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## The Organization: The Fair Labor Association (FLA)

The Fair Labor Association (FLA) is a global non-profit organization committed to improving labor standards around the world and ensuring that workers are treated fairly in developing nations. The FLA was established in 1999 (evolving out of a task force created by then President Bill Clinton), and since then it has developed into a global collaborative initiative with operations in developing countries everywhere, with hubs of operation in the United States, Switzerland, Turkey, and Shanghai (which is where I spent my summer).

While the FLA does many different things — from conducting seminars to reporting to Congress — the primary work of the FLA is the monitoring of factory conditions in developing countries. In order to facilitate this, the FLA forms voluntary partnerships with affiliate organizations (manufacturers and/or colleges); the bulk of FLA funding is provided by affiliate organizations. Affiliate organizations work with the FLA to develop and implement labor standards for their factories. Once an agreement has been reached with an affiliate organization, the FLA will conduct ongoing factory inspections to ensure that standards are being met. The FLA will provide periodic reports to affiliate organizations as to factory conditions and compliance with FLA standards, and when deficiencies are found, the FLA will work with affiliate organizations to bring their operations into compliance.

An example of how this process works can be seen in the formation of a recent high profile FLA/affiliate partnership: the FLA's new relationship with Apple, Inc. Apple, due in part to public outcry over conditions at their manufacturing facilities in Shenzhen, China, engaged the FLA to address concerns over long hours, low pay, and poor conditions at facilities owned by Foxconn (a large technology manufacturing firm to which Apple outsources much of its manufacturing, including the manufacture of iPads and iPhones). Apple signed a contract with the FLA through which Apple promised to contribute a significant amount of money (as well as in-kind contributions — the FLA office in Shanghai where I worked received a large number of computers and iPads for their operations) to the FLA to pay for their ongoing operations.

In exchange for the aforementioned contribution, the FLA worked with Apple to develop labor standards for Foxconn's operations (at least that part of Foxconn's operations which manufacture Apple products — Foxconn is a contract manufacturer for a number of technology companies around the world). At the beginning of the process, the FLA did an initial site visit to Foxconn's operations in Shenzhen to assess current conditions (which was unprecedented at the time as Apple is known for their secrecy). The FLA then prepared a report based on their preliminary findings, and then, working with Apple and Foxconn, developed an action plan designed to improve conditions at the factory in order to bring the manufacturing facility into compliance with FLA standards. Among the improvements undertaken as a result of this process was an increase in wages, a decrease in the maximum hours worked per week, improved overtime payment mechanisms, and improvements to work conditions. The FLA's work did not end there, however, as the organization continues to monitor progress at the Foxconn facility.

At first blush it may seem as though there is little reason for a company such as Apple to engage the FLA in factory monitoring; after all, Apple had to throw open the doors of its factory to outside parties (something the notoriously secretive company is not keen on doing), was subjected to intense public scrutiny and media coverage, and, of course, Apple actually *paid* for all of this intrusion into

its operations. However, despite the costs to Apple (and other organizations) associated with being an FLA affiliate, there are many benefits. Apple, for example, had faced a significant amount of public outcry due to allegations of poor working conditions in its (actually Foxconn's) manufacturing facilities. By opening the doors of its operations to the FLA, Apple was able to improve its public image, and, particularly in Apple's case, receive a large amount of free publicity (due to the media's fascination with all things Apple). Still, even affiliates who are not as high profile as Apple benefit from an improved public image due to their ability to say that they are affiliated with the FLA; consumers nowadays are becoming increasingly concerned about where their products come from and who is actually making them, and companies benefit by taking proactive steps to be good corporate citizens.

In addition to the standard affiliate monitoring operations outlined above, the FLA also engages in several special projects around the world. For example, the FLA has created the FAIR-ART project, a special endeavor to protect artisan workers around the world who are particularly vulnerable to abuses. The Cotton Project, another FLA undertaking, is committed to monitoring cotton supply chains to ensure that apparel companies are sourcing their cotton from socially responsible sources (there is a major international problem with forced child labor in the picking of cotton). These are just a couple of the many special projects the FLA undertakes around the world to protect the rights of workers.

## My Work

For the many things the FLA is, the one thing it is not is a legal organization. The FLA is not staffed by lawyers, and their employees have no legal training. The FLA does not even have in-house counsel; their legal council is provided by Matthew Owens of Arnold & Porter in Washington, DC. In Shanghai, where I spent my summer, most of the office staff were people from rural areas of China (as well as areas surrounding Shanghai); no one in the Shanghai office had any legal education (though many of them had a western education), and none of them had more than a lay familiarity with Chinese law. One of the newest staff members in the Shanghai office (he started right around when I arrived for the summer) was a former employee at Foxconn's Shenzhen manufacturing facility where he worked on building iPads and Mac computers; he was brought on to the FLA after Apple became an affiliate, and his job was, in large part, to interact with supervisors at the Shenzhen facility. Needless to say, my presence was the first time FLA Shanghai had ever had a person with any legal training or expertise on hand.

When I left for Shanghai, I had no idea what kind of work I would be doing for the FLA; neither did they. By the time I arrived, however, they had worked out a summer project for me: research Chinese labor law and minimum wage standards. What may have appeared to be a straightforward, though admittedly broad, command, however, was anything but for several reasons. First of all, Chinese law is not as well developed as western law, and sources of the law are quite diffuse. Second, primary sources of the law are not in English (I do not speak Chinese). Third, the Chinese legal system is structured quite differently than other legal systems. Fourth — and this is what proved to be the biggest challenge of the summer — no one in the office at which I was working, as mentioned above, had any legal training whatsoever; this meant that when I got stuck or ran into

difficulties, I had no one to turn to for advice. Still, despite the challenges that came from not having an expert in Chinese law to whom I could turn, the fact that I was on my own in a field of law about which I knew virtually nothing turned out to be one of the most rewarding aspects of my summer experience. That, combined with the broad command to “research Chinese labor law,” allowed me to really tailor my summer work to my interests.

From the broad directive to research Chinese labor law, I decided that, by the end of the summer, I wanted to produce two products for the FLA: a database of minimum wage laws in every county and town in the People’s Republic of China, and a simple guidebook to major Chinese labor laws written in plain English that could be used as a reference by the FLA’s factory monitors. Once I had figured out what I wanted to produce over the summer (and once the Office Director had signed off on my proposal), it was not as simple as just diving in headfirst and pulling up statutes and codes. There was no Lexis or Westlaw to which I could turn and, perhaps even more challenging, I was completely unfamiliar with Chinese legal structures and legal history.

Before I started doing substantive research into Chinese labor laws, I decided the best thing to do would be to familiarize myself with both Chinese legal history and current Chinese legal structures. Just as they do in the first few days of law school in the United States, I felt as though it would be prudent to learn about the system in which the laws I would be researching are created and enforced before I actually learned about the law. To do this, I turned to a variety of Internet resources, which was challenging in its own right. China has what is colloquially referred to as the “Great Firewall of China,” a massive computer firewall employed by the Communist Party to block a significant number of websites. Luckily I knew of these restrictions before arriving, so I set up a proxy server in the United States which allowed me to circumvent the censorship measures via a VPN (VPN services are commonly employed by Chinese citizens who are in the know about censorship issues). The VPN allowed me to utilize resources with I was familiar, including Google (Google is blocked in China).

Before getting into the current Chinese legal system and its structures, I started off by researching a bit about Chinese legal history. China, as one of the oldest civilizations in the world, unsurprisingly has a significant amount of legal history. Throughout its imperial history, China developed a fairly comprehensive system of laws — both civil and criminal — that rivaled that of western countries in terms of its complexity and comprehensiveness. Though the ultimate source of law was the emperor, there was a vast administrative structure in place to enforce the law and promote order throughout the empire. While in many ways the imperial legal system resembled the legal systems of civil law countries, there were many idiosyncrasies as well, some of the most notable being the heavy reliance on informal community councils to settle disputes and the ultimate power of the emperor’s representatives to render decisions, even if such decisions ran counter to written law (in some ways resembling English courts of equity, though much less formal in its structure). In the early twentieth century, when the imperial age came to an end, the new government — the Republic of China — instituted a scheme of laws, modeled on European civil law systems, which built upon traditional Chinese law.

The rule of law in modern China would not last long, however, as the country fell into civil war. Eventually, the government which had been formed after the fall of the empire — the government of the Republic of China — fled to modern Taiwan, and a new government came into power: the Communist government of the People’s Republic of China (PRC). The Communist leadership of

the PRC did not, in its earliest days, value the rule of law. Instead, the party was a central source of power, and party members at all levels of government ruled rather arbitrarily. The follies of the early Communist Party and its leadership are well known to the world (such as the failed five year plans), and today's Communist Party acknowledges the mistakes made under the rule of Chairman Mao.

When Mao died in 1978, Deng Xiaoping took the reigns of government, and set China on a new track: a track toward modernization and gradual economic liberalization. Among the many sweeping reforms instituted in the modern period ushered in by Deng Xiaoping was a new respect for the rule of law. China implemented a new legal system, again modeled after European civil law systems, and the system has been developing ever since. Though the modern Chinese legal system still has a long way to go before it is on par with the more advanced legal systems of developed countries, great strides have been made in promulgating new civil codes, developing court systems (though they are overworked and underfunded), decreasing the amount of decisions made arbitrarily by party leadership increasing the role of the judiciary, and increasing the predictability of the legal system (important for foreign companies trading with China).

Once I had a bit of a background in Chinese legal history and the modern Chinese legal system (as much as I could reasonably learn in just a couple of weeks), I set out first to do research into minimum wage laws in China. Much to the surprise of people with whom I have spoken after returning from Shanghai, China does indeed have minimum wage laws. In fact, China has such aggressive minimum wage laws that there have been some foreign companies that have moved their manufacturing operations away from China to avoid the wage standards, which have been steadily increasing since the institution of more aggressive minimum wage standards in 2008.

Despite the national requirement for minimum wages promulgated by the National People's Congress, there is not a national minimum wage; instead, the central government has left it up to provincial and local governments to set minimum wage standards across the country. China is a huge country with over a billion residents and with hundreds of local governments; this means there are literally hundreds of different wage standards across the country. In order to find the monthly and hourly minimum wage levels across the country — China has a monthly minimum wage for full-time workers and an hourly minimum wage for part-time workers — I turned to two kinds of sources: government documents and documents created by third parties. I ultimately ended up looking at dozens of different sources, comparing and verifying information, and, when there were discrepancies, figuring out what information was the most current (minimum wages have been increasing rapidly across the country). Eventually I was able to compile a comprehensive database of the most up-to-date minimum wage laws in all parts of China. There are 31 provinces in China (though I did not collect data for the special administrative regions of Hong Kong and Macau since FLSA Shanghai does not operate in those areas), and within each province there can be dozens or hundreds of different wage standards depending on the city (wages are higher in urban areas and lower in rural areas). Ultimately, I ended up with wage data for over 1600 cities, towns, counties, etc.

After completing the minimum wage database project, I moved on to my second project: developing a handbook on national Chinese labor laws for FLSA factory inspectors. Given the time constraints of only having a few weeks over the summer during which I could complete this project, the handbook I was developing would only be able to cover the most fundamental national labor laws. What I ended up creating was by no means a treatise on labor laws in the People's Republic of

China, but it was still a useful resource for the FLA's factory inspectors, who, as previously mentioned, are not trained in legal matters.

I decided to focus my research efforts on the two primary laws promulgated by the National People's Congress (the supreme legislative authority in China): The National Labor Law, passed in 1995, and the more comprehensive and robust National Labor Contract Law, passed in 2008. In addition to these two major labor laws, I also included sections of the Chinese Constitution guaranteeing certain protections for workers (note: the Chinese Constitution is easily amended by the National People's Congress and has been amended several times since 1978), and included a brief overview of Chinese legal history and legal systems.

The first of the two primary national laws governing labor is the 1995 Labor Law. The Chinese Constitution makes several broad guarantees with regard to labor, such as rights to work, rights for workers to rest, and rights to social insurance; the 1995 law was the first major national undertaking to effectuate these (and other) constitutional commands related to labor protection. The 1995 law is a lengthy (and broad) law addressing a wide range of different topics related to labor. I will not go into great detail about the law here, but I will list a few of the topics covered by this law (this is not an exhaustive list). The 1995 law addresses, among other things, the following: basic rights of workers to rest, to enjoy occupational safety, and to receive vocational training; the responsibility of employers to promulgate bylaws; democratic management and labor negotiation; non-discrimination (on the basis of race, sex, religion, etc.) and equality for women; minimum employment age (16); basics regarding the formation, enforcement, and dissolution of labor contracts; economic remedies for wrongfully terminated employees; maximum work hours; national work holidays; overtime pay; wage standards; occupational health and safety measures; protections for female and juvenile workers; vocational training; social insurance and welfare; labor disputes; governmental supervision and inspection; governmental responsibilities; etc. The 1995 law, which is still in effect, provides the foundation for all other labor laws and regulations in the People's Republic of China.

The second of the two primary national laws is the 2008 Labor Contract Law. While there are some redundancies between the 2008 law and the 1995 law, the 2008 Labor Contract Law, for the most part, expands greatly the labor contract provisions originally promulgated in the 1995 law. The 2008 law did not abrogate the 1995 law (as some people have claimed), but rather greatly enhanced the protections afforded to Chinese workers under national law while adding several new provisions and requirements with which employers must comply. In fact, the law strengthened worker protections so much that several employers rushed to form new contracts with employees prior to the law's effective date, while other employers moved their manufacturing operations from China to other countries in Southeast Asia (such as Vietnam).

The 2008 law, like the 1995 law, is a lengthy piece of legislation and, again, I will not go into great detail about the law here. In essence, however, the 2008 law requires that all employment relationships be formed by contract. The law requires that formal contracts be drafted for all employment relationships, and in case of a failure to form a written contract (or in the case of missing mandatory terms), the law provides a default set of contractual rules. Employers are prohibited under the law from terminating employees without cause (with some exceptions), and there are administrative and judicial remedies prescribed in the law when an employer impermissibly breaches a labor contract. Employees are also liable to employers for a breach of contract, though I doubt employers make much use of such provisions (I have seen no empirical data on the matter,

but given the ready supply of labor, it seems to be a costly proposition for employers to sue employees over a breach). In addition to laying out a comprehensive (though, again, broad) scheme for labor contracts in China, the 2008 law also addresses in greater depth than the 1995 law issues of organized labor, non-compete and non-disclosure agreements, and collective bargaining.

While there are numerous provincial and local laws that supplement the two aforementioned labor laws (as well as administrative regulations), I only had time to address the 1995 and 2008 laws for the handbook. This was just as well, though, since the purpose of the handbook was not to be a comprehensive treatise on Chinese labor law, but rather to be an introductory guide to the principles of the national labor laws for non-lawyers.

The two laws combined are comprised of about two-hundred individual sections. While distilling a couple hundred provisions into a form accessible to non-lawyers would typically be an (relatively) easy exercise if I were working with American law, working with these statutes proved to be a fairly complex, or at least time consuming, exercise. The first challenge I faced was tracking down copies of these laws from an official source. While they are fairly major laws and are posted all over the Internet, I wanted to start with a copy of the laws from an official source. Once I had an official source, however, I then faced the daunting task of translating the laws from Chinese to English (made especially daunting considering I do not speak or read Chinese). I took a multi-pronged approach to translating the original text to English. First, I ran the original text through not one but *three* electronic translation services. I then compared these electronic translations with each other *and* with three other online English translations I had found. From the six translations I was working with, I created a composition of what I found to be the best translations, and then had someone who spoke both English and Chinese check my final translation.

Once I had my final translation in place, I proceeded to translate the language of the 1995 and 2008 laws from English legalese (which is what was rendered by the direct translation) into language that could be understood by lay English speakers. In addition to translating the legalese to lay English, I also categorized the provisions of the law by subject area (the law is not well organized in its original form and jumps around from substantive area to substantive area), and combined the two laws into one handbook, so that a factory inspector reading the laws would not be going through a list of statutory provisions but would, instead, be looking at a handbook organized by topic and written in plain English.

The two above projects combined (as well as my background research into Chinese legal history and legal structures) consumed the bulk of my time in Shanghai, and I actually had to finish my handbook after returning to the United States.

## **My Takeaway**

My time in Shanghai with the FLA was very educational and rewarding. While there were certainly challenges and frustrations I had to overcome — from logistical problems with my accommodations to the language barrier I experienced being an English speaker in a place where virtually nobody spoke English to getting sick (twice) — by the end of the summer I felt as though I not only had

learned a lot about substantive Chinese law, but that I had also greatly honed my legal research and writing skills while learning a lot about myself.

As far as substantive knowledge goes, I obviously learned a lot about Chinese labor law. China has, at least on paper, very strong labor protections, some of which are stronger than those afforded to workers in the United States. Of course, the protections are only on paper; in reality, China lacks the administrative and judicial resources and infrastructure to effectuate these protections to their fullest. Still, as China continues to develop and modernize, I have no doubt that these labor laws will be enforced more aggressively. More important than the substantive law I encountered, however, was the opportunity to engage with a legal system in a part of the world that is becoming increasingly more powerful and influential. My familiarity with the Chinese legal system and culture may serve me well in my career, especially considering that the firm at which I will be working next summer (and presumptively after graduation) has a Shanghai office (though I will be working out of their Park Avenue office) and engages in extensive transactional work as well as litigation involving Chinese firms.

Beyond the substantive law I learned at the FLA, my time in Shanghai really allowed me to hone my skills as a researcher and a writer. I was thrown into a new country and a new culture with a legal system and legal tradition quite unlike the one I am used to at home. I had none of my familiar research tools (i.e., Lexis and Westlaw), and I had no one to turn to who had legal expertise. Despite the challenges I faced, I was able to produce great products using nothing but free online sources. I had to get creative at times to find the information I needed, but in the end, I got it done. If I was able to do the kind of research I did over the past summer with the resources I had available, I should be in good shape for researching as a practitioner.

I would not trade my time in Shanghai for anything in the world. I feel very fortunate to have had the opportunity to do something truly unique during my 1L summer, and the opportunity to go to Shanghai to do work for a non-profit is probably an opportunity that I will never have again, or at least not at any time in the near future. I had the opportunity to not only learn about a system of law completely foreign to me, but I got to do so while doing work for a non-profit; work that will hopefully make a difference in the lives of workers in a developing country. And I got to do all of this while exploring a new country and a new culture. My time in Shanghai, while brief, is something that I will carry with me throughout my legal career and, indeed, my life.