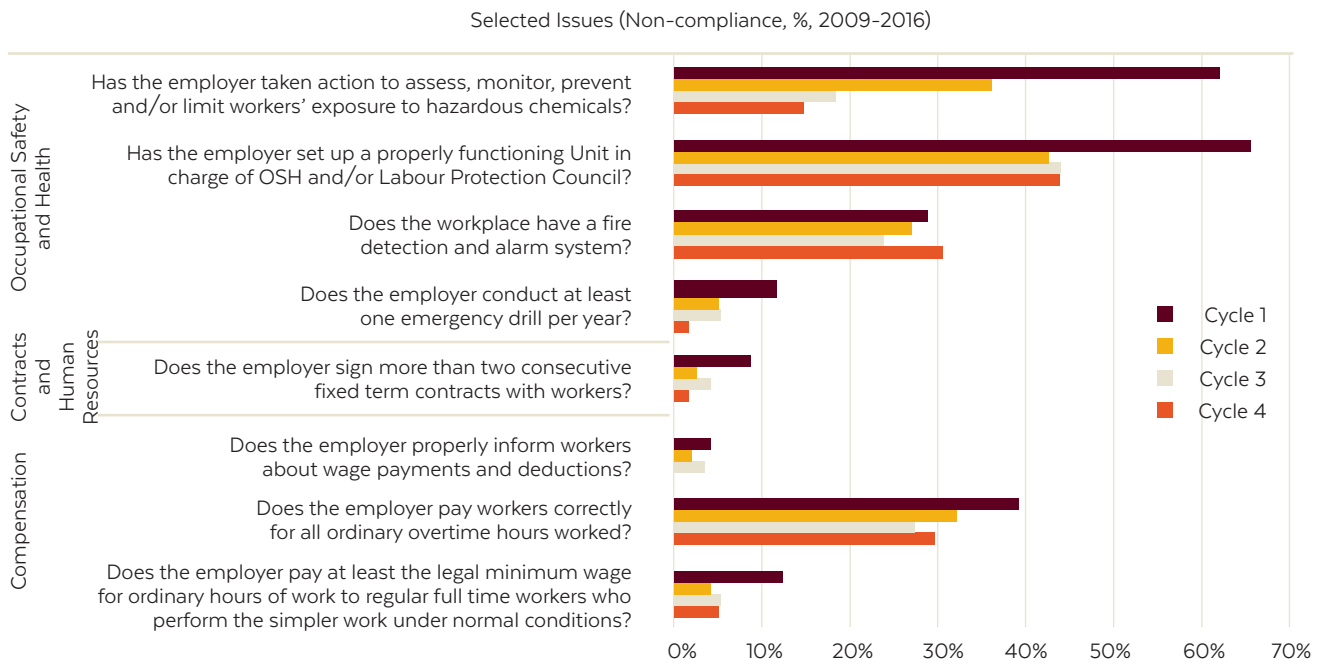


FIGURE 4: WORKING CONDITIONS



Core Labour Standards

One of the standout areas of progress under the Core Labour Standards cluster is the decline in management interference in the work of the trade union. The share of factories in which managers were involved in union decision-making and activities (including administration, financing and elections) fell by more than half between the first and sixth cycle, from 62 percent to 41 percent.¹¹ Although still a significant challenge for the sector, the positive trend reflects a number of factors, including an evolution of business attitudes (in favour of more union autonomy) and the accompanying efforts of the Vietnam General Confederation of Labour (VGCL) to professionalize the grassroots union structure to boost representativeness.

However, the major likely factor driving the most recent decline is the expected launch of public reporting in Vietnam, which has compelled many factories to take immediate steps to remove management from the trade union, often under real or perceived pressure from buyers. The extent to which such moves are substantive and sustainable, however, remains unclear, since there

are a number of “quick fix” techniques factories have been known to adopt in the past to comply with this aspect of the Better Work assessment (such as changing the job title of a manager who is serving on the trade union, to something that implies a lower level of authority). For more sustainable results based on genuine attitudinal change, Better Work advises factories to instead develop and implement a staged roadmap for reducing management interference, whilst continuing to advocate for greater institutional support for this position - and the wider principle of union autonomy and independence - at all levels of the VGCL, Vietnamese Business Forum (VCCI) and MOLISA.

Better Work Vietnam staff also received extensive training in 2016 on how to address the different causes of management interference in trade union operations, in the context of advisory, assessment, and training services, and this will continue alongside efforts to boost their investigative and advisory skills on this difficult issue.¹²

Future progress in reducing management involvement in union affairs will stand the garment industry in good

stead for upcoming national labour reforms, which will seek to enshrine further convergence between Vietnamese law and internationally agreed core labour standards.¹³

A number of other core labour standards issues show non-compliance rates of zero by the fourth cycle. These include child labour, which was down from 1 percent in the first cycle, and involuntary admission of workers to the trade union, for which non-compliance fell from just under 12 percent in the first cycle.

Working Conditions

Trends under the Working Conditions cluster paint a mixed picture of compliance performance over time. Progress on publicly reported Occupational Safety and Health issues is largely positive, with higher shares of factories now actively limiting workers' exposure to harmful chemicals and holding annual emergency drills, in line with Vietnamese law. At the same time, whilst a rising proportion of factories are now establishing properly functioning units in charge of OSH, non-compliance on this issue remains high at above 40 percent, the main reasons being inadequate staffing of these bodies (in terms of both absolute numbers and the staff qualifications required to fulfil their mandates).

The one exception under the OSH cluster is the slight rise in the share of factories not complying with laws on fire detection and alarm systems - up two percentage points to 31 percent from the first cycle. This aligns broadly with the observation made in Section 2.2 that many factories continue to under-estimate fire risks, while others still fail to ensure regular and effective maintenance of fire alarms and detection systems. As such, many fail to ensure ongoing testing of their systems, with faulty and unconnected smoke detectors being one of the most common findings for Better Work assessors.

Of the three publicly reported issues under the Compensation cluster, all show falling non-compliance over the observation period.

Between the first and fourth assessment cycle, the share of factories not paying the minimum wage (for ordinary hours of work) fell from 13 percent to five percent - a trend which in part reflects clearer under-

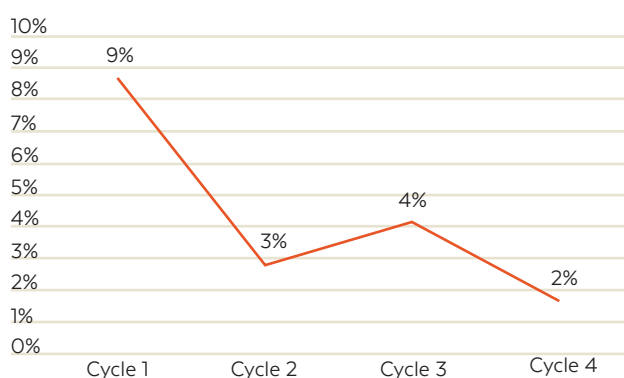
standing of the law following explanatory Government decrees since 2015 and a renewed focus on the issue in Better Work's factory advisory work.

Similarly, in the fourth cycle, Better Work found no instances of workers being inadequately informed of wage payments and deductions, compared with 4 percent of factories in the first cycle. This trend too has been observed more widely among established Better Work factories in recent years, particularly among those that have received specific training and instruction on compensation and benefits systems.

Non-compliance with the law on overtime pay remains an issue for 30 percent of factories (at the fourth cycle stage), although this represents an improvement from the 39 percent observed in the first cycle. A major driver of non-compliance in recent years has been use of incorrect salary calculation formulas which end up underpaying workers for certain overtime, and to a lesser extent the calculation of overtime for piece rate workers (who represent a fairly small share of workers in the overall factory workforce).

However, while this particular issue is now less common, compliance rates are still weighed down by a number of continued practices, including unrecorded "hidden" overtime, gaps in overtime payment for small groups of supporting workers, and uncounted overtime for workers that have clocked in early (e.g. 30 minutes before the regular start time).

FIGURE 5: NON-COMPLIANCE RATES (%), PUBLICLY REPORTED ON CONTINUOUS USE OF TEMPORARY WORK CONTRACTS CYCLES 1 TO 4¹⁴



Section III: Conclusions

Better Work Vietnam's 9th Industry and Compliance Review provides a range of insights into the state of working conditions and labour standards in the garment industry today. The report draws upon data from a large and varied sample of factories participating in the programme for between one and seven years, bringing together quantitative compliance findings with qualitative evidence from day-to-day advisory work in factories. The findings have far reaching implications both for policymaking and wider industry development.

As in previous years, non-compliance remains concentrated in the working conditions clusters, particularly compensation and working time. In both areas, more than three-quarters of compliance points (i.e. question groupings) show non-compliance rates of more than 50 percent. Occupational safety and health has the most extensive list of questions in the Better Work assessment, and although there have been some observable recent improvements in this area, for example in reducing chemical exposure and establishing workplace OSH units, consistent across-the-board progress remains elusive in many factories. A major cause of this is the lack of a systems based approach to improvement, which means that even when OSH measures are strengthened, they are often susceptible to backsliding. Having policies and procedures in place to prevent and manage OSH risks can both reduce the likelihood of human error and mitigate compliance disruptions due to high staff turnover, which remains a common concern for many factories.

Excessive working time, and particularly the regular breach of legal overtime limits, remains a perennial problem for the industry and something that is unlikely to change for the foreseeable future. Notwithstanding recent modest declines in non-compliance observed in Better Work factories, enterprises across the industry continue to face a range of barriers to compliance in this area, not all of which are in their

control. Specifically, while a lot of businesses are in theory capable of reducing overtime reliance through improvements to production planning and productivity (assuming the right knowledge, support and resources are available), they have far less control over the sourcing practices of buyers in the supply chain, which for many remains the single biggest source of working time pressure.

Also in line with recent experience, non-compliance rates across the core labour standards cluster remain low. Forced labour has been all but eradicated from Better Work factories, while non-compliance on child labour is more commonly a case of weak age verification systems and young workers (i.e. those between the age of 15 and 18) performing overtime or heavy work than the actual employment of under 15s. Likewise, cases of discrimination remain few and far between, and mostly relate to employers stating a gender preference in recruitment advertisements. At the same time, Better Work continues to receive reports and anecdotal evidence of strategies used by factories to circumvent gender protection laws and undermine workers' rights, for example to coerce women into not falling pregnant or screen out those who already are.

Sexual harassment is an issue that has received heightened media attention in recent years, with a number of studies showing it is far more widespread in Vietnam than previously acknowledged. As in society more widely, instances of sexual harassment in Better Work factories are likely to be under-reported, particularly given the fact much of the production workforce falls into what ILO defines as the most vulnerable group (i.e. women between the age of 18 and 30 in unskilled or semi-skilled work positions).¹⁵ Since 2016, Better Work has invested considerable additional resources both in the investigative capacity of its assessors and advisors, to better uncover cases of sexual harassment, and in education, training, and awareness raising for workers and factories. In 2016 it also

co-developed the first industry code of conduct for employers, which provides practical guidance on the prevention and management of sexual harassment in the workplace.¹⁶

Freedom of association and collective bargaining is the one noteworthy exception among the Core Labour Standards clusters, with high non-compliance rates in a number of key areas. Owing to the limited protections afforded under the Vietnamese labour code, freedom of association is not assessed by Better Work at the enterprise level; however the programme continues to track management involvement and interference in factory level trade unions, and it is on this issue that both significant progress and continued challenges can be seen. Indeed, while management involvement in trade union activity remains a problem for around half of factories, trend data shows that non-compliance has fallen significantly in recent years, as businesses become both more aware of public exposure of their compliance performance and more open to the idea and benefits of greater union autonomy (both for workplace relations and wider business performance). For Better Work and its tripartite partners, the task in the coming years will be one of sustaining and accelerating the pace of change in existing factories, whilst also scaling up advocacy and outreach to the wider garment sector, where traditional business attitudes to the role and composition of the union remain predominant.

In the coming years there is also a need for more substantive efforts to strengthen the quality and visibility of enterprise level collective bargaining, and to pilot new mechanisms for reaching sustainable collective agreements as a bedrock of a well-functioning industrial relations architecture. Currently, factories in Vietnam exhibit notable flaws both in terms of the content and process for collective bargaining (including the voting threshold for approval), as well as how they are communicated to the workforce. As such, in most enterprises they remain of limited effect in providing an inclusive framework to improve working conditions, protect rights, and enhance business stability and perfor-

mance. Similarly, despite being codified in law, social dialogue is yet to emerge as a mainstream or widely understood process for organizing workplace relations in much of the garment industry. Building a more holistic understanding of social dialogue will be key in the coming years, not just in reducing non-compliance on direct procedural issues like the content of the quarterly dialogue process, but also in supporting wider bipartite relations and systems for identifying and driving change across all aspects of labour rights and working conditions.

Trend data also shows significant progress across a number of important issues subject to public reporting, including the establishment of OSH units, reduction of chemical exposure, overtime pay, and management involvement in the trade union. While accurately attributing these trends to specific dynamics remains difficult, it is likely that this is linked to both long term behavioural change and the resulting growth in responsible business practices in Vietnam and the prospect of greater public scrutiny posed by the forthcoming public reporting initiative. Specifically, while many enterprises were already adopting improved business practices amid deeper integration in global supply chains and proactive engagement with Better Work advisory and training services, the desire to prevent public exposure of non-compliance has provided added impetus for change in the last twelve months in particular.

After considerable growth in recent years, Better Work Vietnam is now entering its third phase, which will be guided in its implementation by a new programme strategy. Under this plan, the programme will continue to grow its factory membership base in the short term, whilst also intensifying longer term strategic efforts to build the capacity of national partners (i.e. MOLISA, VGCL and VCCI) so they can assume a greater and more direct role in supporting the programme and its impact. Beyond simply enforcing compliance, this will also imply a more prominent role for these institutions in advising and training enterprises, and in promoting industry competitiveness through responsible business, in line with their organizational mandates and the wider national development agenda in Vietnam.

ANNEX A: FACTORIES COVERED IN THIS REPORT

28.1 Co., Ltd.	Branch of Garment 10 Corp JSC - Hung Ha Garment Factory
Nam of London Co. Ltd.	Oasis Garment Co. Ltd. (Vietnam)
3Q Vina Co., Ltd.	Branch of Poong In Vina Co. Ltd.
Nam Phuong Co., Ltd.	Opus One Corporation
A First Vina Co., Ltd.	Branch of Smart Elegant International Vietnam Ltd. No.2
Nam Yang International Viet Nam Co., Ltd.	O-Sung Vina Co. Ltd.
All Super Enterprise (Vietnam) Ltd.	Branch of Thuan Phuong Embroideries Garments Co., Ltd.- Binh Chanh Factory
Namlee International Co. Ltd.	P.I.T Vina Co. Ltd.
Alliance One Apparel Co. Ltd.	Branch Of Yupoong Vietnam Co. Ltd.
Namyang Delta Co., Ltd.	Park Corp. (Vietnam) Ltd.
AMW Vietnam Co. Ltd.	CCH TOP (VN) Co. Ltd.
Namyang Song May Co. Ltd.	Parosy JSC
Ando International JSC	Cerie Binh Duong Garment Co. Ltd.
NB Nam Phuong Co. Ltd.	Peak Speed Printing Co., Ltd.
ASG Vina Co. Ltd.	Choi & Shin's Vina Co. Ltd.
New Wide Garment (Viet Nam) Co. Ltd.	Pearl Garment Vietnam JSC
Asia Garment Manufacturer Vietnam Co., Ltd.	Chuan Mei Glove Co, Ltd.
Nha Be Garment Corporation- JSC	Pearl Vina Co. Ltd.
Avery Dennison RIS Vietnam	Chutex International (Long An) Co. Ltd.
Nhat Phuong Printing Co., Ltd.	Phong Phu - Cam Sanh Apparel Co., Ltd.
B.R.O Sun Garment Textile Vietnam Co., Ltd.	Chutex International Co. Ltd.
Nien Hsing (Ninh Binh) Garment Co. Ltd.	Phong Phu International JSC- Jean Export Garment Factory
Bac Giang Garment Corporation	Cuong Tai Co., Ltd.
Nien Hsing Garment (Vietnam) Co. Ltd.	Phong Phu International JSC- Phong Phu Long An Export Garment Factory
Bando Vina Co. Ltd.	D.E.M Co. Vina
Nobland Viet Nam Co. Ltd. (NBVO)	Phu Hung JSC
Bao Hung JSC	Dae Kwang Apparel Joint Stock Company
Nobland Vietnam Co. Ltd.	Phu Khang Co., Ltd.
Beeahn Viet Nam Co.,Ltd.	Dang Nguyen Embroideries Garments Co. Ltd.
Now Vina Co., Ltd	Phuong Dong JSC
Branch of Continent Packaging Corporation	Dap Cau Garment Corporation JSC
Nurian Vietnam Co. Ltd.	Phuong Nam Garment Trading Import Export JSC

Deuck Woo Viet Nam Co. Ltd.
 Poong In Vina 4 Co. Ltd.
 Deyork Vietnam Co., Ltd.
 Poong In Vina 5 Co. Ltd.
 Domex (Vietnam) Co., Ltd.
 Poong In Vina Co. Ltd.
 Dong A Textile Garment JSC
 Precious Garments (Vietnam) Co. Ltd.
 Dong Bang Vina Co., Ltd.
 Premier Global (Vietnam) Garment Factory Co. Ltd.
 Dong Tai Viet Nam International Co., Ltd.
 Pro- Sports Giao Thuy JSC
 Dou Power (Vietnam) Co. Ltd.
 Puku Vietnam Co., Ltd.
 Duc Giang Corporation
 Pungkook Saigon Co., Ltd.
 Eclat Textile Co., Ltd (Viet Nam)
 Pungkook Saigon Two Corporation
 Eight March Textile Co., Ltd. Branch- Hai Phong Veston Factory
 QMI Industrial Vietnam Co., Ltd.
 Eins Vina Co., Ltd.
 Quang Thai Garments Manufacture Co., Ltd.
 Eland Binh Duong 1 Factory
 Quint Major Industrial Vietnam Co. Ltd.
 Eland Vietnam Corp. Ltd.- Cu Chi Factory
 Regent Garment Factory Ltd.
 Eland Vietnam Corp. Ltd.- Long An Branch
 Rich Way Co. Ltd.
 Eland Vietnam Corporation Ltd. - Trang Bang Branch
 S.J Vina Co. Ltd.
 Emperor (VN) Co., Ltd.
 Saigon Private Garment Export Co., Ltd. (Branch)
 Epic Designers Viet Nam Co., Ltd.
 Saitex International Dong Nai (VN) Ltd.
 Esquel Garment Manufacturing (Vietnam) Co., Ltd.
 Sambu Vina Sports, Ltd.
 Esquel Garment Manufacturing Vietnam - Hoa Binh Co. Ltd.
 Sao In Garment Embroidery Imp/Exp Co. Ltd.
 Eun-Sun Vina Embroidery Co. Ltd.
 Sarah Co. Ltd.
 Excel Tailoring Vietnam Co. Ltd.
 Seyang Corporation Vietnam.
 Far Eastern Apparel (Vietnam) Ltd.
 Shillabags International Co. Ltd.
 Fashion Garment 2 Co. Ltd.- Tan Phu Branch
 Shing Viet Co. Ltd.
 Fashion Garments 2 Co., Ltd.
 Shinsung Vina Co. Ltd.
 Flexcon Vietnam Joint Venture Co. Ltd.
 Shinwon Ebenezer Ha Noi Co. Ltd.
 FTN Vietnam Co. Ltd.
 Shinwon Ebenezer Sai Gon Co., Ltd.
 Fullwealth International Garments Inc.
 Shinwon Ebenezer Vietnam Co. Ltd.
 G & G II Garments Co., Ltd.
 Simone Accessories Collection Vietnam Ltd.
 Gennon Vietnam Garment Manufacturing Ltd.
 Simone Accessories Collection Vietnam TG Ltd.
 GG Vietnam Co., Ltd.
 Smart Elegant International Vietnam Ltd.
 GG Vina Co. Ltd.
 Son Ha Garment JSC
 Grace Sun Vietnam Garment Co. Ltd.
 Son Kha Co., Ltd.
 Grand Well Co., Ltd.
 Song Hong Garment JSC- Factory 7.8.9.10

Grande International Enterprise Corp Co. Ltd.	Thien Quang Sewing Clothing One Member Co., Ltd.
Song Tien JSC	Indo-chine VN Co. Ltd.
Great Super Enterprise Ltd. (VN)	Thuan Phuong Embroideries Garments Co. Ltd.
SSV Export Garment Company	J&D Vinako Co. Ltd.
Green Vina Co. Ltd.	Tien Tien Garment Joint Stock Company- Workshop 4
Sun Garment Textile Vietnam Co., Ltd.	JC INT'L Vina Co., Ltd.
Ha Hae Vietnam Corporation	TNG Investment and Trading JSC - Phu Binh 3 Garment Branch
Sun World Garment Co. Ltd.	Jea-Must Vietnam Co., Ltd.
Han Sung Vina Co. , Ltd.	TNG Investment and Trading JSC- Viet Thai Garment Branch
Sungjin Inc Vina Co., Ltd.	Jiangsu Jing Meng Vietnam Co. Ltd.
Hana Kovi Inc.	Tong Yu Textile (VN) Co. Ltd.
T & AN Co. Ltd.	Jin Ju Plus Vina Co., Ltd.
Hansae TG Co. Ltd.	Top One Garment MFG Co. Ltd.
T & T Co. Ltd.	JME Vina Co. Ltd.
Hansae Vietnam Co. Ltd.	Top Royal Flash Vietnam Co., Ltd.
T & T Co., Ltd (Sewing Site)	Joon Saigon Co., Ltd.
Hansoll Vietnam Co., Ltd.	Trida Co. Ltd.
Tai Viet Camping Products Industries Co. Ltd.	Jung Kwang Vietnam Co., Ltd.
Hansoll Vina Co. Ltd.	Triple Garment (Vietnam) Co., Ltd.
Texma Vina Co., Ltd.	K.J Vina Co. Ltd.
Hanul Co. Ltd.	Truong Hy International Co., Ltd.
Thai Hoa Garment Co. Ltd.	K+K Fashion Co., Ltd.
Highvina Apparel Inc.	Truong Vinh Trading Industrial Garment Co. Ltd.
Thanh Tai Garment and Wash Company Limited	Kanaan Saigon Co., Ltd. (The 2nd factory)
Hong Seng Thai-Vina Co. Ltd.	TTC Garment Embroidery Co. Ltd.
Thanh Tri JSC	Kim Binh Garment Co., Ltd.
Hung Long Garment & Service JSC	TTG Co. Ltd.
Thao Uyen Garment Manufacturing and Trading Co.Ltd.	King Hamm Industrial Co., Ltd.
Hung Yen Garment Corporation JSC	Tungtex Fashions (Vietnam) Limited
Thien Chi Garment Co., Ltd.	King Hung Garments Industrial Co. Ltd.
Hyunlogos Vina Co. Ltd.	UBI Vina 1 Co., Ltd.
Thien Nam Garment Co., Ltd.	King Star Garment Co. Ltd.
I.S Vietnam Co., Ltd.	Unipax Co., Ltd.

Kinh Bac Garment JSC
 Unique International (VN) Co. Ltd.
 KL Texwell Vina Co. Ltd.
 Unisoll Vina Co., Ltd.
 Kosvi Apparel
 United Sweethearts Garments (Vietnam) Co. Ltd.
 Kovina Fashion Inc.
 Upgain (VN) Manufacturing Co. Ltd.
 Kowide Outdoors Co. Ltd.
 V.J. ONE Garment Co., Ltd.
 L&S Vina Co. Ltd.
 Van Phu Garment JSC.
 Lam Thanh Co., Ltd.
 Van Thanh Trading Service Co. Ltd.
 Lan Hanh Manufacturing- Trading-Service Co., Ltd
 Vastco Garments Ltd.
 Langham Garment Co., Ltd.
 Viet Hung JSC.
 Leader One Vietnam Ltd.
 Viet Khoa Co. Ltd.
 Lee & Vina Co., Ltd.
 Viet My Export Garment Co. Ltd.
 Leo Jins Vietnam Co., Ltd.
 Viet Pacific Apparel Co. Ltd.
 Liem Trinh Co. Ltd.
 Viet Pan Pacific International Co. Ltd.
 Linh Fashion Trading and Services Co. Ltd. - Phu Tai Linh Branch
 Viet Thinh Garment JSC
 Longway Vietnam Co. Ltd.
 Viet Tien Garment Corporation
 Lotus Textile & Garment Co. Ltd.
 Viet Vuong Co. Ltd.
 Lyon Garment Co., Ltd.
 Vietnam Rehong Garment Co., Ltd.
 M&J Garment-Printing-Embroidery Co. Ltd.
 Vina CKGF Trading Co. Ltd.
 M.D.K Co. Ltd.
 Vina Gio Co. Ltd.
 Made Clothing (Vietnam) Co. Ltd.
 Vina Korea Co., Ltd.
 Makalot Garment (Viet Nam) Co., Ltd
 Vina Kyungseung Trading Co., Ltd.
 Maxim Vietnam Co., Ltd.
 Vinh Tien Garment In-Ex Co. Ltd.
 May Hai JSC
 Wah Hai Garments Joint Venture Co. Ltd.
 Michelle Vietnam International Sewing Co. Ltd.
 Westfield Vietnam Co., Ltd.
 Mido Trade Co., Ltd. -Ninh Binh
 Win Vina Co. Ltd.
 Minh Tri Co. Ltd.
 Wooyang Vina II Co., Ltd.
 Minh Tri Thai Binh Co., Ltd.
 Yakjin Vietnam Co. Ltd.
 MJ Apparel Co., Ltd.
 Yen The Garment Co., Ltd.
 My Viet International Export Service Trade Co. Ltd.
 Yesum Vina Co. Ltd.
 Nahal Vina Co., Ltd.
 Yupoong Vietnam
 Nam Ha Garment JSC

ANNEX B: METHODOLOGY

Factory assessments

This report is based on aggregate compliance findings from a sample of 257 factories in the Better Work programme. Compliance findings themselves are derived from factory level assessments, which are conducted annually by Better Work advisors in all participating factories.

Better Work conducts factory assessments to monitor compliance with international core labour standards and

the national labour law. Assessment reports highlight non-compliance findings, which are used as a baseline to help factories plan their improvement activities. Collecting and reporting this data over time helps both factories and Better Work track progress and commitment to improved working conditions over time.

Compliance questions in the Better Work assessment are organized under eight issue groupings, known as clusters, and 37 sub-groupings known as compliance points. Of the eight clusters, four are based on international core labour standards (as governed by the ILO’s “Fundamental Conventions” on Child

FIGURE 6: BETTER WORK ASSESSMENT CLUSTERS AND COMPLIANCE POINTS

CORE LABOUR STANDARDS	01	02	03	04
	CHILD LABOUR	DISCRIMINATION	FORCED LABOUR	FOA and COLLECTIVE BARGAINING
	<ul style="list-style-type: none"> Child Labourers Hazardous Work and other Worst Forms Documentation and Protection of Young Workers 	<ul style="list-style-type: none"> Race and Origin Religion and Political Opinion Gender Other Grounds 	<ul style="list-style-type: none"> Coercion Bonded Labour Forced Labour and Overtime Prison Labour 	<ul style="list-style-type: none"> Union Operations Freedom to Associate Interference & Discrimination Collective Bargaining Strikes

Labour, Discrimination, Forced Labour, and Freedom of Association and Collective Bargaining¹⁷), while four are linked to Conditions of Work issues specified in the national law, namely Compensation, Contracts and Human Resources, Occupational Safety and Health, and Working Time. As a crosscutting issue, the Better Work assessment also looks at the extent to which factories have adequate management systems in place, both for Occupational Safety and Health, and Contracts and Human Resources.¹⁸

The core labour standards cluster is reported to the same standard in assessments in all Better Work countries, with the exception of Freedom of Association

in Vietnam, which is not reported at the factory level.¹⁹ Similarly, compliance points in the conditions of work cluster are largely consistent across countries in terms of overall content, although specific questions can vary according to the precise requirements of the national law in each country. In countries where national law is either unclear or doesn't address a relevant issue, Better Work establishes a benchmark standard based on international standards and good practice.

Better Work reports the non-compliance rate (NC rate) for each of the 37 compliance points. A compliance point is marked non-compliant if any single question within it is found to be out of compliance with the law.

WORKING CONDITIONS

05

COMPENSATION

- Minimum wages
- Overtime wages
- Hazardous Work
- Premium Pay
- Method of Payment
- Wage Information, Use & Deduction
- Paid Leave
- Social Security and Other Benefits

06

CONTRACTS and HUMAN RESOURCES

- Employment Contracts
- Contracting Procedures
- Termination
- Dialogue, Discipline and Disputes

07

OCCUPATIONAL HEALTH AND SAFETY (OSH)

- OSH Management Systems
- Chemicals and Hazardous Substances
- Worker Protection
- Working Environment
- Health Services & First Aid
- Welfare Facilities
- Worker Accommodation
- Emergency Preparedness

08

WORKING TIME

- Regular Hours
- Overtime
- Leave

END NOTES

- 1 For more information on the ILO's eight Core International Labour Conventions (29, 87, 98, 105, 100, 111, 138, and 182), please visit: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>
- 2 Cumulative figures covering the period from inception of the programme in 2009 to April 2017.
- 3 "Vietnam shoe and garment exports see drastic slowdown in 2016" (28 December 2016). Vietnam Breaking News, available at: <https://m.vietnambreakingnews.com/tag/giang-of-vitas/>
- 4 The CBI is the Centre for the Promotion of Imports from Developing Countries, part of the Netherlands Ministry of Foreign Affairs.
- 5 Although the Trans-Pacific Partnership Agreement is now unlikely to come to fruition in the foreseeable future, other upcoming trade agreements such as the EU-Vietnam Free Trade Agreement also contain similar labour provisions.
- 6 However, weak understanding of the issues among factories and workers, together with likely under-reporting of discrimination issues may also be a factor in the low rates of non-compliance.
- 7 This table shows selected questions from the Interference and Discrimination compliance point. Questions on which no factories were found to be non-compliant are omitted.
- 8 Starting in 2017, non-compliance relating to non-production workers and sub-contracted workers are recorded under one catch-all question in the Better Work assessment questionnaire (Have you found non-compliance with legal requirements for compensation, contracts, OSH, systems, and/or working time pertaining to non-production workers and/or sub-contracted workers?). Boiler workers are considered production workers, but security guards (who are often, but not always, subcontracted through private security companies) are not.
- 9 This represents 8.5 percent of the total number of questions in the assessment.
- 10 There are only 12 factories that have been with Better Work Vietnam since its launch in 2009 (i.e. 7 cycles) – a sample considered too small to be included in this dataset.
- 11 The programme will also adapt and expand its training for factories to focus on developing the ability and buy in of factory management and trade union personnel to adopt more progressive industrial relations approaches, including those which free grassroots trade unions of all management influence.
- 12 In Chapter 2.2 (Compliance Situation) the percentage of factories non-compliant in this area is slightly different, at 37 percent. The disparity is explained by differences in sample size and composition between the sample used for the snapshot compliance situation discussion and the longer term sample used for trend analysis.
- 13 Vietnam is expected to ratify ILO Conventions number 87 (the Freedom of Association and Protection of the Right to Organise Convention) and 98 (the Right to Organise and Collective Bargaining Convention), and enshrine their component provisions in the national Labour Law.
- 14 The complete compliance question to determine non-compliance in this issues is: Does the employer sign more than two consecutive fixed term contracts with workers?
- 15 ILO (2013) Sexual Harassment At The Workplace In Viet Nam: An Overview Of The Legal Framework. Available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_206106.pdf
- 16 ILO (2015). Code of Conduct on Sexual Harassment in the Workplace. Available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-hanoi/documents/publication/wcms_421220.pdf
- 17 For more information on the ILO's eight Core International Labour Conventions (29, 87, 98, 105, 100, 111, 138, and 182), please visit: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>
- 18 Management systems questions focus on the adequacy of workplace policies and procedures to prevent and mitigate human resource and OSH related risks. Such questions are considered "for information only", since they are grounded in industry good practice and/or Better Work recommendations rather than compliance with the law. Information only questions also cover issues such as the trade union (size and structure), the collective bargaining process, strikes and industrial action, and the compensation structure for workers (e.g. piece rate or hourly rate).
- 19 Freedom of association is not fully protected under Vietnamese law (only one trade union is legally allowed), and so in this context Better Work is unable to ask questions pertaining to right of workers to join a union of their choice or the ability of unions to join a federation of their choice, as in other countries. Despite this, the question of whether workers are required to join a union is still assessed at the factory level, along with other aspects of union activities, including management interference in union affairs, anti-union discrimination, collective bargaining, and strikes.



International
Labour
Organization



**International
Finance
Corporation**
WORLD BANK GROUP