INDEPENDENT INVESTIGATION REPORT ON ALLEGATIONS OF LABOR RIGHTS VIOLATIONS AT HONG SENG KNITTING, THAILAND

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Requested by: Fair Labor Association

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I. Background of Investigation

On March 22, 2024, the Fair Labor Association (FLA) received a Third-Party Complaint (the Complaint) from Ravi Anupindi from the University of Michigan, a member of FLA Board of Directors (the Complainant), concerning alleged labor violations at Hong Seng Knitting Co. Ltd. (the Factory) in Thailand. The Factory is a supplier for Nike (the Brand), an FLA member company. The Complainant requested an investigation into three allegations: mandatory unpaid leave during suspension related to the COVID-19 pandemic; coercion of workers to accept this unpaid leave; and retaliation against workers who refused to accept unpaid leave. The Complainant also urged the FLA to collaborate with the Brand to ensure that affected workers receive appropriate compensation, should the unpaid leave be found to violate local law and international labor standards, and to ensure the Brand's suppliers adhere to the FLA Code and Benchmarks, particularly regarding workers' right to freedom of association.

In response, FLA initiated the Third Party Complaint (TPC) process in April 2024, selecting Professor Panthip Pruksacholavit (the Investigator) as the independent investigator following interviews with several candidates. The investigation officially commenced on May 22, 2024. Before the Complaint was filed with FLA, several other pathways were explored to seek resolution to the allegations.

The alleged incidents began in May 2020, during the early stages of the COVID-19 pandemic. Shortly after, the Human Rights for Development Foundation (HRDF) raised the issue with the Worker Rights Consortium (WRC), which engaged with the Brand in August 2020 and shared the alleged worker rights violations.

In December 2020, the Brand engaged the social compliance auditing firm "ELEVATE"[1] to investigate the reported workers' rights violations. ELEVATE's investigation concluded that the suspension without pay was legal under Thai law, and as a result, the Brand implemented no corrective actions.

The WRC published its investigation report on April 5, 2021, which included recommendations for corrective actions. However, neither the Brand nor the Factory implemented these recommendations, as the Brand disagreed with the WRC investigation's findings. On April 19, 2022, the WRC updated its website, stating that the Brand's position remained unchanged.

In October 2022, the Brand collaborated with Georgetown University, a member of the WRC Board, to jointly engage Thai legal counsel, DLA Piper Thailand, for a comprehensive review of the case and legality of the way in which leave without pay practice was implemented by the Factory. The review was completed in January 2023, and reaffirmed that the leave without pay practice was in accordance with Thai law. After the review, the Brand maintained its position and refused to follow the WRC's recommendation to compensate workers for the unpaid leave period. However, the WRC contested the review process, stating that it had never agreed to this review process in the first place. Furthermore, neither the Brand nor Georgetown University provided a detailed explanation of the legal interpretation made by DLA Piper. As a result, the WRC did not accept the outcome of the review process.

In March 2023, a group of University of Michigan students wrote a letter to the university's president, highlighting the case and requesting an opportunity to present their concerns at the upcoming meeting of the University of Michigan President's Advisory Committee on Labor Standards and Human Rights (PACLSHR), scheduled for early April 2023.

In April 2023, PACLSHR began discussions with the Brand and they also involved the FLA in these discussions. However, at that time, the University of Michigan had not formally requested an investigation by the FLA. Despite months of communication with the Brand, there was no progress in resolving the case, and the Brand's position remained unchanged.

[1] ELEVATE has been acquired by LRQA as of April 2022: https://www.lrqa.com/en/latest-news/lrqa-completes-acquisition-of-elevate/

II. General Overview of the Complaint

During the COVID-19 pandemic, the Factory management allegedly forced workers to accept mandatory unpaid leave during the work suspensions due to business challenges. The Complainant alleged that the Factory management engaged in various practices that violate local laws as well as the FLA Workplace Code and Compliance Benchmarks. The Complainant requested FLA to investigate the following **three allegations**:

Allegation # 1 - *Unpaid Leave during Suspensions*: Despite the Factory having over 3000 workers, only four filed complaints with the Thai Department of Labor Protection and Welfare (DLPW) regarding the unpaid leave policy. Following the DLPW process, it was determined that the request for unpaid leave, which workers were forced to sign, was not legally valid. As a result, these workers were entitled to receive suspension pay as mandated by Thai law, which is equivalent to 75% of their wages during the suspension period.

Allegation # 2 - *Coercion*: Workers were allegedly coerced into signing the unpaid leave documents. Those who refused to sign were reportedly threatened with dismissal or transfer from their current positions within the Factory.

Allegation # 3 - *Retaliation*: A worker leader who peacefully and lawfully protested the Factory's attempts to coerce workers into signing documents related to unpaid leave allegedly faced retaliation. The Factory reported him to the police, compelling him to flee the country. This individual was a migrant worker from Myanmar.

III. Methodology

This incident had been investigated by other organizations before in 2020–2021. The findings from previous investigations were used as a valuable source for cross-checking information as the Investigator examined the allegations presented in the Complaint.

A variety of methodologies were used in this investigation, including:

- **Desk research**: The Investigator reviewed the WRC report, WRC Model Code of Conduct, relevant Thai laws and regulations, Thai court decisions, the DLPW order, the FLA Workplace Code of Conduct and Compliance Benchmarks, the Brand's Codes of Conduct, as well as general information related to the case to gain a comprehensive understanding.
- **Interviews**: The Investigator conducted interviews with relevant parties and individuals connected to the case. The list of interviewees is as follows:[2]
    - **Complainant**
        - Ravi Anupindi from the University of Michigan, a member of FLA Board of Directors
    - **The Brand**
        - Senior Director of Industry Engagement, Responsible Supply Chain
        - Director of Partnerships and Stakeholder Engagement, Responsible Supply Chain.
        - Vice president of global apparel and accessories manufacturing. Formerly part of the responsible supply chain team leading labor health and safety program based at the headquarter
        - Partner management director for North America. Formerly in labor team leading labor compliance

[2] For confidentiality reasons, the names of the parties are not disclosed in this report. All workers' names have been replaced with codes.

        - Senior counsel providing legal services to the supply chain and responsibility supply chain teams.
    - **The Factory**
        - Owner
        - Director
        - HR manager
        - Production Manager
        - HR & Payroll Staff
        - Welfare Committee (Worker representative) & Leader Line
    - **WRC**
        - Executive Director
        - General Counsel and Deputy Director for Policy & Research
        - Southeast Asia Regional Director
        - Thailand Field Representative
    - **HRDF**
        - Director
        - Case manager
        - In-house lawyer
    - **DLA Piper Thailand**
        - Partner
        - Senior Associate
    - **Workers: onsite and offsite interviews**
        - Nine workers who refused to sign the unpaid leave form
        - Ninety-eight workers who signed the unpaid leave form; 95 are current workers at the Factory/ Cassia and 3 are former workers.
    - **Business owners and employees in other workplaces in Thailand**
        - Four garment factory owners in Bangkok area
        - One food manufacturing factory owner in Bangkok Metropolitan area
        - One automobile manufacturing factory owner in Bangkok Metropolitan area
        - One rubber and tire manufacturing factory owner in Southern Thailand
        - Two hotel owners in Northern Thailand
        - Two garment factory employees in Bangkok area
    - **DLPW office**
        - Labor specialist, professional level, DLPW area 2
        - Labor specialist, DLPW head office
    - **Immigration Office**
        - General Officer, Sub-division 3, Immigration Division 1, Chamchuri Square Bangkok

- **Factory visit**: The Investigator visited the Factory, touring each department and meeting with workers while they were working. This allowed the Investigator to gain some understanding of the working conditions and environment, as well as the nature of the tasks in each department. The visit also enabled the Investigator to interview 100 workers and conduct a factory-wide survey.
- **Anonymous Worker Survey**: In addition to interviewing 100 workers at the factory, the Investigator conducted a factory-wide anonymous survey by distributing survey forms to 537 workers.
- **Document review:** After receiving supporting documents from the parties, the Investigator reviewed the documents and cross-checked them with the testimonies and information gathered from various sources.
- **Email Communication**: The Investigator utilized email as an effective communication channel to correspond with parties who were not interviewed, such as Georgetown University and ELEVATE. Email was also frequently used to ask follow-up questions and receive documentation.

The Investigator conducted interviews with 108 workers who were employed at the Factory during the time of the incident. This group included nine workers who refused to sign the consent form. Among the 108 workers, 102 are current employees of the Factory/Cassia, and six are former employees.

For the five former workers, the HRDF assisted by providing contact information and facilitating their travel arrangements. Four of these individuals were interviewed in person at the Investigator's office, while one was interviewed via video call. Additionally, another former worker, whose contact information was provided by the other five, was interviewed over the phone.

Among the 102 current workers, 100 were interviewed onsite at the Factory, while two were interviewed offsite. All interviews were conducted privately, involving only the Investigator and a translator, without the presence of management staff, other employees, or representatives from HRDF.

The Factory provided the Investigator with a list of current workers, along with brief information such as employment date, current department, etc. Other than those who had refused to sign the consent form, the Investigator randomly selected workers who had been employed during the incident. Although the onsite interviews with current workers took place at the factory, they were conducted in a private room without the presence of managerial staff or other workers. The Investigator ensured that there was no CCTV monitoring or audio recording device in this room. Additionally, prior to worker interviews, the Investigator informed Factory management about the confidential nature of the interviews and the principle of non-retaliation, ensuring that no employees were coached before their interviews.

To ensure confidentiality and provide a clear understanding of the purpose of the interview, the Investigator explained the nature of the investigation and the role of the FLA to each worker. The workers were informed that the Investigator is a full-time law professor appointed by the FLA to conduct this investigation independently. It was emphasized that the interview was not being conducted on behalf of the Factory, the Brand, WRC, or HRDF. The purpose of the investigation was made clear, and workers were given the opportunity to ask any questions they had. The investigator also obtained verbal consent from each worker to participate in the interview, ensuring adherence to ethical standards for research involving human subjects.

To prevent potential retaliation, the Investigator provided workers with a contact phone number during the interview and on the survey form. This allowed them to reach out for follow-up conversations or to report any incidents of retaliation after the interview.

IV. Previous Investigations and Reviews

The Investigator has identified at least two investigations and one review conducted by three organizations on this matter to date: the WRC, ELEVATE, and DLA Piper Thailand.

WRC Investigation

The WRC's fact-finding investigation began in July 2020, shortly after the case was filed by the HRDF. The WRC published its report[3] in April 2021 on its official website. The investigation was carried out by the WRC's own investigation team. Due to the COVID-19 pandemic, the investigation encountered several challenges and limitations.

[3] https://www.workersrights.org/wp-content/uploads/2021/04/Hong-Seng-Report-2021-04-05.pdf

The methodologies used included interviews with workers, communication with the Brand and the Factory, and a review of the related documents, laws and regulations. No interviews with the employer or employees were conducted on the factory premises, and the investigators did not visit the Factory.

The WRC investigation concluded that several labor violations had occurred at the Factory, including:

- The practice of unpaid leave is illegal under Thai law which stipulates that all workers must receive at least 75% of their wages during a suspension.
- All workers were coerced into signing forms related to this practice.
- Workers who refused to sign the forms faced threats, retaliation, and termination.
- One worker, who peacefully exercised the worker's right to freedom of association, was retaliated against, reported to the police, and forced to flee to Myanmar.

ELEVATE Investigation

The investigation by ELEVATE was conducted in October 2020, following communication from the WRC to the Brand concerning the matter. The Brand commissioned ELEVATE to examine the circumstances surrounding the suspension and unpaid leave. The investigation sought to assess whether these practices complied with Thai law, whether workers were coerced into agreeing to unpaid leave, and whether those who refused to sign the agreement faced incorrect payments, termination, or forced job transfers as retaliation.

Although the Business Director of LRQA (ELEVATE) collaborated with the audit team involved in this case to provide some information from the report to the Investigator, the Investigator was not granted access to the full report. The Brand cited a disclaimer within the report that restricted its disclosure, preventing the Investigator from verifying the details directly.

The methodology employed during the ELEVATE included a factory visit, interviews with various stakeholders, and document reviews. Specifically, the team conducted onsite interviews with 20 workers, offsite interviews with 11 workers, and phone interviews with 2 former workers. They also interviewed factory management, six welfare committee members, one DLPW officer, seven individuals from the surrounding community, and one staff member from the HRDF. The onsite assessment took place from October 19 to 26, 2020.

The ELEVATE investigation concluded that

- The Factory should pay Burmese workers who did not sign the agreement at least 75% of their basic wage for June 2020. The Investigator inferred that the auditors found the practice of unpaid leave compliant with Thai law, provided that workers give their consent. However, from a risk management perspective and in the interest of fairness among all workers, the auditors further recommended that the Factory consider compensating all workers for unpaid leave, not just those Burmese workers who did not sign this agreement.
- The investigation did not find evidence of systemic coercion. Workers were subsequently asked to resume regular working hours once business operations began to recover. This conclusion was supported by worker testimony, which indicated that they were not coerced into agreeing to the arrangement. While the workers expressed reluctance to accept the terms, they acknowledged the practical realities of the situation, fearing that refusal to reduce working hours could lead to layoffs or even a shutdown of the business.
- The investigation found that all 12 workers who declined the unpaid leave arrangement were reassigned to departments with regular operating hours. This reassignment coincided with the return to normal operations in the sewing department, which occurred on the same day that eight Burmese

workers attempted to file a complaint with the DLPW. The workers expressed a preference to work 5 to 6 days per week, a schedule only feasible in the sewing department due to the limited operations in other departments. However, the investigation revealed that the workers' primary concern was their lack of experience in their new roles. Since the sewing department had reduced worker allowances, leading to overall lower pay, three of the four workers who initially lodged complaints against the reassignment have since withdrawn their complaints and remain employed at the facility.

- The investigation determined that W1's unannounced absence from June 2 to June 9, 2020, constituted a legitimate ground for termination under Thai labor law. According to relevant provisions, an employer is legally authorized to terminate an employee without severance pay if the employee is absent without explanation for three consecutive days. However, the investigation noted mitigating circumstances, as W1's absence was attributed to the fear of arrest, rather than a willful violation of the factory's rules. Although the investigation did not find solid evidence of retaliatory actions against W1, it was believed that retaliation played a role in the termination. The investigators recommended that the Factory officially explain the reasons for W1's termination, and if the explanation is deemed unacceptable, compensation should be provided.
- Due to the timing of the termination, the investigation found strong indications that another worker, W2, was terminated in retaliation for W2's complaints. The investigators recommended that the Factory provide official explanation for W2's termination. If the explanation is deemed unacceptable, compensation should be provided.

DLA Piper Thailand Review

Unlike the previous investigations conducted by WRC and ELEVATE, DLA Piper Thailand did not conduct a fact-finding investigation. Instead, they conducted a review based solely on documents provided by their clients—the Brand and Georgetown University. Their analysis focused specifically on the legality of the Factory's leave without pay practices under Thai law.

The Investigator was not granted a permission to access to any reports or records of communication between DLA Piper Thailand, the Brand, and Georgetown University. Despite multiple requests for disclosure, both the Brand and Georgetown University refused, citing attorney-client privilege under U.S. law. They explained that revealing such privileged communications would violate U.S. legal norms. However, both the Brand and Georgetown University arranged for an online meeting between the Investigator and DLA Piper Thailand to discuss the case broad terms. As a result, the Investigator was unable to verify the authenticity of the information from the actual report, and the scope of discussion was very limited. DLA Piper Thailand also refused to provide any written answers or present any evidence during the meeting.

Based on the limited information gathered from the meeting, DLA Piper Thailand confirmed that their review was based solely on documents submitted by the Brand and Georgetown University. The Brand asserted that documents from Georgetown University included documents provided by WRC; and documents from the Brand included documents provided by the Factory and non-confidential source documents from ELEVATE. However, DLA Piper Thailand confirmed that they had not received any documents directly from the WRC, the Factory, or other external stakeholders. The review commenced in October 2021 and concluded in early January 2022, conducted mainly by two Thai labor lawyers from DLA Piper Thailand who specialize in Thai labor law.

The review concluded that the Factory's leave without pay practice is permissible under Thai Law. DLA Piper Thailand explained that this practice constituted a change in employment conditions under the Labor Relations Act, as long as both employer and employee agreed to the new terms, the agreement is valid under the Thai Civil and Commercial Code. DLA Piper Thailand also verified that the signed form used by the Factory is valid and sufficient to prove workers' consent. During the period of leave,

the employer has no legal obligation to pay wages, in line with the principle of "no work, no pay" under the Thai Civil and Commercial Code.

DLA Piper Thailand asserted that the practice of unpaid leave is distinct from the requirement under Section 75 of the Thai Labor Protection Act, which mandates that 75% of wages be paid during work suspensions. DLA Piper Thailand explained that employers in this situation had two legal options: they can either implement an unpaid leave policy with employee consent or suspend work and pay 75% of wages. The primary challenge with unpaid leave is ensuring that express written consent from employees is obtained and that this consent is voluntary. Nevertheless, DLA Piper Thailand confirmed that both practices are permissible under Thai Law.

DLA Piper Thailand confirmed that their legal conclusion was based on extensive experience advising clients across various industries—such as hotels, restaurants, and manufacturing—on similar issues during the pandemic. They stated that unpaid leave policies were widely implemented across Thailand during the pandemic and are permissible under Thai law. They also claimed to have consulted with the DLPW in previous cases, and that the DLPW confirmed the legality of this practice.

It is important to note that DLA Piper Thailand's review did not cite any court rulings, regulations, guidelines or authoritative opinions specific to this case. Additionally, issues related to coercion or retaliation were beyond the scope of their review, which focused solely on the legality of the unpaid leave policy. Consequently, matters related to coercion or retaliation were not discussed during the meeting.

V. Observations on Previous Investigations and Review

The investigations conducted by WRC and ELEVATE occurred over four years ago, shortly after the incident in question. While both investigations offered valuable insights, it is important to note that several limitations existed, despite the events still being fresh in the minds of the parties involved. These constraints largely arose from the COVID-19 pandemic and the differing methodologies employed by each organization. The Investigator has made several observations regarding these investigations, which are outlined below.

Audi Alteram Partem: Opportunity to Hear from All Parties Involved

The WRC faced significant challenges in ensuring that all parties involved were given an opportunity to provide their testimonies. While the report did not specify the number of workers interviewed, the WRC investigator later confirmed to the Investigator that, out of over 3,000 workers employed at the factory, 11 workers were interviewed via phone and offsite meetings. Notably, these workers were all individuals who had contacted HRDF to request assistance. Due to difficulties in contacting the remaining workers for offsite interviews, the investigation lacked input from those who did not file claims, which limited the scope of worker representation and feedback. Additionally, the WRC decided against conducting onsite interviews, citing concerns that workers might be reluctant to share truthful accounts if interviewed on the employer's premises. Consequently, no onsite interviews with either workers or managers at the factory were conducted. Although WRC confirmed that they exchanged emails with the factory on at least four occasions during the investigation, the Factory contended that no communication occurred prior to the publication of the report. The Investigator could not verify this claim due to a lack of access to the evidence.

The Brand commissioned ELEVATE to conduct an investigation within a short timeframe, making it one of the few audit firms willing to perform onsite inspections during the height of the pandemic. ELEVATE's team visited the factory and conducted onsite interviews with management and 20 workers. Additionally, they interviewed 11 workers offsite and 7 individuals from the surrounding

community. However, while the number of workers interviewed exceeded that of the WRC investigation, the sample size remains relatively small compared to the factory's total workforce of over 3,000. It is also worth noting that ELEVATE team did not get in touch with the WRC or HRDF during their investigation to seek insights or explore details regarding the allegations outlined in the WRC report.

DLA Piper Thailand, which was engaged in 2021 after the investigations by WRC and ELEVATE, had no opportunity to gather additional evidence beyond what was supplied by its clients – the Brand and Georgetown University. The firm did not verify facts with either the workers or factory management as it relied exclusively on the documentation provided.

The Investigator found lack of comprehensive worker representation, along with the absence of involvement and feedback from all relevant parties in previous investigations and review, has hindered efforts to achieve a transparent, fair and inclusive evaluation of the incident.

Involvement of Legal Professionals in the Investigations

The central questions of this investigation focus on the legality of the employer's unpaid leave practices in Thailand and whether their actions constituted coercion and retaliation. Addressing these issues necessitates a thorough understanding of Thai law. However, neither the WRC nor ELEVATE included legal professionals in their respective investigations. Below, the Investigator outlines the involvement -or lack thereof- of legal experts in each investigation.

The WRC conducted its investigation through its internal team, which included the WRC country representative in Thailand and the Southeast Asia regional representative. Both individuals possess extensive experience in investigating labor cases, having worked on numerous labor cases in the past. Despite their experience, neither of the investigators held legal qualifications. However, they asserted that they had a sufficient understanding of Thai labor law. They opted not to involve legal professionals or consult with any government authorities, believing that the legal aspects of the case were straightforward and did not require specialized legal interpretation.

ELEVATE assigned a team of three full-time staff auditors to conduct their investigation, which was completed within 15 staff days. While none of the auditors were lawyers, one had prior experience conducting social compliance assessments related to Thai labor laws. ELEVATE explained that legal professionals were not involved in this investigation, as legal consultation was outside the firm's mandate for this case. ELEVATE clarified that for investigations conducted on short notice with a limited scope, legal experts are typically not engaged unless specifically requested. In this case, the investigation report was delivered to the Brand, which held responsibility for any subsequent actions, including the decision to seek legal counsel if necessary.

Conflicting Facts

The investigations and review conducted by WRC, ELEVATE, and DLA Piper Thailand each rely on their own sets of evidence. However, due to confidentiality obligations, the Investigator did not have full access to the evidence used in these previous investigations and review. This limitation made it challenging to cross-reference the findings and verify the facts presented by each party.

Although the WRC report is publicly available on their official website and some documents were shared with the Investigator in the early stages of this investigation, much of the evidence remains confidential. During Investigator's interviews with workers, particularly with the nine workers who refused to sign certain forms, only several confirmed having been previously interviewed by WRC. The testimonies gathered by the Investigator revealed significant discrepancies with the facts presented in the WRC report. Toward the end of the investigation, the Investigator communicated with WRC to address these conflicting facts and requested access to relevant evidence for cross-verification.

However, due to confidentiality restrictions, WRC declined to share the names of workers interviewed, interview records, or related documents. As a result, the Investigator was unable to determine whether these discrepancies were due to interviewing different groups of workers or if the same workers had changed their testimonies.

The Investigator also lacked access to the ELEVATE report. The information provided by ELEVATE was limited, and while some facts conflicted with the Investigator's observations, ELEVATE did not support the information they shared with any evidence or documentation. This made it difficult for the Investigator to assess the accuracy of the facts provided.

Similarly, the Investigator did not have access to the DLA Piper Thailand report or any communications with clients. The Investigator was permitted only a brief online meeting with the lawyers involved in the case to discuss the matter in general terms. DLA Piper Thailand declined to provide written responses or share any evidence during this meeting. As a result, the Investigator was unable to verify the authenticity of the information or conduct a thorough review of the evidence.

While the Investigator acknowledges the facts presented by the previous investigations and review, conflicting facts were encountered. These discrepancies may have arisen due to differences in methodology, the parties interviewed, and the varying sizes of employee groups involved in each investigation. Given the lack of access to key evidence due to confidentiality restrictions, it was impossible to definitively establish a complete set of facts.

This report, therefore, relies primarily on the evidence and information obtained during this investigation. In cases where conflicting information was presented, the Investigator prioritized facts that were supported by documentary evidence. Where no such evidence existed, the Investigator has noted this in the report.

VI. Timeline of the Incident

Based on interviews and a review of all evidence, the Investigator developed the following brief timeline of the incident:

- **10 April 2020** – The Employee Welfare Committee met with Factory management to discuss the COVID-19 remediation plan. Both parties agreed on a policy allowing employees to voluntary take at least three days of unpaid leave per month. Following the meeting, the Factory promptly issued Announcement No. 14/2020, requesting daily workers to consider taking voluntary unpaid leave for at least three Saturdays per month, starting from May 2, 2020. [According to the Announcement No. 14/2020]
- **11 April 2020** – An official letter from the Employee Welfare Committee was submitted to the Factory, requesting that the Factory consider granting employees unpaid leave every Saturday during the months of May and June in order to reduce the risk of infection. [Letter from the Employee Welfare Committee to the employer's representative]
- **Late April 2020** – All daily workers signed the form provided by the employer, except one, W1. [Based on the announcement document and signed forms]. Management called W1 into the office, asking him to sign the form, which W1 again refused. [Based on an interview with W1; no other documentary evidence]
- **13 May 2020** – The Factory issued Announcement No. 15/2020 regarding a COVID-19 remediation plan, requesting the cooperation of all workers, both *daily and monthly workers*,[4] in reducing operating expenses by voluntarily applying for unpaid leave for at least 8 days per month

[4] Daily workers are workers who hold the lowest-level positions, primarily working on the manufacturing line, regardless of their nationality. Monthly workers, on the other hand, hold management or leadership roles, including positions like line leaders, regardless of their nationality.

(every Friday and Saturday) from June 1, 2020, to December 31, 2020. This announcement superseded Announcement No. 14/2020. Most employees signed the consent form, except for approximately 20 employees. [Based on the announcement document and signed forms]

- **Mid-May 2020** – The manager called all the 20 workers who refused to sign the consent form into the office several times in a single day to persuade them to comply. Some eventually agreed to sign, while 11 workers continued to refuse. Several employees consulted the HRDF regarding the legality of the unpaid leave practice. HRDF provided a legal opinion stating that the practice of unpaid leave is illegal under Thai law.
- **Mid to Late May 2020** – Some employees who had already signed the consent form approached W1, asking W1 to lead an effort to collect employee signatures and present them to the DLPW and the employer to revoke the signed consent forms. [Based on an interview] W1 shared a message in the employees' chat group, asking those who wanted to revoke their consent to sign a paper form W1 provided. However, few employees signed it. As W1 felt the number was too small, W1 expressed in the group chat that W1 would not proceed further due to the lack of participation. W1 then destroyed the form. [Based on an interview with W1]
- **22 May 2020** – Four employees—W1, W3, W4, and W5—visited the DLPW office to file a case requesting the labor inspector to order the Factory to pay them for the three days in May (2, 16, and 30 May), which they claimed they were forced to take as unpaid leave without their consent. However, the officer did not permit them to file the case since the payment in question was not yet due. The officer advised them to return in early June. [According to interviews with the employees and HRDF]
- **23 May 2020** – On payday, the Factory did not pay any employee for the days the company had requested voluntary unpaid leave, regardless of whether or not they had consented.
- **25 May 2020** – W1 posted on W1's personal Facebook (set to public) commenting about the situation at the Factory, where workers were allegedly forced to sign the leave without pay forms. [According to the Facebook screenshot, confirmed by W1]
- **26 May 2020** – The labor relations manager called a meeting with W1 and requested W1 to remove the Facebook post. The manager also informed W1 that the employer would file a police report if the worker did not remove the post. [According to the Factory management interview]
- **27 May 2020** – W1 did not remove the Facebook post. The Factory filed a police report against W1 for defamation and asked the police to investigate the case and order W1 to remove the post. [According to the police report document]
- **28 May 2020** – The Factory posted a photograph of the police report on the company's Facebook page, warning all employees that if anyone posted similar content, the Factory would pursue legal action to the fullest extent. [According to the screenshot of the Factory's Facebook post]
- **2 June 2020** – HRDF met with the four employees to plan how to bring the case to the DLPW. [According to the HRDF interview]
- **4 June 2020** – HRDF assisted the four workers in filing a case with the DLPW, requesting the labor inspector to order the employer to pay them for the three days of unpaid leave they did not consent to. The case was filed online due to the pandemic, and none of the employees visited the DLPW office in person. [Information provided by HRDF]
- **4 June 2020** – W1 fled to Myanmar with W1's family. [According to documents and interviews with both HRDF and W1]
- **9 June 2020** – W3, along with two other employees who did not file the case, received a transfer order from the cutting department to the packing department, effective 16 June 2020. Their main task in the packing department was folding clothes and sealing them in plastic bags. [According to transfer document provided by the Factory]
- **11 June 2020** – W2 and W5 received a transfer order from the cutting department to the sample department, effective 16 June 2020. Their main task in the sample department was cutting for product samples. [According to transfer document provided by the Factory]
- **16 June 2020** – The Factory visited the DLPW office as requested by the labor inspector regarding the case filed by the four employees on 4 June 2020. [DLPW document].
- **16 June 2020** – W6 received a transfer order from the cutting department to the store (warehouse) department, effective 1 July 2020. [According to transfer document provided by the Factory]

- **19 June 2020** – Daily workers in the sewing and sewing support departments, including cutting and store, resumed a regular 6-day work week. [Announcement No. 17/2020].
- **19 June 2020** – Six employees—W6, W7, W8, W9, W10, and W11—filed a complaint with the DLPW regarding unpaid leave. [information from ELEVATE]
- **23 June 2020** – W4 received a transfer order from the cutting department to the sewing training department, effective 24 June 2020. [According to transfer document provided by the Factory]
- **24 June 2020** – W3 and W5 received a transfer order from the sample and packing departments to the sewing training department, effective 24 June 2020. [According to transfer document provided by the Factory]
- **15 July 2020** – W3, W4, and W5 settled with the employer, agreeing to receive full payment as demanded in exchange for dropping the case filed with the DLPW. [According to the settlement document signed by the employees]
- **16 July 2020** – W5 and W4 completed training in the sewing training department and were rotated back to the cutting department, while W3 continued in actual sewing department. [According to transfer document provided by the Factory]
- **17 July 2020** – W2 filed a case requesting that the Factory pay for the days W2 was forced to take unpaid leave without consent. [According to the DLPW document]
- **23 July 2020** – The Factory paid the full requested amount of 993 THB (for 3 workdays) to W1 through the labor inspector. [Receipt issued by labor inspector]
- **1 August 2020** – W2 was transferred to the sewing department as W2 requested. [According to transfer document provided by the Factory]
- **11 September 2020** – W2's case was decided, and the labor inspector ordered the Factory to pay W2 for a total of 16 days—8 days for June and 8 days for July. Additionally, the Factory was required to pay 15% per annum in interest. The total amount was 5,478 THB. [According to the DLPW report] The full amount was due to be paid to W2 by 8 October 2020.
- **18 September 2020** – The manager requested around 50 employees to submit copies of their certificates of residence. W2 did not submit his. [According to the DLPW report]
- **24 September 2020** – The manager requested copies of certificates of residence again, but W2 still did not submit. [According to the DLPW report]
- **26 September 2020** – The manager requested copies of certificates of residence once more, and this time, W2 still did not submit. [According to the DLPW report]
- **28 September 2020** – The Factory issued a warning to W2 for repeatedly failing to follow the manager's order. [According to the DLPW report]
- **29 September 2020** – W2 finally submitted the document. [According to the DLPW report]
- **30 September 2020** – The Factory issued a warning to W2 for misreporting the residential address, but W2 refused to sign to acknowledge it. [According to the DLPW report]
- **8 October 2020** – The Factory went to the DLPW office and paid the amount of 5,478 THB to W2 as ordered by the DLPW. [record by DLPW]
- **9 October 2020** – The Factory dismissed W2 without advance notice or severance pay, citing gross misconduct due to misreporting the residential address.
- **12 October 2020** – W2 filed a case with the DLPW requesting compensation for advance notice and severance pay. [According to the DLPW report]
- **9 December 2020** – The DLPW office ordered the Factory to pay severance to W2, ruling that misreporting the residential address did not constitute serious misconduct and was therefore not grounds for dismissal without severance. However, the labor inspector did not order the Factory to provide compensation for advance notice, as W2 had violated the company's rules by not presenting the copy of certificate of residence when requested. [According to the DLPW report]
- **10 February 2021** – The Factory paid the full amount requested to nine workers who settled with the Factory earlier in June 2020. [According to the DLPW record]

VII. Overview of Business Relationship between Nike, Hong Seng, Ramatex and Cassia

Hong Seng Knitting had been a supplier for Nike for three decades. At the time of the incident in May 2020, Hong Seng employed 3,220 workers, and migrant workers constituted 66% of the workforce. Nike was the main buyer of Hong Seng.

Due to a strategic shift toward supplier consolidation, Nike decided to divest from many small suppliers, including Hong Seng Knitting in 2020. It is unclear exactly when Nike first communicated this plan to Hong Seng, as the communication took place over a Zoom call and no evidence was submitted. Due to global shutdown that began in March 2020, Hong Seng did not receive any orders from Nike for a month and a half. Nike's plan to end its sourcing from Hong Seng was unclear to the factory management, who were not expecting such a move to occur so soon.

Nike did not provide the Investigator with specific details regarding the timing of the decision to exit or the related communications. Hong Seng claimed that there were no indications of a divestment plan from Nike before the pandemic. The volume of orders remained consistently high, around a million pieces per month. Hong Seng received official notice of Nike's exit around April 2020, after a month and a half without any orders from Nike. Although the timing of exit notification is still unclear, both Hong Seng and Nike at least agreed that Nike made the decision to exit Hong Seng before Nike received the WRC allegations.

Ramatex, a Singaporean company, has been one of the top ten suppliers for Nike. Seeking to expand their manufacturing capabilities abroad, Ramatex entered a joint venture with Hong Seng, which was also looking for a business partner. This collaboration resulted in the formation of Cassia Garment in 2022.

Originally, the Hong Seng factory comprised multiple buildings clustered on a large piece of land, bisected by a public road. After the joint venture, this land was divided into two sections. Hong Seng continued operations on one side of the road, while Cassia Garment Factory began operating on the other side.

In terms of facilities, each factory operates independently. The only shared facility observed by the Investigator is the warehouse, where Hong Seng stocks raw materials on one side and Cassia on the other.

Regarding employees, Cassia Garment and Hong Seng Knitting operate as separate entities with distinct identities. They have completely divided their workforces, each having its own uniform and HR units. Workers from one factory are not allowed to enter into the other factory's premises without permission. The employees' uniforms are easily identifiable by their distinct colors. Although around 530 employees (about 75% of Cassia Garment's workforce) were formerly employed by Hong Seng Knitting, they underwent a formal transfer process to join Cassia Garment. As of July 2024, during this investigation, Hong Seng's workforce consisted of 870 employees with migrant workers comprising around 80% of that total. Meanwhile Cassia Garment's workforce consisted of approximately 700 employees.

Regarding shareholders, before the joint venture, Hong Seng Knitting's shares were divided among eight members of one family. After Cassia Garment was established, four of the family members liquidated all of their shares in Hong Seng Knitting and acquired 60% of the shares in Cassia Garment. The remaining four family members retained their shares in Hong Seng Knitting. Ramatex holds the remaining 40% of the shares in Cassia Garment. Ramatex does not hold any shares in Hong Seng Knitting.

Since February 2022, Nike has completely ceased sourcing from Hong Seng. Cassia Garment began its operations in April 2022. All of Nike's production at Cassia Garment was allocated from orders originally placed with Ramatex.

VIII. Related Local Thai Laws

This section is divided into two parts: the first discusses compensation and social security benefits during suspension, and the second addresses the legality of leave without pay. It is important to note that both the Thai Labor Protection Law and the Social Security Law apply equally to all workers in Thailand, irrespective of their nationality.

Compensation and Social Security Benefits during Suspension

Under Section 575 of the CCC, wages are paid in exchange for the reciprocal performance of work. If an employee does not work, the employer is generally not obligated to pay wages during that period. However, there exists a notable exception under the Thai Labor Protection Act when a business temporarily suspends its operations, preventing an employee from performing their duties despite their readiness to work. In such cases, Section 75 of the Thai Labor Protection Act mandates that the employer must continue to pay the employee 75% of their regular wages for the duration of the suspension period.[5] This provision ensures that employees are financially supported during periods where business operations are temporarily halted due to circumstances beyond their control.

The exception provided by Section 75, where employer is not required to pay 75% during the work suspension, is when the suspension is due to a case of *force majeure*. However, in a case of force majeure, employees may be entitled to benefits from the Social Security Fund under Section 79/1 of the Social Security Act.[6]

Section 79/1 of the Social Security Act was introduced in 2015, marking a significant amendment. Prior to its implementation, employees suspended due to force majeure were not entitled to compensation from either their employer or the Social Security Fund. The genesis of this provision can be traced back to the devastating floods that struck Thailand in 2011, submerging large swathes of the country for an extended period. The ensuing business closures necessitated employee suspensions from work. However, due to force majeure being the cause, affected employees were ineligible to receive either 75% of their regular pay or social security benefits. Therefore, this new provision aims to support employees who are affected by a force majeure event.

In January 2017, the Ministry of Labor issued a regulation defining force majeure and specifying entitlements under Section 79/1. Under this regulation issued by the Ministry of Labor, force majeure

[5] **Section 75** of Labor Protection Act states that when it is necessary for an Employer to temporarily suspend the business in whole or in part for whatever cause other than a *force majeure* which affect his/her business and causes the Employer incapable to operate his/her business as normal, the Employer shall pay wages at the payment's place under Section 55 and within payment schedule under Section 70 (1) to an Employee in amount of *not less than seventy-five percent of wages* of working day received by the Employee before the suspension of business for the entire period which the Employer does not require the Employee to work.

The Employer shall give written notice to the employee and the Labor Inspector in advance prior to the date of suspension of business under paragraph one for not less than 3 working days.

[6] **Section 79/1** of Social Security Act states that In the case where an insured person does not work because of a force majeure event or because the employer does not allow work due to a force majeure event causing inability to operate the business as normal, if the insured person has paid contributions for not less than six months within a period of fifteen months before he or she has not carried out his or her work, he or she shall be entitled to unemployment benefits in accordance with the criteria, conditions and rates prescribed in the Ministerial Regulations.

was officially defined to encompass earthquakes, floods, tsunamis, and other natural disasters with substantial public impact, which may prevent employees from working or disrupt normal business operations. The 2017 regulation provides that employees affected by work suspensions due to force majeure were entitled to receive benefits equivalent to 50% of their daily wage from the Social Security Fund. This regulatory framework aimed to provide clarity and support for employees and employers during unforeseen natural disasters, ensuring fair benefits despite temporary work suspensions mandated by force majeure events.

Due to the initial definition of force majeure given in 2017 only referencing natural disasters, there was ambiguity regarding the definition of "force majeure" and its application in pandemic situations. This lack of clarity led to uncertainties about employees' entitlement to benefits under Section 79/1 of the Social Security Act during the COVID-19 pandemic. To address these concerns, on April 17, 2020, the Ministry of Labor issued another regulation providing clarification on the definition of force majeure.[7] According to this regulation, force majeure shall include pandemics such as COVID-19 and other severe diseases that significantly impact public health, thereby preventing employees from working or disrupting normal business operations for employers. According to the Ministry of Labor Regulation, employees are eligible to receive benefits from the Social Security Fund under section 79/1 in the following cases:

- Temporary suspension of work due to quarantine or isolation.
- Temporary suspension of work due to the employer being compelled to close the business directly as a result of the pandemic.
- Temporary suspension of work due to a government order mandating the temporary closure of businesses in response to the pandemic.

In addition to clarifying the definition of force majeure, the same Ministry Regulation also temporary increased the rate from 50% to 62%, with a maximum of 90 days. This increased rate was effective from March 1, 2020 – August 31, 2020. Subsequently, on December 30, 2020, the government issued another Ministry Regulation concerning the matter.[8] While most of the details remained unchanged from the previous Regulation, the rate went back to 50%.

Based on the aforementioned legal provisions, the exemption from paying wages during work suspension due to force majeure applies solely to businesses that were directly impacted by the pandemic or those mandated to temporarily close by the government. The government's closure orders during the pandemic in Bangkok covered a variety of businesses such as restaurants, shopping malls, beauty salons, amusement parks, internet cafes, golf courses, swimming pools, schools, and gymnasiums. Therefore, there were primarily three scenarios under which employers could bring up force majeure claim. The first scenario involved businesses temporarily closing due to the necessity of quarantining or isolating employees. This situation typically arose when an individual within the workplace tested positive for COVID-19, prompting the closure of the business for a specified period to sanitize the premises and quarantine employees who had been in close contact with the infected individual. The second scenario encompassed businesses, example listed above, that were closed due to government mandates. The third scenario occurs when businesses are not mandated to close by the government but face conditions that make staying open impossible, such as being located in a lockdown or curfew area. Hence, the criteria for temporary closure under force majeure are highly restricted, and it is entirely beyond the employer's discretion to decide whether or not to close. Such closures must be justified by a substantial necessity stemming from the pandemic.

Businesses that voluntarily decide to close due to indirect impacts of the pandemic, such as reduced profitability if operations continue or significant downturn in operations due to the pandemic, are not considered closure due to force majeure. Consequently, businesses that opt to suspend operations due to these reasons are still obligated to pay 75% of their employees' wages. This has imposed significant

[7] https://www.ratchakitcha.soc.go.th/DATA/PDF/2563/A/029/T_0008.PDF
[8] https://www.ratchakitcha.soc.go.th/DATA/PDF/2563/A/107/T_0006.PDF

financial strain on employers in various industries, as continuing operations without government closure orders often proves economically impractical.

To alleviate the economic strain on severely affected industries, the government introduced numerous support measures. For instance, a cabinet resolution on July 13, 2021 allocated financial aid to workers in nine specific sectors: construction, hotels and restaurants, arts and entertainment, services, wholesale and retail, logistics, management, science and academia, and communication. Business owners in these sectors were eligible to receive government support amounting to 3,000 THB per employee, with a maximum cap of 200 employees per business. In addition to the financial aid allocated to workers in nine specified sectors, the government implemented supplementary support measures across various domains. General support initiatives include reductions in electricity rates and loan interest rates, benefiting the populace at large. Furthermore, targeted support has been directed towards specific industries severely affected by the pandemic, notably Small and Medium Enterprises (SMEs) and hotel entrepreneurs. Recognizing the significant challenges faced by these particular sectors, the government has ceased the collection of fees from hotels for a period of two years, aiming to alleviate their financial burden and facilitate recovery efforts.

Unfortunately, these support measures were not extended to every industry, and garment manufacturing was one of the sectors excluded from the closure mandates, meaning it did not receive any special support from government. Furthermore, many of the aforementioned special support measures are exclusively available to Thai nationals. Consequently, migrant workers, regardless of their legal status, did not receive the same level of support from the Thai government during the pandemic period.

Legality of Leave Without Pay Practice in Thailand

In cases where the employee wishes to take leave, or when it is not only the employer who decides to suspend or close work but the employee also wishes to be temporarily absent, the practice of leave without pay is treated as an agreement between the employer and the employee. Contrary to the analysis explained by DLA Piper Thailand, the Investigator asserts that the practice of leave without pay constitutes a distinct arrangement, different from the modification of employment conditions as set forth in the employment contract. Leave without pay should be implemented exclusively when both parties consensually agree to a temporary suspension of work for a defined period, rather than establishing a permanent modification of the agreed-upon employment terms.

The practice of leave without pay does not compel the employee to enter into an agreement that would conflict with Section 75 of the Labor Protection Act. Unlike Section 75, which applies when the employer unilaterally decides to suspend work, this practice is relevant in situations where the employee voluntarily wishes to take leave, or where both the employer and employee mutually agree to a temporary absence from work. In applying this practice, it is critical to ensure that the employee has voluntarily and explicitly expressed their intent to take leave.

Unlike many other types of agreements characterized by balanced negotiation between parties, an employment agreement is typically agreed upon by the employer, who often holds significantly more negotiating power than the employee. Without intervention, employees may find themselves compelled to accept unfair contract terms or even relinquish their rights to labor protections. Particularly in Thailand, where labor union participation accounts for less than 3% of the total workforce, there is a significant risk that workers may lack the collective bargaining power necessary to secure fair and equitable agreements on their own. Hence, there exist legal provisions aimed at restricting the freedom of contract in employment are sections 149-151 of the Civil and Commercial Code and section 14/1 of the Labor Protection Act.

According to sections 149, 150, and 151 of the Thai Civil and Commercial Code, individuals possess the right to exercise their legal autonomy and enter into agreements freely, provided that such

agreements are lawful and do not contravene morality or public order.[9] Consequently, any contractual provisions agreed upon by both employer and employee within an employment contract are valid unless they are conflict with provisions outlined in the Thai Labor Protection Act.

The Thai Supreme Court has affirmed this principle through various rulings, emphasizing that agreements between employers and employees conflicting with provisions of the Labor Protection Act are deemed void, regardless of the employee's consent. For instance, agreements requiring employees to work overtime without overtime pay are considered void, and the employer remains obligated to provide overtime pay.[10] Similarly, agreements granting employers the right to dismiss employees without prior notice or severance pay, contrary to the Labor Protection Act, are also void; employers must adhere to statutory requirements rather than the invalidated terms of the agreement.[11] Furthermore, the Supreme Court has ruled that agreements where employees waive their right to weekly holidays are inconsistent with the Labor Protection Act and therefore void.[12]

Upon entering into an employment agreement, both the employer and employee are bound by its terms. However, there are exceptions to the validity of employment contracts under certain circumstances:

- **Void Contracts**: A contract may be deemed void if it is based on hidden intentions,[13] fictitious intentions,[14] or a mistake regarding any essential elements of the contract.[15] In such cases, the contract is considered invalid from its inception and cannot be enforced.
- **Voidable Contracts**: Contracts may be voidable if they are entered into due to a mistake regarding any essential qualities of a person or property,[16] misrepresentation,[17] or under duress (coercion).[18] In these instances, the party who has been misled or coerced has the option to remain

[9] **Section 149** of CCC states that a juristic act shall mean any lawful and voluntary act with the direct intent to establish juristic relations between persons to create, modify, transfer, preserve or extinguish rights.

Section 150 of CCC states that any act with any purpose which is expressly prohibited by law or is impossible or is contrary to public order or morals, shall be void.

Section 151 of CCC states that any act which is different from statutory provisions shall not be void, if such statutory provisions are not related to public order or morals.

[10] Supreme Court decision no. 2537/2525.

[11] Supreme Court decision no. 2499/2537, 569/2547.

[12] Supreme Court decision no. 7670/2547.

[13] **Section 154** of CCC states that any declaration of intent shall not be void by virtue of the fact that the person declaring, in the recesses of his or her mind, does not intend to be bound by his or her declared intent, unless the other party knows such real intent of the person declaring.

[14] **Section 155** of CCC states that any fictitious declaration of intent made in collusion with another party shall be void, but the invalidity may not be asserted against a third party acting in good faith and injured by the fictitious declaration of intent.

[15] **Section 156** of CCC states that a declaration of intent which is acting under a mistake in any essential element of the juristic act shall be void.

The mistake in an essential element of the juristic act under paragraph one shall include, among others, a mistake about a characteristic of the juristic act, a mistake about a person which is a party to the juristic act and a mistake about property which is an object of the juristic act.

[16] **Section 157** of CCC states that a declaration of intent which is acting under a mistake about the quality of a person or property shall be voidable.

The mistake under paragraph one shall be a mistake about such quality as is customarily regarded as essential, and if there had not been such mistake, the voidable act would have not been made.

[17] **Section 159** of CCC states that a declaration of intent procured by fraud shall be voidable.

An act procured by fraud shall be considered voidable under paragraph one only if there had not been such fraud, the voidable act would have not been made.

If any party has made a declaration of intent owing to a fraud committed by a third party, such declaration of intent may be voidable only if the other party knew or ought to have known of the fraud.

[18] **Section 164** of CCC states that a declaration of intent shall be voidable if made under duress.

Duress, in order to make an act voidable, must be imminent and so severe to the extent of creating fear to the victim, and if there had been no such duress, such act would not have been made.

bound by the contract or to be released from its obligations. The contract remains fully enforceable unless either party expresses an intention to void it.

Regarding contract made under duress (coercion), the law outlines four essential elements:

1. The presence of a serious threat,
2. Imminent consequences of the threat,
3. Inducing fear in the threatened party,
4. The threatened party's expression of intent to enter into a contract in response to the threat.

In addition to complying with the Commercial and Civil Code as discussed earlier, an employment contract must also ensure fairness for the employee. Section 14/1 of the Labor Protection Act imposes limitations on the enforceability of employment contracts where the employer holds a significant advantage over the employee. While this provision does not invalidate the agreement outright, it authorizes the court to intervene and adjust the enforceability of the agreement to a level deemed most fair and reasonable. This legal framework aims to protect employees from unfair terms and ensures that contractual arrangements maintain a reasonable balance between the parties involved.[19] It should be noted that only the court possesses the authority to adjust the enforceability of the employment agreement under Section 14/1. Neither party nor any other governmental officer has the authority to do so. Therefore, adjustments to unfair employment terms can only be made through legal proceedings brought before the court.

According to the Thai Labor Protection Law, the statute remains silent on the explicit legality of leave without pay. This lack of specificity can result in varied interpretations. To date, there has been no definitive court decision or confirmation from any governmental agency declaring the practice of leave without pay as illegal. Instead, it was found that guidelines regarding this practice have been issued by the DLPW in the form of newsletters and infographic.[20] The guidelines clearly state that the practice is allowed as long as the employee's consent is obtained and the practice is used temporarily with a clear end period. Moreover, there are a few court decisions which could imply that leave without pay practices are permissible. Additionally, this practice is commonly used in Thailand during extraordinary circumstances such as financial crises and pandemics. Examples include Centara Hotel and Resorts, Thai Airways, Thai Airasia, and Bangkok Post,

Examples of court decision regarding leave without pay during COVID – 19 include the following 2 cases.

Case 1: Court of Appeal Decision no. 538/2566 (2023)

The employer, a hotel in Phuket, was significantly impacted by the COVID-19 pandemic. The employer claimed that the leave without pay policy was announced and in an effort to support operations of the employer and maintain employment, an employee voluntarily applied for leave without pay. The court determined that the employer failed to provide specific dates when the employee took leave without pay. The employee successfully demonstrated attendance at work during the alleged leave period.
The court ruled in favor of the employee, concluding that the employee did not take leave without pay and was presented at work as usual. Therefore, the employer is required to pay employee for that period of time.

Case 2: Court of Appeal Decision no. 2443/2566 (2023)

[19] **Section 14/1** of Labor Protection Act states that a contract of employment between an Employer and an employee, work rule, regulation or order of an Employer result in the Employer being in exploitation of the Employee, the Court shall have a power to order such contract of employment, work rule, regulation or order being enforceable only to the extent as it is fair and reasonable.

[20] https://www.facebook.com/prdlpw/photos/a.1015906948440802/4401887109842752/?type=3

The employer, a local airline, implemented a policy during the pandemic in 2020 that included pay cuts and voluntary leave without pay. The employee neither expressly consented to nor objected to the policy. The case was initially brought before the DLPW. The labor inspector ordered the employer to pay the employee due to the lack of written consent for leave without pay. The employer did not contest the order within the 30-day period. Therefore, the order from the DLPW became final, and the employer was required to comply with the payment directive. The employer forfeited the right to dispute the matter further by not appealing to the labor court within the stipulated timeframe.

Both court cases concluded similarly, with employees being entitled to payment for the period when the leave without pay practice was applied by the employers. However, this entitlement was not due to the illegality of the leave without pay practice. In the first case, if the employer had been able to provide evidence of the specific dates the employee applied for leave without pay and prove the employee's absence on those days, the practice of leave without pay would have been legally upheld and the employer would not have been required to pay the employee for that period. In the second case, if the employer could have demonstrated that the employee gave explicit consent to take leave without pay, the labor inspector would have upheld the leave without pay practice. The lack of explicit consent led to the employer's obligation to pay the employee. These two court cases highlight that the leave without pay practice is legal under Thai labor law, provided that the employer can substantiate the exact dates and employee consent involved.

In conclusion, although there is no specific Thai legal statute directly regulating leave without pay practices, sufficient evidence from various sources supports its legality. This includes guidelines provided by the DLPW, court decisions, and common practices. These sources collectively confirm that the practice of leave without pay is permissible; provided that it must include a clear end period and that the employer obtains express consent from the employees.

IX. Measures Taken by Employers in Response to COVID19 in Thailand

The Investigator conducted interviews with 9 employers and 2 employees across various scales of business in Thailand, including 4 employers and 2 employees from garment sector in Bangkok, to understand how they managed their employees during the global shutdown. The findings reveal a spectrum of approaches adopted by employers:

1. **Transition to Work from Home:** Many employers facilitated work from home arrangements, enabling employees to continue their tasks remotely while receiving full compensation. Industries such as the garment sector, where tools and materials are mobile, opted to distribute necessary equipment to employees' residences. Finished work was collected daily.
2. **Full Pay Work Suspension:** In cases where remote work was not feasible, certain employers, particularly public listed companies, chose to suspend operations while continuing to pay employees their full salaries. This decision, although maintaining employee income security, resulted in increased production costs. These higher costs might manifest in reduced share dividends or increased product prices passed on to consumers.
3. **Partial Pay Work Suspension:** According to Section 75 of the Labor Protection Act, some employers suspended operations with employees receiving 75% of their usual pay. This option necessitates employers proving the necessity of suspension and informing workers and labor inspectors three days in advance.
4. **Suspension without Pay Due to Force Majeure:** According to Section 75 of the Labor Protection Act, if suspension is due to force majeure, employers are not required to compensate their employees for the period of suspension. However, these employees were entitled to receive support from the Social Security Fund under Section 79/1, providing a safety net during their involuntary time off work.
5. **Dismissals with Severance Pay:** Facing economic impracticality, some employers opted to dismiss employees. This approach mandates severance pay and advance notice to employees.

It also exposes employers to potential lawsuits for unfair dismissal if reasons given are unjustified.

6. **Dismissal Agreements with Rehire Promise:** Amid prolonged pandemic conditions, certain employers reached agreements with employees for dismissal, allowing the employees to access unemployment benefits from Social Security Fund. These agreements often waive severance pay with a promise of reemployment once conditions improve.
7. **Voluntary Unpaid Leave:** Some employers offered employees the option of voluntary unpaid leave, allowing them to temporarily step away from work without pay.

These examples of varied strategies illustrate the complex decisions employers faced during the global shutdown, balancing operational continuity, financial sustainability, and employee welfare amidst unprecedented challenges.

X. Findings

Allegation # 1 -- Unpaid Leave during Suspensions

Since this allegation involves two main separate issues; 1.1) the legality of the leave without pay practice under the Thai law and 1.2) the DLPW ruling and its binding nature, the Investigation will assess these two issues separately.

- **Allegation # 1.1 -- Legality under Thai law of *leave without pay* practice**

The Factory's initial announcement regarding the implementation of leave without pay was made on April 10, 2020, during the early stages of the COVID-19 pandemic. Although the Brand claimed to have communicated general labor management guidelines to the Factory, the Investigator found no evidence to support this claim. The documents presented by the Brand consisted of general guidelines summarized from international organizations, which did not include specific guidance on work suspension or furloughs. The Factory confirmed that no such guidelines were communicated by the Brand prior to the furlough announcement. The only advice provided by the Brand was very general; to comply with local laws and adhere to any recommendations from the local government. The Factory further confirmed that the Brand only requested that the Factory to report the number of infected cases but did not request the Factory to report about its labor practices during the pandemic. The decision to implement the furlough policy was made entirely at the discretion of the Factory without acknowledging the Brand.

During the relevant period, the Factory encountered substantial challenges, compounded by widespread uncertainty, particularly regarding safety, as the nature of the virus was not well understood at the time. The global response to the COVID-19 pandemic, coupled with its classification as a highly dangerous disease, instilled considerable fear among employees. The Employee Welfare Committee met with Factory management to discuss the COVID-19 remediation plan on April 10, 2020. They requested that the Factory suspend production and allow them to take leave in order to avoid potential exposure to the virus, expressing their desire not to work during this time. The letter was officially submitted to the employer on April 11, 2020.

From an economic perspective, the Factory experienced a sharp decline in production demand. The Brand, the Factory's primary buyer, typically placed orders for approximately one million pieces per month, with new orders arriving every 15 days. However, for a period of 45 days, the Factory did not receive any new orders from the Brand, and no explanation was provided for this cessation. This lack of orders further exacerbated the Factory's operational difficulties during an already challenging time.

Before deciding to implement the leave without pay policy, the Factory claimed it worked closely with officials from the Ministry of Public Health to ensure adequate health protection measures and with the DLPW to ensure the legality of its labor practices. The Factory consulted a DLPW officer by phone and received confirmation that the leave without pay practice is permissible under the law as long as employees provide their consent. The Factory also referenced an announcement issued by the DLPW on February 28, 2020, which explicitly states that "…to provide protection and control of disease that may spread in the workplace, the employer may agree with the employee to take leave without pay, or implement no work no pay policy, or the employer may pay an agreed amount to the employee for the entire leave period."

The Investigator contacted multiple labor specialists in different DLPW offices, including the office the Factory and HRDF claimed to have called to confirm their understanding of the practice of leave without pay. The responses were consistent: the practice is permissible under the law as long as the employee's consent is given voluntarily. The officers confirmed that the legal requirement for employers to pay 75% of wages during work suspension only applies when the employer unilaterally decides to suspend work. In contrast, the practice of leave without pay is applicable when the agreement is made by both parties and this practice does not conflict with section 75. However, the officers were unable to provide any examples of cases that had consulted on due to confidentiality constraints.

As explained above, the Investigator determined that this case occurred during an extraordinary period, distinct from ordinary circumstances in which workers are ready and willing to work, but the employer chooses to suspend operations for its own reasons. In this instance, a sharp decline in production demand, which was evident to all workers, placed significant strain on the employer. Concurrently, the workers expressed concerns about the health risks associated with continuing to work amid the pandemic. As a result, an agreement was reached between the employer and employees to implement leave without pay for 1-2 days per week.

The Investigator confirmed the workers' understanding of the situation through an anonymous worker survey and confidential interviews conducted with 334 workers employed at the Factory during that period. According to the survey, the reasons for employee consent varied. Approximately 52% of workers who signed the agreement stated they did so to help the employer reduce costs due to the decline in orders, as they wanted to avoid any potential risk of business shutdown or layoffs. Around 30% indicated that concerns over their health and safety during the pandemic influenced their preference to avoid coming to work, thereby reducing their risk of infection.

Since this agreement was mutually reached between the employer and the employees, it is permissible under the law, as explained in Section VIII of this report, provided that the conditions are met and employee consent is clearly demonstrated. In this case, there is no legal requirement for the employer to apply the law mandating 75% payment during work suspensions. Accordingly, workers who consented to taking leave without pay, in this case by signing a form, are not entitled to receive any compensation during the agreed-upon leave period. Workers who refused to sign the form confirmed that they had received full compensation for the leave period in question. The Investigator found no outstanding payments owed to any worker.

The Investigator would like to highlight that, while the leave without pay arrangement is permissible under the law and the signed agreement is binding on both parties, should this matter be brought before the Thai Labor Court, the court would not only assess the validity of the agreement but also consider its fairness to the employees under Section 14/1 of the Thai Labor Protection Act. This provision is designed to ensure that employees are not subjected to agreements in which the employer derives an excessive advantage.

Although the survey data indicates that the majority of workers voluntarily signed the form, the Investigator cannot conclusively determine how well-informed the workers were regarding their available options. It remains unclear whether the workers fully understood that, had they not agreed to

the terms, the law would have entitled them to at least 75% of their wages for the entire leave period, or whether they were aware of the potential duration of the situation. The voluntary decision of over three thousand workers to forgo two days of wages per week for such an extended period (a total of 59 days) could become unfair if the economic and outbreak situations improved and the workers sought to resume a six-day workweek but were unable to do so because of the agreement.

Nevertheless, in this case, the Thai government was able to control the situation effectively, leading to a relatively quick improvement. The Factory soon received a substantial number of orders for the production of face masks and surgical gowns shortly after the agreement was signed. The Factory resumed normal operations in most departments on June 19, meaning that the majority of workers were on unpaid leave for less than two months, amounting to a total of 9 unpaid leave days as opposed to 59 days in the agreement. The Investigator concludes that, since the agreement was in effect for a limited period and was canceled promptly as conditions improved, the agreement is fair to both parties and should be considered fully enforceable.

It should be noted that this conclusion conflicts with legal interpretations provided by WRC and HRDF. During interviews with representatives from both organizations, it was observed that there is a shared understanding that no specific Thai legal statute directly regulates the practice of leave without pay. However, both organizations consider it illegal. The HRDF's lawyer, who communicated this interpretation to the workers and assisted them in filing a case with the DLPW, based his legal reasoning on the principle that if Thai law requires employers to pay 75% of wages during work suspension, then leave without pay should not be permissible. His rationale is that no employee would voluntarily relinquish their wages. While the HRDF lawyer claimed to have had a phone conversation with a DLPW officer regarding the legal requirement for employers to pay 75% during work suspension, he did not explicitly inquire whether the practice of leave without pay is illegal. Thus, this interpretation remains grounded in his personal understanding without legal confirmation from an authoritative source. On the other hand, the WRC's investigation did not involve legal consultation. The WRC investigator formed her interpretation based on extensive work experience in Thailand and document research, similarly concluding that if the law mandates a 75% payment during work suspension, leave without pay should not be an option. This conclusion stemmed from the belief that employees would not willingly forfeit their wages if they had the choice of getting 75% payment. The WRC investigator confirmed that she did not seek any legal advice from a local lawyer or engage with any DLPW officer for an official interpretation regarding the legality of leave without pay practices.

The Investigator found that both the HRDF and WRC share a common interpretation that leave without pay is illegal, based on the reasoning that Thai law requires employers to pay 75% of wages during work suspension. However, neither organization obtained a definitive legal opinion or confirmation from relevant authorities to substantiate this interpretation. As a result, their understanding remains rooted in the experiences and reasoning of the individuals involved.

- **Allegation # 1.2 -- DLPW Ruling and Its Binding Nature**

Unlike most labor violation claims that must be brought directly to the Labor Court, Section 123 of the Labor Protection Act[21] provides an alternative avenue for employees seeking to address violations related to their payment entitlements. If their employers violate the Act, employees have two options: 1) file a lawsuit directly with the Labor Court and 2) file a complaint with the labor inspector.

[21] **Section 123** of Labor Protection Act states that whereas an Employer violates or fails to comply with an Employee's entitlement to receive any payments prescribed under this Act, and the Employee wishes the Labor Inspector to enforce the entitlement under this Act, the Employee is entitled to lodge a complaint, in a form prescribed by the Director-General, to the Labor Inspector of the locality where the Employee works or where the Employer's domicile is located.

If an employee chooses to file a complaint with the labor inspector, the labor inspector has the authority to adjudicate the case. Once the decision is made, the inspector issues an order to both parties involved. This order is binding on both the employer and the employee who filed the case. The labor inspector's order has full enforcement, and there are criminal sanctions for parties who do not follow the labor inspector's order.[22] However, either party can appeal the order to the Labor Court within 30 days from the day which the order was issued.[23] If no appeal is filed within this period, the decision becomes final.

For other employees who are subjected to the same treatment but did not file a complaint, the labor inspector's order in one specific case does not automatically apply to them. However, the decision does set a precedent that can help other employees anticipate the likely outcome if they file similar cases with the labor inspector. Furthermore, labor inspectors in Thailand are vested with the legal authority to enter workplaces to investigate and gather information. Therefore, if a labor violation is identified in one case and the labor inspector suspects that other workers at the same workplace may be experiencing the same or similar unfair treatment, the labor inspector is likely to conduct a further follow-up inspection. This may involve visiting the workplace either with or without prior notification. If any violations are confirmed during such a follow-up investigation, the labor inspector can issue an order requiring the employer to take corrective action, even in the absence of a formal complaint from workers.

The Investigator identified *three attempts* by employees to file a case with the labor inspector to seek payment for the duration of the "leave without pay" period.

***First Attempt*:** The first attempt took place on May 22, 2020, when four employees—W1, W3, W4, and W5—visited the DLPW office. This visit was arranged and accompanied by an HRDF lawyer and an HRDF staff member. The employees intended to file a case requesting the labor inspector to order the employer to compensate them for the three days in May (2, 16, and 30 May) which the employees claimed they were forced to take leave without pay without their consent. Initially, the labor inspector did not permit these four employees to file the case because the payment in question was not yet due. The inspector advised the employees to wait until the end of May to see if the employer would fail to pay for the days they did not agree to take leave without pay.

On June 2, 2022, representatives from the HRDF met with four employees to strategize the submission of their case to the DLPW. Subsequently, on June 4, 2020, HRDF assisted these four workers in filing a complaint with the DLPW. The complaint requested that a labor inspector direct their employer to compensate them for three days during which they were compelled to take leave without pay without their consent. Due to the peak of the COVID-19 pandemic at that time, the case was submitted online, and none of the employees physically visited the DLPW office to submit the claim. Despite W1 returning to Myanmar with the family on the same day, W1's case was successfully filed alongside those of W1's colleagues.

The case did not proceed to completion because, upon being notified by the DLPW about filing, the Factory quickly settled with the employees, offering to pay them for the three disputed days before the labor inspector began reviewing the case. The three employees agreed to accept the payment and subsequently dropped the case. A settlement was reached, and the settlement agreements were signed in the presence of a DLPW officer on July 15, 2020. Additionally, there is evidence of payment recorded by the labor inspector on July 23, 2020, indicating that the employer paid an amount equivalent to three

[22] **Section 151 paragraph 2** of Labor Protection Act states that any person who fails to comply with an order of the Labor Inspector issued under Section 124 shall be penalized with imprisonment of not more than one year, or a fine not exceeding twenty thousand baht, or both.

[23] **Section 125 paragraphs 1&2** of Labor Protection Act states that Where the Labor Inspector has made an order under Section 124, if the Employer, Employee or statutory heir of the deceased Employee is not satisfied with such order, he or she shall bring the case to the Court within thirty days from the date of receipt of the order.

Whereas the Employer, Employee or statutory heir of the deceased Employee fails to bring the case to the Court within the specified period of time, such order shall be as final.

working days to W1 through the labor inspector. W1 confirmed with the Investigator that W1 received the payment via a bank transfer.

Regarding this first claim, the Investigator was able to access the settlement agreements signed between the Factory and the three employees, as well as the record of payment made to W1. However, the Investigator could not obtain any further details about the claim. Moreover, since the settlement was reached before the labor inspector began reviewing the case, no opinion has yet been provided by the labor inspector on the matter.

***Second Attempt*:** Shortly after the first attempt, six employees—W6, W7, W8, W9, W10, and W11—filed a complaint with the labor inspector regarding the leave without pay. There is no evidence confirming the exact date of the filing or whether it occurred before the settlement of the first case. However, based on information provided by ELEVATE, the auditor recorded that the second attempt was filed on June 19, 2020, the same day the factory resumed its regular six-day operation in the sewing department.

Upon receiving a notification by phone from the labor inspector, the factory chose to resolve the case in a manner similar to previous incident, opting to settle the matter before the formal review process began. This settlement led to the employees agreeing to accept the payment offered and withdrawing their complaint. As a result, the labor inspector did not have the opportunity to review the case or provide an opinion.

***Third Attempt*:** On July 17, 2020, another employee, W2, filed a case with the labor inspector at the DLPW office. W2 initially filed a case to request payment for eight working days, which W2 claimed W2 did not consent to take as leave without pay in the month of June. Later, on July 24, 2020, W2 requested additional payment for four working days.

According to the DLPW report, W2 acknowledged that W2 voluntarily signed the leave without pay form and agreed to take leave in May, but not in June. According to the facts laid out in the DLPW report, the Factory made two separate announcements regarding leave without pay. The first announcement, made on April 10, 2020 (Announcement No. 14/2020), requested employees who wished to take leave without pay for at least three days per month to sign the provided form. This form covered leave without pay for May 2020 and June 2020. On May 13, 2020, the Factory issued another announcement (Announcement No. 15/2020), asking employees who wished to take leave without pay for at least eight days per month to sign a new form. This latter form covered leave without pay from June to December 2020.

W2 signed the first form, which covered three days per month for May and June, but refused to sign the second form, which covered eight days per month from June to December. W2 claimed that since W2 did not sign the second form, W2 did not consent to take leave without pay in June. Therefore, W2 asserted that W2 is entitled to receive full payment from June onwards.

Unlike the previous cases, the employer did not settle with W2. The labor inspector reviewed W2's case and issued an order on September 11, 2020 requested the employer to make the payments for the days W2 did not agree to take leave. Although the evidence showed that W2 had signed the first "leave without pay" form which covers leave without pay for May - June 2020, the labor inspector deemed the consent form invalid. There were two reasons given by the labor inspector.

1) W2 signed the form under the impression that W2 was merely acknowledging the message on the document, not giving consent. This misunderstanding of the form's essential elements rendered the signature invalid as consent. The labor inspector, however, did not provide detailed explanations for how they concluded that the employee misunderstood the form's meaning when the texts on the form is very clear in both Thai and Burmese languages.

2) The first announcement made on April 10, 2020, was revoked by the second announcement on May 13, 2020, which came into force on June 1, 2020. Therefore, the labor inspector viewed that

any consent given under the first announcement should be considered revoked as of June 1, 2020. In this case, since W2 did not give consent under the second announcement to take leave without pay from June to December, W2 is entitled to receive full payment from June onwards.

After the Investigator reviewed the DLPW full report of this case in its original language, it was found that the labor inspector did not determine that the "leave without pay" practice is impermissible under the law nor the form is invalid. Although the labor inspector found that the form signed by W2 was invalid due to W2's misunderstanding of its essential elements and that the form was revoked as of June 1, 2020, because of the company's second announcement, the labor inspector did not confirm that any other signed leave without pay forms were also invalid. Additionally, W2 did not claim in the report that W2 or anyone at the Factory was coerced into signing the form, and the entire report did not address the issue of coercion in the workplace.

Following the decision of W2's case, no additional complaints of a similar nature have been filed by other employees. This is the only DLPW ruling made concerning the "leave without pay" issue at the Factory.

As mentioned above, the order issued by the labor inspector is binding on both the employer and the employee who filed the case. For other employees who are subjected to the same treatment but did not file a complaint, the labor inspector's order does not automatically apply to them. If the labor inspector determines that a practice is illegal, those employees affected by the same practice may file a case with the labor inspector to seek similar relief.

In this case, the question of whether the DLPW order could apply to other employees at the Factory has to focus only on W2's case since it is the only case that proceeded to completion and received an opinion from the labor inspector.

Although the Factory distributed the same leave without pay form to all workers in the factory, the labor inspector did not deem the form itself invalid. For W2, the labor inspector provided two reasons for invalidating W2 signature on the form: 1) the misunderstanding of the form's essential elements, and 2) the revocation of the form due to the company's new announcement.

First, W2 was in a unique situation where W2 mistakenly believed that signing the document was merely an acknowledgment of the content in the document. According to the fundamental principles of contract law in Thailand, to declare a contract invalid due to a mistake regarding essential elements, it must be shown that at least one party intended to form one type of contract but mistakenly entered into a different type of contract. Furthermore, the law imposes limitations on this claim: if the mistake results from gross negligence on the part of the expressing party, they may not assert the contract's invalidity themselves.

In this case, although the specific elements or facts considered by the officer are unclear due to the lack of detailed explanations in the DLPW report, it can be assumed that W2 had successfully demonstrated that W2 intended only to acknowledge the message on the document but mistakenly signed the leave without pay application form. Additionally, W2 must have shown that W2 exercised due diligence in understanding the form and that the mistake was not due to gross negligence.

For other employees who signed the same form as W2, in order to claim their forms invalid, they must also prove the same elements as W2. In the Investigator's opinion, W2's case is exceptional. The form was clearly written in both Thai and Burmese and explicitly states at the top that this document is an *"Application for Leave without Pay,"* followed by a subheading stating *"I acknowledge that this unpaid leave is voluntary; therefore, I hereby sign my name as evidence."* Additionally, line leaders provided explanations to workers on each production line regarding the form before distributing it. Interviews and surveys conducted with 334 workers who signed the form revealed that 320 of them confirmed their understanding of its meaning, while 14 claimed they signed without fully understanding the form.

However, during interviews, all employees acknowledged that the form included the text, and they would have understood it had they read it before signing. Therefore, it can be concluded that the majority of workers who signed the form are not able to claim it is invalid, as they did not sign it by mistake. The 14 employees who did not fully understand the form might also be unable to claim they signed it by mistake, as their misunderstanding resulted from gross negligence—specifically, not reading the form before signing.

Second, the Factory issued two separate announcements regarding leave without pay: 1) the first announcement on April 10, 2020 included a form for employees to sign, consenting to leave without pay for May and June 2020 and 2) the second announcement on May 13, 2020 introduced a new form, covering leave without pay from June to December 2020. W2 signed the first form but refused to sign the second form. The labor inspector concluded that although W2 signed the first form, which covered leave without pay for May and June 2020, any consent given under the April 10 announcement should be considered revoked as of June 1, 2020, when the May 13 announcement came into effect. Since the first form was revoked as of June 1, 2020, and W2 did not consent to the second form, W2 is entitled to receive full payment from June 1, 2020, onwards.

Employees at the Factory who wish to bring a similar claim to the DLPW must demonstrate that they did not sign the second form issued under the announcement on May 13, 2020. According to the interviews and evidence provided by the Factory, only 11 employees refused to sign the second form. The remaining 3,209 employees signed both the first and the second forms. Based on the evidence, the Investigator concludes that the claim in question cannot be applied to the majority employees who signed both forms. The question of whether workers who signed the form voluntarily provided their signature will be evaluated below in Allegation #2.

In conclusion, the DLPW's order does not automatically apply to all employees at the Factory who signed a similar form. Employees who wish to bring a similar claim must file a case with the labor inspector and meet the same requirements as W2 to achieve the same outcome. During the investigator's factory visit, general surveys were conducted with 334 workers involved in the incident who are currently employed at the Factory. The survey results indicated that 14 workers claimed to have the same misunderstanding regarding the signed form. However, since the misunderstanding of all 14 workers resulted from not reading the form carefully before signing—constituting gross negligence—it is highly unlikely that they could use their misunderstanding to invalidate their consent. Furthermore, all other 10 workers who did not sign the second form filed their cases with the DLPW, received payment from the employer, and subsequently dropped their cases. As a result, the Investigator could not find any remaining employees holding the same position as W2.

The Investigator also reviewed both FLA Code of Conduct and Compliance Benchmarks and WRC Workplace Code of Conducts to better understand the expectations these organizations have for their affiliates. According to the FLA Code of Conduct and Compliance Benchmarks[24], specifically under "Hours of Work" benchmark HOW.19, the FLA mandates that employers can only suspend work in accordance with national laws, regulations, and procedures. Workers should be paid in full during suspension periods unless national laws stipulate otherwise, an agreement is reached between workers and their representatives, or relevant national authorities authorize alternative arrangements. Additionally, the FLA Code of Conduct and Compliance Benchmarks states that the conditions of suspension should be fully communicated to all workers.

The FLA Code of Conduct and Compliance Benchmarks obligate employers to adhere to national laws. In cases where there is a conflict between the FLA Code of Conduct and Compliance Benchmarks and national legislation, employers are expected to apply the higher standard. While the relevant FLA Code of Conduct and Compliance Benchmarks language generally call for full payment during suspension periods, an exception is made when national laws provide differently. In this instance, since the practice

[24] https://www.fairlabor.org/accountability/standards/manufacturing/

of leave without pay aligns with national laws, the employer is legally entitled to implement this practice for the agreed-upon period between the employer and employee.

The WRC Model Code[25] for its affiliates does not contain specific sections or requirements regarding the suspension of work. However, under the "Wages and Benefits" section, there is a reference for affiliates to follow "applicable laws and regulations." It states: "Licensees recognize that wages are essential to meeting employees' basic needs. Licensees shall pay employees, as a floor, wages and benefits that comply with all applicable laws and regulations, and which provide for essential needs and establish a dignified living wage for workers and their families."

Allegation # 2 – Coercion

The first case of COVID-19 was identified in China in December 2019, leading the World Health Organization (WHO) to declare a global pandemic on March 11, 2020. In Thailand, the initial case was reported in January 2020, with daily new cases remaining in the single digits until mid-March 2020. By late March 2020, the number of daily new cases in Thailand had surged to over a hundred. In response, the Thai government implemented its first lockdown on March 26, 2020, to curb the spread of the virus. Following the lockdown and the imposition of various additional measures, the number of daily new cases swiftly decreased to single digits within a few weeks and remained at that level for the remainder of 2020.[26]

Based on interviews with factory management and workers employed at the factory in 2020, the Investigator found that the period around early April 2020, before the consent form for unpaid leave was circulated, was marked by significant uncertainty and fear. At that time, little was known about the virus, no vaccines were available, and the global death toll was rising rapidly. The widespread perception of COVID-19 as a deadly disease led to a global response characterized by fear, with many employees requesting to halt production and take leave to avoid potential infection. This concern was particularly pronounced among pregnant women and their partners, who were especially worried about the increased risks posed by the virus to pregnant women.

On April 10, 2020, the Employee Welfare Committee met with Factory management to discuss the COVID-19 remediation plan. Both parties agreed on a policy allowing employees to voluntary take at least three days of unpaid leave per month. Following the meeting, the Factory promptly issued Announcement No. 14/2020, asking daily workers to consider taking voluntary unpaid leave for at least three Saturdays per month, starting from May 2, 2020. The letter from the Employee Welfare Committee which was officially submitted to the employer's representative on April 11, 2020, demanded the Factory to grant them permission to take unpaid leave at least once a week on every Saturday in May and June in order to reduce the number of working days to minimize the risk of infection. It should be noted that although the first Announcement in April was jointly initiated by the Employee Welfare Committee and the Factory management, the second Announcement in May was issued solely by Factory management.

While evaluating this allegation, it is essential to determine whether the employees who signed the form did so voluntarily or under coercion. If the consent is given freely, the agreement is considered fully valid, however, if the form was signed under coercion, that consent becomes invalid. Furthermore, since coercion behavior is not allowed under Nike's Code of Conduct, FLA Code and Benchmarks or WRC Model Code, it is crucial to assess whether the factory violated these standards.

Under Thai Law, employment contracts that adhere to the provisions of the Labor Protection Act and are formed with the mutual express intention of the parties involved are generally binding. This means

[25] https://www.workersrights.org/affiliates/model-code/
[26] https://public.tableau.com/views/SATCOVIDDashboard/1-dash-tiles?:showVizHome=no

that parties are obligated to uphold the terms and conditions agreed upon in the contract. However, there are exceptions to the enforceability of employment contracts under certain circumstances as mentioned in details in Section VIII of this report; a contract may be deemed void if it is based on hidden intentions, fictitious intentions, or a mistake regarding any essential elements of the contract. Also, contracts may be voidable if they are entered into due to a mistake regarding any essential qualities of a person or property, misrepresentation, or under duress (coercion). In these instances, the party who has been misled or coerced has the option to remain bound by the contract or to be released from its obligations. The contract remains fully enforceable unless either party expresses an intention to void it. In cases where a contract is made under duress, the law identifies four key elements that must be present: (1) a serious threat, (2) the imminent consequences of that threat, (3) the inducement of fear in the party being threatened, and (4) the expression of intent by the threatened party to enter into the contract as a direct result of the coercion.

Although it is evident that 11 employees did not consent to the unpaid leave, it cannot be assumed that the thousands of remaining workers were coerced into providing their consent unless the four elements of duress, as outlined above, are satisfied.

This allegation raises two key questions:
2.1) Were all workers at the factory coerced into signing the unpaid leave document?
2.2) Were those who refused to sign threatened with job loss or transfer from their current positions within the factory?

- **Allegation # 2.1 – Coercion of All Workers at the Factory**

Based on interviews and relevant documents, it was found that when the first consent form was circulated in April 2020, almost everyone signed it, with the exception of W1. When the second form was distributed on May 13, 2020, almost everyone signed it except 11 workers from the cutting department.

Based on the anonymous worker survey and confidential interviews conducted by the Investigator, out of 340 workers employed at the Factory during that period, 61% remembered signing their names on the form, 4% refused to sign the form, and 33% did not remember anything about the matter. Approximately 97% of the workers confirmed that they did not know anyone who was forced to sign the consent form, whereas 11 workers (around 3%) indicated that they themselves, or someone they knew, were forced to signing it.

The Investigator found that only 11 workers refused to sign the second form. During the factory visit, the Investigator checked the original form and noted that eight signatures were missing from the form: W1, W2, W3, W4, W5, W6, W9 and W11. The other three workers had their signatures appear on the form but claimed they signed it later, after settling with the employer and receiving the full payment. The Investigator observed that all 11 employees who refused to sign were from the same department, worked in the same area, and were well acquainted with one another.

According to the testimonies of the nine workers out of eleven workers who refused to sign, they all testified in the same direction that the number of workers who initially refused to sign ranged from 14 to 30 out of over 3,000 workers in the factory. However, after the manager called all the workers who refused to sign into the office several times in a single day to convince them, some eventually agreed to sign. Among the nine workers interviewed, only one described the manager's manner during these meetings as highly confrontational and intimidating. In addition to threats of termination, the manager displayed anger, shouted loudly, and even banged on the table to instill fear. Despite these coercive behaviors, this worker remained steadfast in refusing to sign. Apart from this one worker, the remaining eight workers described the situation differently. They confirmed that the atmosphere was not confrontational or intimidating. The managers simply tried to convince them by saying that others had already signed and repeatedly asked them to do the same. The manager used some techniques which

separate workers into groups and with a smaller group they can convince some to sign. However, all of the interviewed workers said they were not convinced and remained steadfast in their refusal to sign. None of them expressed fear of punishment or termination, as they believed it was their right to refuse.

To understand why the majority of workers agreed to sign the form, the Investigator included this question in the anonymous worker survey and confidential interviews conducted among 334 workers who were employed at the Factory during that period. The results revealed various reasons for the workers' consent. Approximately 52% of the workers who signed the form indicated that they did so to help the employer reduce costs in response to a decrease in orders. This result aligns with the information presented in the ELEVATE report, which notes that the majority of workers consented because they were aware of the significant drop in orders and feared refusing to agree could result in layoffs or a business shutdown.

Around 30% of the workers who signed the form indicated that, due to the pandemic and concerns for their own safety, they preferred not to come to work to reduce the risk of contracting the disease. About 7% (14 workers) said they did not fully understand the form and signed due to their own misunderstanding. Only 1% (3 workers) reported signing because they were afraid the employer might punish them if they did not sign. Among the 208 workers who remembered signing the form, only one worker said they signed because they were forced by the employer and had no other choice.

Based on the information above, the Investigator observed potential evidence of coercion toward some workers. However, the Investigator did not find convincing evidence of a serious and systematic threat or coercion that would induce fear in the majority of workers to force them to sign. The decision to sign was not made under duress. Therefore, it cannot be concluded that there is systematic coercion to sign the form.

- **Allegation # 2.2 – Threats of Job Loss or Transfer for Workers Who Refused to Sign**

The Investigator interviewed workers and the factory manager as well as cross-checked with relevant documents to assess this allegation. Out of the eleven workers who refused to sign the form, the Investigator had opportunity to interview nine of them.

According to interviews with the nine workers, only one who refused to sign confirmed that the employer threatened this worker with termination. Nevertheless, this worker insisted on not signing. This worker continued to work at the Factory until voluntarily quitting two years later. Apart from W1, who fled back to Myanmar, the remaining seven workers confirmed that the employer did not threaten them with termination. They all testified that the manager called the workers who refused to sign (around 14-30 people) to the manager's office multiple times. Initially, they were called in as a large group, then split into smaller groups, with the groups shuffled. Throughout the time they spent in the office, most testified that the manager attempted to persuade them to sign by saying things like, 'Don't you see that others have already signed? Why don't you just sign?' 'If you don't sign, the company might have to close anyway,' or 'If you are not happy, you can quit.' In the end, the number of workers who refused to sign was reduced from 14-30 to eleven.

The investigator was unable to interview the line leader and HR manager who directly interacted with the eleven workers regarding signing the form, as they are no longer employed at the Factory.

The Investigator checked whether the eleven workers who insisted on not signing were transferred to different departments. The department transfer documents, which contain the workers' signatures, match the workers' testimony. Of the eleven workers who refused to sign, only five were transferred to a different department. Two were transferred before filing complaints, while two others were transferred back to the cutting department within several weeks. Upon reviewing the overall data, the Investigator found that many other workers, not involved in the case were also transferred to different departments. During the two-month period of uncertainty, the company moved many workers around. Some workers

had requested the factory to transfer them to different departments, as certain departments have experienced a decrease in workload. Despite some workers not wanting to come to work at all during this period, the Factory testified that during the remaining four working days, some of them preferred to work in departments where they could work more hours and earn overtime compensation. Therefore, the evidence is not sufficient to establish a connection between department transfers and refusal to sign the form.

Regarding the skills workers lack when transferred to other departments, the departments involved in this case are sample, storing, packing, and sewing. During the factory visit and in the worker interviews, the Investigator found that the storing and packing departments do not require any special skills. The main task in the packing department was folding clothes and sealing them in plastic bags. The sample department simulates factory operations and runs trial productions before actual production; cutting is also a task in the sample department. Workers moving cutting department to the sample department are required to work in the cutting section, where they use the same skills as in the cutting department. In the sewing department, most Burmese workers initially worked in sewing positions before moving to other roles such as cutting. According to the workers' profiles in the Factory database, almost all Burmese workers there, including all eleven workers involved in this case, have sewing skills and started their job at the Factory with a position in sewing department before moving to cutting. Additionally, if workers who have been transferred to other departments move back to the sewing department, they are required to spend 6 to 15 days in the sewing training department with regular pay to refresh their skills before joining the actual sewing department.

Regarding the working environment in the new department, none of the nine interviewed workers reported experiencing harassment or unfair treatment during the transition or while working in their new roles. Therefore, the Investigator did not find any convincing evidence of difficulties faced by workers during their transfer to the new departments.

Although one worker reported coercion to sign and threats of job loss, this number is not conclusive enough compared to the total workforce at the factory. While the Investigator cannot definitively confirm the absence of any coercion, the small number of affected workers, who have already been identified and received full payment, suggests that the remaining workers who signed the form did so voluntarily and without coercion under Thai Law. Therefore, the consent form is considered fully enforceable. Additionally, there is insufficient evidence to conclude that transfers were due to refusal to sign the form, and the Investigator did not observe any struggles experienced by this group of workers during their transfer to the new departments.

The results of the evaluation of this allegation is consistent with the findings in ELEVATE investigation but differ significantly from the conclusions in the WRC report. No supporting evidence from WRC was provided to the Investigator for cross-verification. While the Investigator acknowledges the possibility that workers may have changed their testimony since the first investigation, no evidence or incentive was found to suggest that this occurred, especially considering that some of these workers are no longer employed by the Factory. Moreover, the Investigator did not observe any discrepancies between testimonies from on-site and off-site interviews, or between current workers and former workers. Given this context, the Investigator determined that the testimonies collected during the current investigation are reliable. In the absence of compelling reasons for the workers to change their statements, this investigation relies on the testimony obtained directly by the Investigator.

Allegation # 3 -- Retaliation

Although the scope of this investigation was initially limited to the case of the worker who was reported to the police and subsequently fled the country, the Investigator believes that it would be beneficial to broaden the scope to include all other workers who refused to sign the form, in order to gain a more comprehensive understanding. This allegation concerns the fact that, among the workers who did not consent to sign the form, one was reported to the police, one was dismissed without severance pay,

three resigned afterward, whereas six are still employed at the Factory/Cassia. The Investigator divided the allegation into three groups:

- **Allegation # 3.1 – Police Report against W1**

W1 has been one of the most vocal workers on this issue. According to W1's testimony, W1 expressed interest in reading about labor law-related issues online and believes W1 has a good understanding of Thai labor protection laws. When this incident first occurred, W1 believed that the "leave without pay" practice was illegal. W1 researched the issue online and consulted with HRDF to confirm W1's understanding. W1 claimed that the information available online and the information provided by HRDF confirmed that the practice was indeed illegal. W1 then began posting and sharing information about the practice on W1's personal Facebook page, where W1 is friends with many workers from the Factory.

The first consent form was signed by almost all of the workers except W1. However, when the second form was circulated in May, W1 advised W1's colleagues in the cutting department, where W1 was working, to read the text in the form carefully and not to sign if they didn't want to because W1 believed the practice was illegal. W1 also believed that the government prohibits any form of work suspension, which W1 equates with 'lockouts' under the Labor Relations Law. Consequently, W1 believes that the Factory is in violation of the law by intending to suspend workers for 1-2 days per week.

As W1 communicated W1's understanding of law to colleagues, some colleagues in the cutting department refused to sign, while the majority of workers in the factory had already signed. Later on, many of W1's colleagues realized through W1 Facebook posts that the Factory is violating the law and that the employer was taking advantage of them. A few of them asked W1 to help invalidate their consent and demand that the employer cancel the practice. W1 then sent a message to a private group chat, notifying the colleagues at the Factory that if anyone wanted to cancel their consent, they could sign their name on the form W1 provided. W1 promised to send the list of names to the DLPW and the employer. However, after that massage was sent, W1 didn't receive many signatures from colleagues. Based on a picture of the signature form, the Investigator found 15 signatures, but the original form had been destroyed. Since there were not enough signatures, W1 decided to cancel the plan to file a claim on behalf of all workers in the Factory and continued filing the claim only for W1 and a small group of W1's close friends.

The first time W1 and the three colleagues visited the DLPW office on May 22, 2020, HRDF facilitated their travel arrangements and translation. However, the officer didn't allow them to file the claim since the payment in question was not yet due. The officer told them to return around the beginning of June, after the payment was due.

W1 did not passively accept this illegal treatment or allow it to continue. Three days later, on May 25, 2020, W1 wrote 15 paragraphs on W1's Facebook wall, explaining in detail the situation at the Factory. W1 mentioned that the law explicitly prohibits employers from implementing suspensions during the pandemic; however, the Factory is in violation of this law by proceeding with the announcement of such suspensions. W1 also mentioned the 'leave without pay' policy, described the employer's unfair method of obtaining employees' consent, and expressed anger and frustration about this illegal practice. Along with the statements, W1 uploaded pictures of the Thai laws (in Thai Language) related to the prohibition of strikes and lockouts during the COVID-19 pandemic, as well as the Factory's work rules, which included the name of the Factory.

After this Facebook post went public and was liked and shared widely, on May 26, 2020, the Factory sent the labor relations manager to meet with W1 and requested W1 to remove the post. The manager told W1 that the Factory would file a police report if W1 did not remove the post. On May 27, 2020, W1 had not removed the Facebook post, so the Factory filed a police report against W1 for defamation and asked the police to investigate the case and order W1 to remove the post. The Factory also uploaded

a photograph of the police report on the company's Facebook page, warning everyone that if any other workers posted anything similar to defame the company, the company would pursue legal prosecution to the fullest extent.

W1 feared potential arrest, especially given W1's Burmese nationality, where pre-emptive detention practices are known. W1 contacted several organizations, including HRDF, seeking assistance, but did not receive support from any organization due to the absence of imminent legal consequences. Faced with the urgency of the situation, particularly as W1 has a young family, W1 decided to quickly return to Myanmar on June 4, 2020, with W1's spouse and a daughter. On the day of W1 departure, W1 informed some colleagues of the departure plans, and after leaving, W1 did not receive any further communication from any colleagues or the employer.

The central issue is whether the police report filed by the employer against W1 is unlawful and constitutes retaliation. Under Thai Labor Relations law, employees have the right to engage in concerted activities, including protests and strikes, as part of their freedom of association. However, this right has limits, and employees are not permitted to engage in illegal activities such as defamation, violence, or other criminal behavior while exercising these rights.

W1 made a statement on the social media, which qualifies as publishing to a third party. This statement is presumed to have damaged the Factory's reputation. The statement clearly asserts that the Factory is breaking the law by implementing suspensions during the pandemic, despite legal prohibitions. It further alleges that all workers should receive 75% of wage but the Factory has employed various coercive tactics to compel all employees to agree to unpaid leave. According to the text in the police report, the employer filed the report specifically because of the social media post, which the employer believed harmed the company's reputation. The day before filing the report, the manager warned W1 to remove the post; however, W1 did not comply.

There may be debate as to whether W1's actions meet the criteria for defamation under Thai Criminal Code. However, this investigation does not extend to a detailed analysis of defamation laws. This Investigation only confirms that the employer had the legal right to file a police report since evidence exists of a social media post criticizing the Factory and claiming that the Factory is breaking the law to a third party. Exercising the employer's right to protect its reputation from defamation does not violate any provision of the Thai Labor Relations Act. Whether W1's actions constitute defamation under Thai Criminal Code, the police will need to conduct further investigation and file the case to the Criminal Court to decide the case.

Interviews with the other eight workers who refused to sign the leave without pay form revealed that none feared facing similar consequences as W1. They all understood that the police report was the consequence of W1's Facebook post, not the refusal to sign the consent form. Regardless of signing the consent form or not, as long as they refrain from posting defamatory content about the employer on social media, they believe they will not face legal consequences.

Therefore, the employer's actions in this case are within their legal rights and do not violate the Thai Labor Relations Act. The Investigator found no indication of retaliation in the form of a police report for refusing to sign the consent form.

The findings of this investigation on this matter differ from those presented in the WRC report. While many details obtained from W1's testimony diverge from the facts set forth in the WRC report, the Investigator considers the most critical omission in the WRC report to be the W1's Facebook post. The absence of this evidence may create the impression that W1 was reported to the police solely for lawfully and peacefully exercising W1's rights.

- **Allegation # 3.2 -- Termination of W2**

W2, another employee who refused to sign the second consent form, filed a case on July 17, 2020, two days after the first group of employees reached a settlement with the Factory. On September 11, 2020, the DLPW ordered the Factory to compensate him for a total of 16 days (8 days for June and 8 days for July). Additionally, the Factory was required to add 15% per annum interest. W2 confirmed that W2 received the full amount on October 8, 2020.

On September 18, 2020, the Factory, through the labor relations manager, requested that 50 employees, including W2, submit copies of their certificates of 90-day residence report to ensure all workers had correct documentation in order to submit that document to migration authorities. W2, along with approximately 20 other employees, did not submit the document. The employer sent a second request on September 24, and a third request on September 26. After three requests, W2 still did not submit the requested document. On September 28, 2020, the employer issued a warning to W2, stating that W2 had violated the company's work rules by failing to submit the required document after multiple requests.

On September 29, 2020, W2 finally submitted the requested document. After reviewing the document, the employer noted that the residence information in W2's document was inaccurate. Based on the interview with the Factory, all workers are required to report the factory's address as their residential address. W2 declared residential address as *"47/28 Min Buri, Min Buri, Bangkok"* whereas the actual residence was supposed to be the Factory's address which is *"287, 289 Suksawat 30, Bangpakok, Rat Burana, Bangkok."* W2 testified that the reported address is not W2's actual residential address and was recorded purely due to a mistake by the agent.

On October 9, 2020, the Factory terminated W2 without providing severance pay or advanced notice. The Factory claimed that by reporting false information to the officer regarding the residential address, W2 committed a serious violation of company rules and breached Thai migration law. The Factory also claimed that due to the severity of the violation, it was legally exempt from providing severance pay or advanced notice.

With assistance from HRDF, W2 filed a claim with the DLPW, seeking severance pay and compensation in lieu of advanced notice. However, there was no claim of unfair dismissal or unfair labor practices filed against the employer.

On December 15, 2020, the DLPW office ordered the Factory to pay severance to W2, ruling that misreporting the residential address did not constitute a serious enough violation to justify dismissal without severance pay. However, the DLPW determined that W2 was not entitled to compensation in lieu of advanced notice, as W2 had repeatedly violated employer's command by failing to submit the requested documents. After the DLPW order was issued, the Factory did not appeal to the Labor Court, the case became final 30 days after the order was issued.

It should be noted that W2 may not have been aware of the legal right to file a claim related to unfair labor practices under the Labor Relations Law, which could have been pursued if W2 believed W2 was retaliated against for exercising labor rights or reporting violations. According to HRDF, the lawyer focuses on providing assistance under the Labor Protection Law, not the Labor Relations Law. Therefore, HRDF did not inform W2 that W2 could also bring unfair labor practice claim. Regardless, during the interview, W2 stated that W2 believes the dismissal was due to a misreporting of the residential address. W2 acknowledged that, although the dismissal felt harsh and W2 was dissatisfied, particularly as W2 believes other workers who made the same mistake were not dismissed, W2 attributed the error to the agent handling the paperwork. W2 further clarified that W2 does not perceive the dismissal as retaliation and confirmed that W2 experienced no other forms of retaliation.

The central issue in this allegation concerns the justification provided by the Factory for the dismissal. Under Section 121(1) of the Thai Labor Relations Act,[27] an employer is prohibited from dismissing or constructively dismissing an employee for engaging in associational activities or for participating in petitions and complaints to government authorities. In this instance, it is unclear whether the dismissal constitutes an act of unfair labor practice, as the employee was terminated for a serious reason, yet this occurred shortly after the filing of a previous case. Therefore, it is essential to determine whether misreporting of the residential address is actually a serious misconduct and whether the dismissal of workers for misreporting of the residential address is a common practice at the workplace. This will allow us to determine whether W2 was subjected to discriminatory treatment by the employer as a result of filing the case with the DLPW.

According to the interview, the Factory emphasized that it takes the documentation of migrant workers very seriously due to the strict standards imposed by its buyers. Any violation of laws regarding migrant worker documentation would result in a red flag for the Factory, which could significantly affect the amount of orders it receives from buyers. The Factory cited a case from around 2015, in which a worker submitted his brother's documentation because he could not return home to retrieve his own. The Factory viewed this as a serious violation of company's regulation and subsequently dismissed that worker. The Factory further clarified that dismissals related to documentation issues are very rare. The Factory ensures that workers possess the correct documentation before hiring them. Additionally, once employed, the Factory assists workers with documentation renewals, including visas, work permits, and the required 90-day residence reporting. As a result, employees typically do not encounter documentation problems once they are hired.

However, during the early stages of the COVID-19 pandemic, the government imposed restrictions on large gatherings. As a result, the Factory was unable to assist workers in taking them together to migration office to report their residence every 90 days. The Factory required each employee to handle this independently. Workers were required to report their residential address twice before the Factory resumed its regular assistance. Among thousands of workers, W2 was the only worker who provided incorrect information on documentation and, as a result, the only one dismissed for this reason. Since no other employees have encountered the same issue, there is no common practice at the workplace regarding this issue.

The Investigator reviewed the DLPW's opinion regarding this case and visited the immigration office to inquire about the consequences of misreporting a residential address. The DLPW opined that the employee did not intend to misreport or was even aware that the document was incorrect. The employee had hired an agent to handle the documentation on the employee's behalf. The DLPW also viewed this as a mistake that could be easily corrected by visiting the immigration office to update the information. Although there may be some criminal sanctions for misreporting a residential address, the penalty is merely a small fine.

The Investigator also inquired with an officer at the immigration office. The officer confirmed that correcting a misreported residential address made by mistake is not a crime, and the employee can easily update the information at the office.

After evaluating testimonies from W2, the Factory, the DLPW's opinion, and information from the immigration officer, the Investigator found that W2's dismissal occurred only several months after W2 filed a case seeking compensation for unpaid leave, and just a day after that compensation was paid to

[27] **Section 121(1)** of Labor Relations Act states that an Employer shall not terminate the employment of or take any action which may result in an Employee, a representative of an Employee, a Committee member of a Labor Union Federation being unable to continue working, as a result of the Employee or Labor Union calling a rally, filing a complaint, submitting a demand, negotiating or instituting a lawsuit or being a witness or producing evidence to competent officials under the law on labor protection or to the Registrar, Conciliation Officer, Labor Dispute arbitrator or Labor Relations Committee member under this Act, or to the Labor Court, or as a result of the Employee or Labor Union being about to take the said action.

him. Although the Factory provided a reason of the dismissal, citing concerns about the documentation, the Investigator was not convinced that retaliation did not play a role in this dismissal. The Factory could not successfully prove that the employee's mistake was as serious as the Factory explained, nor could it demonstrate that dismissing an employee for such a mistake is a common practice at the workplace. Consequently, the Investigator concludes that retaliation was a contributing factor in the decision to terminate this worker.

This finding is consistent with the ELEVATE report which also mentioned that due to the timing of the termination, there was a strong indication that W2 was terminated in retaliation for the complaint with the DLPW.

- **Allegation # 3.3 -- Other Employees**

Apart from W1 and W2, out of the nine remaining workers who refused to sign the form, six are still employed by the Factory. Based on interviews, none of them reported experiencing retaliation following the incident. While two of these workers expressed dissatisfaction with their overall working conditions, their concerns were unrelated to the incident in question.

Among the three workers who are no longer employed at the Factory, one left in 2020, one left in 2021, and one left in 2022. The Investigator was able to interview only one worker who resigned in 2022. This worker reported experiencing various forms of retaliation after the incident, including being transferred to different positions, an increased workload, and scolding from a line leader. Despite seeking help from HRDF after the WRC investigation was completed, the worker was unable to make contact with a representative. However, the worker confirmed that the negative experiences were not the reason for the worker's resignation; the worker left voluntarily for a better job opportunity.

While the Factory's records show that the remaining two workers resigned voluntarily, the Investigator was unable to confirm the circumstances due to a lack of direct communication with them.

The Investigator did not find sufficient evidence to conclude that there was retaliation against other workers. While the worker who resigned in 2022 described an unpleasant experience, it is difficult to attribute this to retaliation for the incident. The Investigator found that many workers experienced similar treatment after the pandemic, indicating that these issues may be part of broader working conditions rather than targeted retaliation. Further details on general working conditions will be provided in the subsequent section.

XI. Conclusions and Recommendations

This investigation required significant time and effort due to several challenges, including the long delay between the incidents and the investigation, which hindered access to some relevant information. Most notably, many employees from the Factory during the unpaid leave practices were no longer available. There were also significant changes to personnel within the Brand and ELEVATE. Many individuals who were previously involved in the case are no longer available, leading to a diminished ability to access information. The departure of key personnel has also resulted in a loss of knowledge regarding this case, making it increasingly challenging to gather relevant details from these two parties. This situation has created a gap in information flow, further complicating efforts to obtain the necessary insights. Additionally, confidentiality clauses imposed by the parties limited access to vital information from prior investigations and review.

Strong opinions from both sides of the dispute have impeded constructive dialogue over the years, resulting in an ongoing stalemate on even basic issues. Changes in company structures and business relationships between the Brand and the Factory further complicated the case.

The assessments and conclusions presented in this report are based on a careful review of available evidence and information. The Investigator conducted an impartial and independent investigation, free from bias or direction from the involved parties. It is important to note that neither the parties involved nor the FLA influenced this report, which is solely the product of the investigator's independent work.

The investigator appreciates the cooperation of all parties involved, despite the limitations imposed by confidentiality. While some conclusions may not satisfy everyone, this report aims to encompass the perspectives of all parties, offering a balanced account of the situation. Recognizing that investigations often reveal complexities rather than clear-cut answers, the investigator believes this report effectively presents the feedback and opinions of all stakeholders while offering an analysis of the things happened from the local law and international labor standards perspectives and offering some corrective actions to the parties involved.

1. Legality of Unpaid Leave Practice and Unpaid Wages

As detailed in this report, from a legal perspective, the Factory's implementation of leave without pay practice is compliant with Thai law. This practice, adopted by various companies across various industries in Thailand during the COVID-19 pandemic, served as a stopgap measure to address challenges such as financial strain due to a sudden drop in global demand, protecting workers from infection, and preventing layoffs and business closures.

Under Thai law, workers who voluntarily agree to take leave without pay, as evidenced by signing a formal consent, are not entitled to wages during the leave period. This practice is legally permissible and does not violate statutory requirements. Furthermore, since workers who declined to sign the form were compensated for their leave period, the Investigator believes that there is no legal violation or outstanding wage payments owed to workers who voluntarily signed the leave without pay forms.

The Investigator believes that evaluating the Factory's leave without pay practice solely from the perspective of local law does not provide a comprehensive analysis, particularly since this Factory is an exporter and a long-time supplier of the Brand which was expected to follow international standards like the FLA, WRC, and Nike Codes of Conduct. One key issue observed is that discussions have been predominantly framed in the context of local law, with limited focus on international labor standards. A broader evaluation from the perspective of workers' rights, as laid down in international labor law, raises the following important questions:

1. Do the FLA Code of Conduct and Compliance Benchmarks, WRC, or Nike Codes of Conduct require the Factory to provide full compensation to workers during work suspensions?
2. Were all workers properly informed regarding their available options? Whether the workers fully understood that, had they not agreed to sign the form, the law would have entitled them to at least 75% of their wages for the entire leave period?
3. Were workers provided with clear and accessible complaint channels at both the factory and brand levels to address grievances or clarify concerns about working conditions? Whether any workers who signed the consent form due to the lack of proper complaint channels or worker representatives?
4. Did the business relationship between the Brand and the Factory play a role in the Factory's decision to implement the leave without pay practice as a stopgap measure to mitigate the financial strain experienced during the onset of the COVID-19 pandemic?

The answer to the first question evaluated in detail in the last part of Section X, Allegation 1.2 of this report. The Investigator concluded that there was no clear requirement or guidance provided to suppliers regarding compensation during work suspension periods. None of these Codes (FLA, WRC or Nike) explicitly mandate compensation such periods. In fact, only FLA Code of Conduct and Compliance Benchmarks includes a section on work suspensions, but this section primarily refers to compliance

with local legal requirements and calls for full compensation unless there is a specific legal framework or agreement between parties.

The answer to the second question is more challenging to determine, as a significant portion of the workforce is no longer employed at the factory. Despite a significant effort, the Investigator was able to reach only slightly more than 10% of the workers who experienced the leave without pay practice. Feedback from this group indicated that most workers were aware of the meaning and legal consequences of the consent form they signed. Workers who refused to sign were eventually compensated, and this process was communicated to workers through announcements and personal communication. However, the Investigator could not definitively verify whether all the remaining 90% of the workers also provided their consent with the same level of understanding. Conclusions were drawn from the available information and feedback, which represented a statistically significant sample size of the workers but did not encompass all workers present during the time of the incident. More importantly, no one knows whether the workers fully understood that if they had not agreed to sign the form, the law would have entitled them to at least 75% of their wages for the entire leave period. In Section X of this report, the investigation's findings do not support a determination that coercion, as laid down in Thai law, took place. However, the Investigator would like to highlight the issue of consent given without adequate knowledge and understanding of available options. In such cases, it would be unjust to place these vulnerable workers in a position where they are bound by bad decisions made under such circumstances with limited knowledge. In this case, the Investigator was unable to determine if workers were fully aware of the available options, how many would still choose to give their consent. Nevertheless, the Investigator believes that the workers were only informed of the meaning of the consent form and its legal consequences. The Factory did not present the workers with alternative choices when requesting their signatures on the consent form.

The third question was thoroughly examined by the Investigator. Although the Brand claimed to have a complaint channel for workers to directly report grievances, it was found that this system was not available in Thailand at the time of the incident. Following the incident, the Brand began collaborating with a third-party labor monitoring network in Thailand to oversee working conditions among its suppliers and to serve as a complaint channel for workers in the region. The Investigator believes that if an effective complaint mechanism had been in place at the time, workers could have communicated their concerns directly to the Brand, fostering healthier communication. This, in turn, might have led to a better understanding of both legal and code requirements for workers and could have played a key role in resolving disputes between workers and factory management before they escalated to this point.

The Investigator would like to also point out that, the existing industrial relations environment in Thailand is one shaped, to a great degree, by laws significantly restricting the ability of workers (particularly migrant workers) to freely exercise their freedom of association rights, particularly the rights to form organizations as they choose to and engage in collective bargaining. The extremely low rates of union density and coverage of workers by collective agreements persisting in the country bear stark testimony to this defining reality. In view of this broad and unfortunate state of affairs, it can only be speculated as to how the events discussed in the present case might have been treated differently under a very different industrial relations scenario, one marked by the presence of genuine workers' organizations or worker representatives capable of effectively negotiating with the employer on behalf of the workers. Under such a scenario it is reasonable to surmise that many of the identified problems, the lack of a proper complaint channel and the lack of worker representative, might have been effectively addressed or dealt with.

The fourth question addresses an important aspect of labor rights: responsible sourcing and responsible exit are crucial concepts for establishing a healthy business relationship between brands and suppliers. These relationships play a key role in the financial well-being of suppliers, which ultimately affects workers' employment conditions, including wages and benefits. As explained in detail in Section VII of this report, it was observed that the Brand's plan to divest from the Factory was unclear to the factory management, who were not expecting such a move to occur so soon. This may have resulted from a

communication problem between the parties; however, it is important to note that the early stages of the COVID-19 pandemic were turbulent, causing strain in communication due to uncertainty stemming from lockdowns and a drop in global demand. Under these circumstances, the Investigator believes that communication issues for a brief period are understandable given the unprecedented global hardships caused by the pandemic. Nonetheless, the Brand could have managed this process better, particularly for its suppliers that rely solely on orders from the Brand, such as the Factory. A one-and-a-half-month period without orders from the factory's only client would inevitably place it in a financially difficult situation, ultimately impacting the employment conditions of the workers.

Recommendations:

The Investigator has determined that the leave without pay practice complies with local law and, as such, aligns with the FLA Code of Conduct, Compliance Benchmarks, and the Codes of Conduct of WRC and Nike. However, as outlined above, the Investigator also identified several significant issues: inadequate communication regarding all available options for workers, the absence of a proper complaint mechanism and worker representation, and concerns over the Brand's divestment process. These deficiencies suggest that the situation might have unfolded differently if these issues had been properly addressed.

It is clear that both the Brand and the Factory share responsibility for these issues, and it would be unjust to place the burden solely on the workers. Focusing only on compliance with local law and disregarding the actual losses suffered by workers due to the actions (or inactions) of both the Brand and the Factory would be unfair. The workers should not bear the full impact of the income loss caused by the leave without pay practice, especially given the contributing factors beyond their control.

In light of this, the Investigator recommends that both the Brand and the Factory collaborate to devise a plan to provide partial compensation to the affected workers for the time during which they lost income while on leave without pay. Since no legal violation has occurred in this matter, there is no legally prescribed method for calculating the compensation that should be provided. Furthermore, it is not feasible to identify which specific workers were directly affected by these issues when signing the consent forms or which workers are entitled to receive compensation.

The Investigator recommends that the Brand and the Factory develop and implement a plan to compensate the workers for partial income loss by providing an amount equivalent to 50% of the daily minimum wage rate for the period during which they were on leave without pay. Although not all workers returned to work on the same date, it was found that the majority took leave for a period of 9 days. The Investigator suggests using this 9-day period as a baseline for calculation. Accordingly, each worker should receive 1,489.50 THB. As eleven workers have already been compensated, the remaining compensation should be distributed to the 3,209 workers who have not yet received payment. The total compensation amount would be 4,779,805.50 THB.

The Brand and the Factory can choose either one of the following distribution options:

Option A:

Both parties are encouraged to devise a practical and efficient method of distributing this compensation, ensuring access for all workers while minimizing financial strain on both the Brand and the Factory. The Investigator identified that some of the affected workers are still employed at the Factory and at Cassia Garments factories. For these workers, the compensation could be provided either as an additional 4.5 days of paid annual leave or in cash, whichever is more feasible. For those workers who are no longer employed at the Factory or Cassia Garments, payment should be made through their bank accounts. The Brand may also involve ISSARA to assist in locating these former employees and obtaining their bank account details.

Option B:

If distributing compensation as outlined in Option A proves impracticable, the Brand and the Factory may consider adopting the "cy-près doctrine", which is commonly used in class action lawsuits, to manage the distribution of the total sum of 4,779,805.50 THB. Under this approach, instead of compensating each worker individually, the Brand and the Factory could create a fund or implement a project that would benefit the workers at the Factory as a whole. This option allows for the allocation of the same amount while ensuring the feasibility of the distribution plan.

It should be noted that this recommendation has been formulated solely by the Investigator. The Brand, the Factory, and the workers may propose alternative methods of compensation distribution that may be more effective and beneficial to the workers. The Investigator stresses that flexibility in the method of distribution is acceptable, provided that the total amount distributed is no less than 4,779,805.50 THB.

2. Coercion, Harassment, Abusive Treatment

The Investigator found no evidence of systematic coercion to sign the leave without pay consent form, which is fully enforceable for those who voluntarily signed it. It is important to note that coercive behavior is strictly prohibited under Nike's Code of Conduct, FLA Code of Conduct and Benchmarks, and the WRC Model Code. Given this, it is also essential to determine whether the factory's actions violated these established standards. The Investigator highlights that in social audits, the threshold for identifying coercion is generally lower than the legal definition. Social audits account for the power imbalance between workers and management, which may present forms of coercion that do not meet the stricter legal criteria. According to the ILO Handbook on Forced Labor Surveys,[28] common forms of coercion include abuse of vulnerability, debt bondage, restriction of movement, violence, and threats or intimidation. These elements are often used in social audits to assess coercion.

While the Factory's actions do not meet the legal definition of coercion—since the four elements of duress (as outlined previously in Section X, Allegation 2) were not fulfilled—the Investigator notes that these actions may still be considered coercive behavior under the FLA standards. The broader understanding of coercion in the FLA framework takes into consideration the disparity in bargaining power between workers and management. In this case, the fact that the manager of the Factory repeatedly called the workers who initially refused to sign into the office multiple times in a single day, ultimately leading some to agree to sign, could be considered coercive behavior under FLA standards.

Moreover, it is undeniable that harassment and abusive treatment occur in the workplace. According to the anonymous worker survey, when employees were asked to rate their working conditions and treatment in general, 83% rated them as decent, while 12% expressed dissatisfaction. Among the dissatisfied group, 6% (eight workers) reported experiencing verbal abuse from a leader or manager. Additionally, following the Factory visit, the Investigator received a phone call from a worker who, while he/she did not discuss the case due to starting his/her employment in 2022 after the incident, reported receiving very poor treatment from the line leader, who frequently scolded him/her using inappropriate language. Confidential worker interviews also revealed that some workers perceive yelling and scolding as common, particularly when employees are under pressure to complete orders.

During the Factory visit, the Investigator reviewed audit reports from the period of 2019-2022. The NCAT audit report conducted on February 12, 2019, indicated evidence of harassment and abusive treatment in the Factory.

The Investigator believes that the absence of effective complaint channels is a significant contributing factor to this issue. An anonymous worker survey conducted in the workplace revealed that 8% of

[28] https://www.ilo.org/publications/hard-see-harder-count-handbook-forced-labour-surveys

respondents were unaware of any available complaint channels, while 6% did not respond to the question. Among those who provided answers:

- 51% indicated they would report issues to worker representatives,
- 4% stated they would file complaints directly with buyers
- 48% said they would use the complaint box located within the factory,
- 4% would report the issue to government authorities, and
- 2% would seek assistance from an NGO.

The survey data further demonstrates gaps in workers' understanding and access to effective complaint channels. A significant portion of the workforce was either unaware of the mechanisms or relied on indirect and less formal methods for addressing grievances, such as reporting to worker representatives or using a factory complaint box. The fact that 4% of workers suggested reporting directly to buyers, despite no formal channel existing, highlights confusion or misinformation among the workers.

The Brand's failure to establish accessible and effective complaint channels for workers at its suppliers in Thailand at the time of the incident constitutes a breach of its own global labor standards. Although corrective measures are underway, including collaboration with the credible nonprofit third-party organization ISSARA to address this issue, the previous lack of available mechanisms left workers unable to effectively address grievances, reflecting non-compliance with established labor standards.

Recommendations:

According to the FLA Code of Conduct and Compliance Benchmarks, specifically under "Harassment or Abuse" benchmark H/A.5 Discipline/ Verbal Abuse, the FLA mandates that employers must not use any form of verbal violence, including screaming, yelling, or threatening, demeaning, or insulting language as a means to maintain labor discipline. Nike's Code of Conduct also includes a harassment and abuse policy, providing detailed guidelines for suppliers. Similar points are also observed in WRC Model Code of Conduct.

To align with the FLA Code of Conduct and Compliance Benchmarks, the WRC Model Code, and Nike's Code of Conduct, the Investigator recommends that the Factory intensify efforts to address and eliminate these issues. Furthermore, a system should be established to assess the effectiveness of the measures implemented to eradicate such practices.

It is expected that ISSARA will establish a complaint channel for Cassia's workers and initiate monitoring activities by the fourth quarter of this year. This development is seen as a crucial step toward preventing similar problems and disputes in workplaces in Thailand in the future. However, further efforts are necessary to inform and empower workers about available channels to ensure future compliance. According to the FLA Code of Conduct and Compliance Benchmarks, under "Grievance System" benchmark ER.17.1 Grievance System/ Worker-Management Communication, the FLA mandates that employers must have a clear and transparent system of worker and management communication that enables workers to consult with and provide input to management. This might include suggestion boxes, worker committees, designated spaces for worker meetings, union representatives, and meetings between management and workers' representatives. In addition, benchmark ER.17.4 requires that employers must ensure that the grievance procedures and applicable rules are known to workers, and that workers are fully trained on their use. Nike's Code of Conduct also includes effective grievance process which provides details on grievance policy and procedure, communication and training, and grievance resolution.

To align with the FLA Code of Conduct and Compliance Benchmarks and Nike's Code of Conduct, the Investigator recommends that the Factory intensify efforts to adopt these guidelines regarding this matter in the FLA Code of Conduct and Compliance Benchmarks and Nike's Code of Conduct.

3. Retaliation

3.1 Worker 1 (W1)

Although it is clear from above that the Factory has the right to file a police report under the law, and that W1's decision to flee to Myanmar does not amount to dismissal or constructive dismissal, the Investigator concluded above that there is no evidence of retaliation to W1 and there is no outstanding payments owed to this worker. However, the Investigator believes that this matter requires a broader perspective. In this case, considerations of fairness must extend beyond strict legal provisions to ensure that equity and justice are adequately served.

The Investigator found that W1 acted without sufficient knowledge of the law, which the Investigator believes that the Factory bears partial responsibility for this misunderstanding. This case highlights the Factory's failure to establish a clear and transparent communication system between workers and management, a system that would enable workers to seek advice and provide input. W1 was unaware of the existence of worker representatives and had no one W1 trusted within the workplace to provide W1 with information about the laws or assist W1 in asserting W1's rights.

Recommendations:

The Investigator recommends that the Factory compensate W1 for some part of damages suffered as a result of this incident. As there is no legal violation on this matter, there is no prescribed method for calculating the partial compensation that the Factory should provide. The Investigator proposes that compensation be based on the severance pay W1 would have been entitled to if W1 had been dismissed at the time of the incident. With three years of employment, the calculated severance pay would amount to 180 days' worth of wages, totaling 59,580 THB.

It is important to note that this recommendation only suggests a reasonable approach to partial compensation and is not intended to fully cover all losses sustained by W1. The Investigator is not in a position to determine W1's precise actual losses.

3.2 Worker 2 (W2)

Although W2 denied any connection between W2's termination and W2's refusal to accept the leave without pay practice, as well as W2's filing of a complaint with the Department of Labor Protection and Welfare (DLPW), the Investigator identified evidence of retaliation against W2, who did file a complaint with the DLPW regarding this matter, as explained in detail in this report. Such retaliatory actions constitute an unfair labor practice under Thai Labor Relations Law. However, due to the 60-day time limit for filing claims of unfair labor practices, W2 can no longer pursue this claim through the Labor Court.

Recommendations:

In the interest of fairness, the Investigator recommends that the Factory compensate W2 with 43,030 THB (331*26*5), with interest accruing at 15% per annum from the date of W2's dismissal. This amount is based on the estimated maximum compensation W2 would have received had W2 filed and won the case in 2020. The Court customarily determines compensation by assessing the duration of employment, typically granting an award equivalent to one month's salary for each year of employment.

In accordance with the FLA Code of Conduct and Compliance Benchmarks, under benchmark ER. 17.6 regarding grievance system, the FLA mandates that employers are required to implement systems to prevent retaliation and discrimination against workers who file grievances, including those related to harassment, abuse, violations of factory procedures, compensation, or unsafe working conditions. The

Investigator also recommends that the Factory adopt and enforce procedures aligned with the FLA Code of Conduct and Compliance Benchmarks to ensure compliance and protect employees from retaliation.

4. Workload and Overtime Pay

Although this issue is not directly related to the complaint filed with the FLA or the case at hand, interviews and surveys revealed notable dissatisfaction among more than 87 workers regarding the current working conditions. A significant portion of these workers expressed concerns about the heavy workload and the lack of additional income from overtime pay. Many reported that after the Brand divested from the Factory, the overall volume of work significantly decreased, resulting in fewer opportunities for overtime, which had previously supplemented their income. Despite the reduced work volume, workers are still expected to work at a rapid pace during regular hours to meet production targets. Those who work more slowly than their peers feel pressured, as the team-based incentive structure requires collaboration in producing a single product.

Recommendation

The Investigator recommends that the Factory assign more realistic production targets to individual workers. If production targets cannot be met within regular working hours, the Factory should consider offering overtime opportunities to workers who are seeking additional income. This approach would address both the issue of excessive workloads and the lack of overtime pay, benefiting both the workers and the overall production process.

5. Transparency and Cooperation

During this investigation, the Investigator observed commendable cooperation from certain parties, particularly the Factory and HRDF, in disclosing information and providing documentation. However, significant challenges arose in obtaining some important documentation and information from other parties, including the Brand, the WRC, and Georgetown University. These parties cited confidentiality constraints as the primary reason for refusing to disclose documents or specific information essential for cross-referencing and verifying inputs provided by various stakeholders throughout the investigation.

The Investigator made multiple efforts to encourage these parties to share the necessary documents and information, emphasizing that all data would be treated as confidential and would not be disclosed in the report. The purpose was solely to use the information for cross-verification and informed decision-making. Despite these reassurances, the Investigator was unable to gain full access to certain documents and information. While some verbal clarifications were provided by the parties, they were insufficient to enable comprehensive and timely cross-verification on specific topics. The lack of access to this documentation and information required the Investigator to rely on alternative sources, which ultimately prolonged the investigation process.

As the Brand is an accredited member of FLA, it operates under the FLA's Charter and associated policies, which emphasize transparency and cooperation in investigations. While the Investigator acknowledges that confidentiality agreements with third parties would restrict the Brand from disclosing protected information, upon review, it became evident that not all the restrictions cited by the Brand were based on binding third party confidentiality agreements.

The FLA Charter and the investigation's Terms of Reference (TOR) include robust safeguards to protect the confidentiality of sensitive information. These protocols should have reassured the Brand about the secure handling of such materials. Given these guarantees, the Brand could have demonstrated greater trust in the process and cooperated more fully with the Investigator's requests.

The withholding of information by other parties also hindered and prolonged the investigation process. Nonetheless, the Investigator was able to reach conclusions based on the available information. While the withheld information did not significantly impact the final outcomes in this case, the Investigator highlights this issue as a cautionary note for future investigations. The withholding of critical information could, in other contexts, obstruct or delay investigations or potentially mislead Investigators, undermining the integrity and reliability of FLA's investigation process.

XII. Final Remarks

The Investigator identified ***communication*** as a critical factor in this case. Misunderstanding of the law led to a series of disputes over the past four years. Had the Factory provided clear explanations to the workers regarding their legal rights and the relevant laws, the workers would not have had to seek information independently, thereby avoiding the risk of receiving incorrect legal advice.

During the interviews, it became evident that all of the workers who refused to sign the form did so under the belief that work suspension was prohibited during the pandemic and that the leave without pay practice was illegal. This situation might have been mitigated had they been informed that the law actually prohibited lockouts under the Labor Relations Law, not work suspension, and that the practice was permissible. The workers' resistance stemmed from their perception that the employer was attempting to conceal an illegal practice. This misunderstanding originated from a single worker who, lacking the ability to read or understand Thai, relied on online search engines to interpret the law. Unfortunately, neither the employer nor the employees attempted to engage in dialogue or clarify their positions. The employer simply maintained that the suspension was allowed and the practice legal, without providing a detailed explanation, leaving the worker to seek advice from HRDF.

Due to this lack of understanding, the worker inadvertently committed defamation against the employer, not realizing that legal protections do not extend to those involved in criminal actions. Prior to the employer filing a police report, had there been communication regarding the legal consequences of such actions, the employee might have removed the defamatory Facebook post and reverted to peaceful protest. However, instead of engaging in dialogue with the worker, the Factory chose a harsh and punitive approach, further escalating tensions.

HRDF facilitated the workers in filing complaints with the DLPW, allowing them to consult with government authorities and gain a better understanding of Thai law. However, HRDF staff only asked whether the law mandates that employers pay 75% of wages during a suspension, without directly addressing the legality of the leave without pay practice. This incomplete communication left the workers misinformed, as they continued to believe their interpretation of the law was correct. Moreover, all of the workers, who were unable to communicate in Thai, relied entirely on the Burmese case manager for translation, further hindering their ability to fully understand the legal nuances.

Subsequently, when the HRDF filed the case with the WRC, the WRC did not consult legal professionals or government authorities to verify the interpretation of the practice, despite the investigator's awareness that the practice was not explicitly addressed in the law. Neither the WRC nor the Factory made any attempt to engage in dialogue or clarify their positions. During the WRC investigation, communication with factory workers was very limited. The WRC only engaged with a small group of workers who had filed a complaint with HRDF. They did not reach out to the broader worker population to gain a comprehensive understanding of the situation within the factory.

When the Brand became aware of the issue, it engaged ELEVATE to assess the legality of the leave without pay practice. Although the Brand received ELEVATE's report in late October 2020—only two months after the WRC's initial engagement—the Brand did not provide a detailed explanation of the findings to the WRC, leaving the organization with unresolved questions about the legality of the practice.

Furthermore, when the Brand and Georgetown University jointly commissioned DLA Piper Thailand to review the legality of the practice in late 2021, neither the Brand nor Georgetown University provided a detailed explanation of the correct legal interpretation to the public or the WRC. They also refused to share the findings with interested parties.

This issue could have been avoided or resolved much earlier had all parties made a greater effort to communicate effectively and in good faith. The extensive resources devoted to multiple investigations could have been spared. The Investigator hopes that all parties take this case as a significant lesson in the importance of communication. Transparent and good-faith dialogue is essential to prevent similar issues in the future.