GUIDEBOOK TO CAMBODIAN EMPLOYMENT AND LABOR RELATIONS LAWS

KOY Neam
ANN Vireak

THE ARBITRATION COUNCIL FOUNDATION

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Publisher's Preface

Since 2006 the Arbitration Council Foundation has published a series of "Compilation of Legal Documents Concerning Labor" for use by individuals working in various enterprises and researchers of labor law and regulations. The Compilation gathers primary sources of laws, sub-decrees, Prakas, circulars, directives, and announcements related to labor. Because those legal instruments are scattered but often interrelated, the Arbitration Council Foundation sees a need to organize them into various topical sections and headings with direct references to the sources of laws and regulations.

This will help readers to understand the legal information in organized structure and simpler language and to provide easy access to the primary sources of laws and/or regulations.

The Guidebook to Cambodian Labor Laws is developed to respond to the above-stated needs. The Arbitration Council Foundation hopes the Guidebook will be beneficial to individuals working in the labor sector and those who are interested to study the laws on employment.

The Arbitration Council Foundation is pleased to partner with GAP Inc. for the development of the Guidebook. The Arbitration Council Foundation is grateful to Gap Inc. and its staff, whose generous support contributed to the development of this Guidebook.
The opinions expressed in this Guidebook are those of the authors and do not necessarily reflect the position of the Arbitration Council Foundation and GAP Inc.

The Arbitration Council Foundation

MEN Nimmith, Executive Director

July 2020

Preface

The labor sector operates in a complex legal environment. The Guidebook to Cambodian Employment and Labor Relations Laws provides an overview of laws and regulations that interact with employment in Cambodia.

The Guidebook integrates relevant legal provisions, including those of the Labor Law, Law on Trade Union, Civil Code, Law on Social Security Schemes, and other laws and regulations, into a single book to help readers understand their application and interrelations. It provides a concise and easy-to-understand legal guide on employment and labor relations in Cambodia. References to legal and regulatory sources and relevant Arbitration Council awards are provided next to each topic. It is intended to be accessible to a wide range of audiences, from workers and employers to students to practitioners to others who are interested in employment laws.

The Guidebook is organized into topical sections: general provisions applicable to labor, organizational structure and roles of professional organizations and government bodies, employment contracts, collective bargaining agreements, employment conditions and benefits, employment of children and women, duties and responsibilities of employers and worker-employees, health and safety in the workplace, and social security schemes.

Although the authors have endeavored to provide up-to-date information in the Guidebook, employment laws and the labor sector are ever-changing. While it is hoped that the Guidebook will be a useful reference material, this publication is for information purposes only. It is not intended to be an authoritative document or a substitute for legal advice.

This Guidebook is realized thanks to the generous support of GAP Inc. and many people who have contributed to this project. Special thanks to:

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Koy Neam
Ann Vireak

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ABBREVIATIONS

AC Award No. xx/yy	Arbitration Council Award Case No. xx, Year yy (e.g. AC Award 10/03 is Arbitration Council Award No. 03, 2003)
Art.	Article
CC	Civil Code
Cir.	Circular
Cl	Clause (a provision of a Prakas)
CON	Constitution
CrimC	Criminal Code
Dir	Directive
ILO C29	International Labor Organization Convention on Forced Labor 1930
ILO C87	International Labor Organization Convention on Freedom of Association and Protection of the Right to Organize 1949
ILO C111	International Labor Organization Convention Discrimination (Employment and Occupation) 1958
ILO C 138	Minimum Age Convention, 1973
ILO C154	International Labor Organization Collective Bargaining Convention 1981
ILO C 182	Worst Forms of Child Labor Convention, 1999
ILO R 190	Worst Forms of Child Labor Recommendation, 1999
LCS	Law on the Common Status of Civil Servants
LCE	Law on Commercial Enterprise
LIS	Law on Insolvency
LIV	Law on Investment
LL	Labor Law
LMW	Law on Minimum Wage
LoC	Law on Construction
LPE	Law on Public Enterprise

LSHT	Law on the Suppression of Human Trafficking and Sexual Exploitation
LSS	Law on Social Security Schemes
MoLVT	Ministry of Labor and Vocational Training
MoJ	Ministry of Justice
MoEF	Ministry of Economy and Finance
MoH	Ministry of Health
Para.	Paragraph
PK	Prakas (An ministerial act adopted by Minister)
SCN	Seickdei Choun Damnoeng (Announcement)
SD	Sub-Decree (an executive act signed by the Prime Minister)
LTU	Law on Trade Union

SECTION ONE

GENERAL PROVISIONS OF THE LABOR LAW

Reference

LL Art. 1

The Labor Law establishes the rules that govern the employment relationships between non-state employers and the worker-employees. These relationships are established by employment contracts between the employer and individual workers or collective agreements between the employer and the worker-employees collectively. The Labor Law of the Kingdom of Cambodia applies to employment contracts, whether they are concluded inside or outside Cambodia, as long as their implementation occurs in the territory of the Kingdom of Cambodia without distinction as to the nationality or the residence of the parties. For example, Party A and B reside in France. Both parties conclude an employment contract, under which Party B is assigned to work as a manager of a hotel in Phnom Penh owned by Party A. The Labor Law of Kingdom of Cambodia is applicable to the contractual relationships between the two Parties.

There are many kinds of working people. Some would work for their own account; others would work for others. It appears that the Labor Law of Cambodia is intended to apply to worker-employees, so it would be useful for the readers to familiarize themselves with some categorized working people.

A. Actors in the labor sector

a. Enterprise

References

LL Art.1, 2,
LPE Art. 26

An enterprise may be created by a physical person or legal entity to carry on a business. For purpose of Labor Law, a physical person is considered an employer who creates an enterprise only if he or she employs one or more worker-employees. The enterprise can take form of a sole proprietorship or partnership if more than one physical person creates the enterprise.

One or several private legal entities can also create an enterprise and that legal entity becomes an employer only if it employs one or more worker-employees. For example, Company ABC is an employer who creates ABC Transportation enterprise.

Also, the public legal entities can create an enterprise and is an employer of an enterprise the same way as private legal entities. These entities are public or state-owned enterprises.

An enterprise is a firm or business that uses human, material and financial resources to produce goods and services. For example, banking business, transportation business, telecommunications business.

The notion of enterprise and legal entity (company) that creates an enterprise is very important when it concerns the closure of the enterprise and the dissolution of the legal entity. The closure of an enterprise is governed by the Labor Law, while the dissolution of the company is governed by the Law on Commercial Enterprise. Since a company can create many enterprises and if an enterprise is closed, a question may arise: who would be liable to the claims by worker-employees (creditors)? If the enterprise itself is not a separate entity from the company, the company is liable to the worker-employees' claims. For example, Company A that sets up a factory is liable to the worker-employees' claims of unpaid wages even if the factory is closed.

b. Establishment

Reference

LL Art. 2

An establishment is an operating unit of an enterprise geographically located at a definite place that employs one or more worker-employees working in a defined place. Examples of the establishments include a factory, workshop, working site. An establishment is considered an enterprise if such an enterprise has only one establishment.

c. Employer

References

LL Art. 1, 2

The employer is a physical or legal person that employs one or more worker-employees permanently or occasionally. The employers for the purpose of the Labor Law can be:

- Private enterprises or establishments (e.g. private companies, private commercial houses)

- Public enterprises or establishments (e.g. state-owned enterprises)
- Semi-public enterprises or establishments
- Religious or non-religious establishments which provide vocational training or conduct charitable activities
- Liberal professions (e.g. bar associations, engineers' association)
- Associations or any groupings (e.g. non-governmental organizations, association of farmers, association of bankers, garment manufacturers associations).

Reference

LL Art. 7

Artisan: An artisan is a person who performs manual labor or uses machinery for his or her own account to produce certain products with the assistance of his or her spouse and/or members of the family without remuneration and of the workers or apprentices. All the people who work in the workshop are under the direction of the artisan. Aside from the members of the artisan's family members, the workshop cannot employ more than seven workers otherwise the person who directs the workshop will lose his or her status as an artisan. Because he or she employs workers an artisan is also an employer.

References

LL Art. 45, 47

Tasker: A tasker (*kariyaphearee*) is a person who receives specific tasks from an entrepreneur (*sahakrin*), and who recruits laborers to execute the tasks. The tasker signs a contract with the entrepreneur and receives a lump sum payment for the work or service provided to the entrepreneur. The tasker is treated as an employer of the laborers and must comply with the provisions of the Labor Law. In English term, *entrepreneur*[1] is a contractor, while the tasker is a sub-contractor.

d. Worker-Employee

In Labor Law and labor regulations, as will be seen below, the term worker-employee is a mingling of the term "worker" and "employee". In the common parlance, workers are understood by the Cambodians as those who work in the factories or those who work manually, while employees are understood as people working in the offices.

[1] A person who undertakes to carry out certain work of another person under the contract work (See Article 652 of the Civil Code).

The distinction between employee and worker is clearly seen in the methods of wage payment. For example, Article 116 of the Labor Law requires that workers must be paid twice a month, while the employees must be paid once a month.

In general, the term worker-employee is intended by the Labor Law and other laws (for example, the Law on Trade Union) to encompass both workers and employees.

Reference

LL Art. 6

Worker: The worker provides manual labor in exchange for remuneration and works under the direction of the employer or its representative. Manual labor is an essential characteristic attributed to the worker and not to the way he or she is paid. The worker is not an employee nor a domestic worker.

Reference

LL Art. 5

Employee: The employee is a person who enters into a contract to assist another person in exchange for a remuneration. The work of the employee does not involve manual labor, though he or she may provide some manual assistance that is occasional and incidental to his or her main duties.

References

LL Art. 3; CC Art. 652, 664; AC Award No. 04/05, 53/07, 154/09, 162/15 & 214/15

Worker-employee: The worker-employee is a person of any nationality who work for an enterprise and does not work for his or her own account. Worker-employee enters into an employment contract with the employer for remuneration. A person working for another person may be a worker-employee or a contractor. In order to determine whether a person is a worker-employee or a contractor it is irrelevant to consider the amount of the remuneration to be received or the status of the employer (for example, the private or state-owned enterprise, a liberal profession) he or she works for.

It suffices to look at (1) remuneration (whether A receives remuneration and it does not matter whether the amount is small or large), (2) the furnishing of service, and (3) the direction and control of the employer over the worker-employee. For example, A works as a supplier of automobile spare parts for B. A appears to be an independent supplier/contractor of spare parts, but to determine if A is an employee of B or an independent contractor, it is important to look for further facts if A meets the three elements of employer-employee relationship. Another example, A volunteers to work as an administrative assistant of B's firm for $30 monthly remuneration. To determine A is a worker/employee of B it suffice to look at (1) whether A receives a remuneration, (2) whether A has furnished service to B, and (3) whether A is under control of B or A works independently from B. If the elements are met, A is a worker/employee of B.

A worker-employee is under the control of the employer when the worker-employee is directed and managed by the employer, that is the employer steers the worker-employee toward a result.

Although he or she furnishes a work or service for remuneration, an independent contractor is different from a worker-employee. An independent contractor is a person who executes a contract, under which he or she agrees with another party (the owner of work) to accomplish a certain work in exchange for a remuneration for the result of such work. The independent contractor owes the owner of work an obligation to accomplish the work both parties have agreed upon. The owner of work does not steer the independent contractor toward a result. The owner is interested in collecting the work accomplished according to the specifications required by the contract. For example, A is contracted by B to conduct a research under certain terms of reference on the economic impact of the pandemic disease on the garment factories. B does not direct or control the work of A, but B will only receive the research report accomplished by A pursuant to the terms of reference.

Characteristics of Worker-Employee and Independent Contractor	
Worker-employee	**Independent contractor**
Provide labor or service	Provide labor or service
Receives remuneration based on work time or other modes of compensation	Receives remuneration for achievement of work mutually agreed-upon
Under the direction and management of the employer	Not under the direction and management of the employer

e. Apprentices

Reference

LL Art. 8

The apprentice is a person who seeks to learn skills from an employer or an artisan. In this regard, the apprentice enters into an apprenticeship contract, under which the employer or the artisan undertakes to train or cause someone to train the apprentice.

B. Applicability of the Labor Law

The Labor Law has three dimensions of applicability: territoriality, nature of enterprises or employers, and the nature of the persons employed.

a. Territorial applicability

The Labor Law applies to the employment contract, the implementation of which is carried out in the territory of the Kingdom of Cambodia.

b. Applicability by enterprises/employers

References

LL Art. 1,
LPE Art. 1, 38

As indicated above, the Labor Law applies to the enterprises or establishments in the industrial, commercial, mining, artisanal, services, agricultural, land transportation, fluvial transportation sectors. These enterprises can be public, semi-public, or private. For example, the public enterprises covered by the Law on the General Status of the Public Enterprises are subject to the Labor Law as well. The public enterprises can be owned wholly by the State (state-owned enterprises) or jointly owned by the State, where the State owns more than 51% shares, and private persons/entities (mixed enterprises). There are also enterprises that are jointly owned by the State and private persons/entities, but the State holds less than 51% shares, which are also classified as mixed enterprises or semi-public enterprises. Private enterprises are those that are governed by the Law on Commercial Enterprises.

The enterprises or establishments can be religious, for example a religious organization that builds vocational training schools and provides training to poor people. A non-governmental organization that conducts charitable activities are also governed by the Labor Law.

The Labor Law is applicable to the liberal professions like the bar association, notary, medical order, board of accounting, engineering order, etc.

The Labor Law is also applicable to the associations, such as farmers' association, bankers' association, taxi association, and the grouping, such as non-governmental organizations working in human rights, economic, or health sector.

c. Applicability by employed persons

Civilian worker-employees are governed by the Labor Law. But the persons described in the following paragraphs are not. Domestic workers are not governed by the Labor Law, although they are entitled to freedoms of association as set out in the Labor Law.

Reference

LCS Art. 1

Civil servants who are appointed under the Law on the Common Status of Civil Servants are not governed by the Labor Law. Civil servants are those who hold permanent tenure and work in the administration, excluding those belonging to the judicial and legislative corps.

The police, army personnel, military police are not governed by the Labor Law. They are governed instead respectively by the Royal Decree on the Separate Status of the National Police and the Law on the General Status of the Military in the Royal Armed Forces.

The Labor Law does not apply to the air or maritime personnel. They are governed by a separate law. However, they are entitled to freedom of association pursuant to the Law on Trade Union.

C. Prohibition of certain labor treatments

a. Prohibited discrimination

References

ILO C111 Art. 1.1, LL Art. 12 AC Award No 03/03, 10/03, 197/16

Cambodia acceded to the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) on 23 August 1999. The Convention Article 1.1(a) provides for the definition of discrimination as "any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation." The Cambodian Labor Law prohibits the employer from taking into consideration the following factors in the hiring, allocating or assigning work, training, promotion, determining remuneration, providing social benefits, and taking disciplinary actions or terminating the employment contract:

- **Race:** It is a group of people who are hereditary from a group of an ethnic group. For example, people who are hereditary to Khmer race.

- **Color:** Color is not necessarily attributed to racial color. People in the same race may have different colors. For example, some Khmer people may have light complexion, while others may have dark complexion.
- **Sex:** This could be female or male. But it could include the transgender people too.
- **Belief:** For example, people who have certain philosophical beliefs.
- **Religion:** This could be a person who has a faith, for example, a Buddhist, a Muslim, a Christian.
- **Political opinion:** This refers to a person who has a political tendency, for example, conservative or liberal political tendency.
- **National origin:** This could be those who have the same citizenship but come from different nationalities. For example, some Vietnamese nationals acquire Cambodian citizenship through naturalization.
- **Social origin:** This refers to a person who comes from a class of elite or a class of farming families.
- **Membership** in the worker-employees' unions or conducting union activities.

As can be seen in the Cambodian Labor Law, discrimination can occur **during the hiring process, during the course of employment** (allocation or assignment of work, promotion, training, fixing remuneration, provision of benefits, disciplinary actions), and in the termination of employment. In order to determine whether a discrimination has occurred or not, three elements of discrimination may be looked into: (1) difference in treatment (distinction, exclusion, or preference), (2) ground on which the difference in treatment is based (from race to social origin to membership in the union), and (3) the result of the difference in treatment (impairment of equality of opportunity or treatment).[2]

For example, a recruitment committee of an organization interviews candidates for an office job in Phnom Penh. Among the two short-listed candidates there is one woman who is pregnant. The recruitment may be discriminatory if:

1. That woman is excluded from the job and a man is recruited (difference in treatment between a man and a woman)
2. The ground of exclusion is based solely on the fact that she nd on which the treatment is based)

[2] International Labor Office and International Finance Corporation, Legal Brief Underlying Better Work's Compliance Assessment Tool: Discrimination, See at https://betterwork.org/global/wp-content/uploads/Legal-brief-on-discrimination-FINAL.pdf

3. Because the two candidates have the same or similar qualifications, the difference in treatment results in the woman losing the opportunity to get the job or equal treatment (result of the difference in treatment).

References

AC Award No. 283/14, 228/16, 033/18

As another example, consider an employer who decides not to extend employment contracts to workers. Workers allege that their contracts are not extended because they are active members of a union. However, the employer cites economic reasons as grounds for not extending the contract. In such case, evidence must be offered to prove if there is discrimination on the grounds of union membership. An employer may be found to have discriminated against workers who are members of a union when evidence shows it initially requested a group of union members to resign from the union, but later agree to extend contracts to those who agreed to resign and terminated the contracts of those who refused resign.

References

Art. 369; PK No. 377, 14 Sept 2015 (MoLVT-MoJ), PK No. 659 (MoLVT-MoEF), 6 Jun 2016

An employer who violates the anti-discrimination provision of the Labor Law is subject to a fine from 61 to 90 days of the daily reference wage. The daily reference wage is the minimum wage that is determined by joint Prakas of the Ministry of Labor and Vocational Training and Ministry of Justice. The current daily reference wage is 40,000 riels.

b. Permitted discrimination

References

ILO C111 Art. 1.2, LL Art. 12

Some acts may appear to be discriminated tory but are not prohibited if the grounds for distinction, exclusion, or preference are based on the inherent requirements of a particular job. For example, recruitment of a Christian priest to teach the bible to a Christian congregation may be permissible. But a requirement for a credit officer of a Christian-owned microfinance institution to be a Christian may be discriminatory because the exclusion (act of discrimination) of other people of different religious values (ground of discrimination) from the job would nullify their opportunity for the job (result in the difference in treatment).

c. Forced labor

References

ILO C29 Art. 2.1, LL Art. 15

Forced or compulsory labor is defined by the ILO as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." The elements of forced labor are:

- A work or service is obtained from a victim
- The work or service has not been rendered voluntarily by the victim.

To facilitate the detection of forced labor, the International Labor Organization has introduced the following indicators[3]:

- **Abuse of vulnerability:** Forced labor may occur when a victim is deprived of the travel documents in a foreign country and the employer provides very low wages. The victim is compelled to continue to work because he or she cannot travel back to the home country.
- **Deception:** Forced labor may occur when a victim is promised to have a good job, but instead is compelled to work in abusive working conditions; the victim also may not have no chance to escape because, for example, he or she is trapped in a sea fishing boat.
- **Restriction of movement:** This may occur when, for example, victims are placed in a training center and are prohibited to leave the place. Or, the victims are placed to work in a plantation under guard or surveillance by the employer so they cannot freely leave.
- **Isolation:** This may occur, for example, when the victims are on the sea fishing boats and are deprived of means of communications with the families or the outside world.
- **Physical and sexual violence:** This may occur when, for example, victims are beaten to perform work or provided drugs to work incessantly under addiction or forced to have sex with a supervisor. The victims do not consent to these conditions but cannot escape them because they are in vulnerable positions or under threat of force.
- **Intimidation and threats:** These may occur when, for example, the victims are threatened with wage cuts or reduction, or under other forms of psychological coercion.

[3] For more information see ILO Indicators of Forced Labor at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

- **Retention of identity documents:** This may occur when victims are contracted to work in a foreign country where the placement agency retains the passports in order to prevent the victims from departing the country.
- **Withholding wages:** This could be used as a means to retain the victims to work with the employer. For example, the employer retains certain amount of wage as a security against the victims leaving the job.
- **Debt bondage:** Debt bondage can be a situation where the victims work and are able to repay certain amount of debt and unable to repay the whole loan and therefore are compelled to work indefinitely for the lender.
- **Abusive working and living conditions:** For example, victims work under hazardous conditions and because they are in a vulnerable position, they cannot leave the job. They work involuntarily because they do not have other option for their livelihood.
- **Excessive overtime:** This may occur when victims are forced to work more than eight hours a day without their real consent or under threat of dismissal or without extension of the employment contract.

References

LL Art. 360, 369; PK No. 377. 15 Sept 2015 (MoLVT-MoJ), PK No. 659 (MoLVT-MoEF), 6 Jun 2016; LSHT Art. 12

The violations of the forced labor provisions are subject to a fine from 61 to 90 days of the daily reference wages or subject to imprisonment six days to one month. The current daily reference wage is 40,000 riels. In addition, the violations can be also subjected to other laws and penalties, such as the Law on the Suppression of Human Trafficking and Sexual Exploitation, which is seven to 15 years of imprisonment.

References

ILO C29 Art. 2.2, CrimC Art. 72

Not all labor is forced labor although there is a lack of voluntariness on the part of the persons whose work or services are obtained forcefully. Examples include compulsory military service, civic obligations, community services as a result of criminal conviction, work or services requisitioned for such emergency as natural disaster, earthquake, epidemic or epizootic diseases, fire, or flood, etc.

D. Public order

References

CC Art. 3, 354.

The freedom of contract is the general principle of contract law under which the parties are free to choose whatever terms and conditions they prefer to govern their contractual relationships. In the strict sense of freedom of contract, the state has no power to impose any terms or conditions on the contracting parties.

However, to prevent a party from taking unfair advantage over another party, the state puts the limit on such freedom so to protect a disadvantaged party. These protections are aimed at dispensing justice or fairness for the persons who are in a vulnerable bargaining position. These acts may be included in the adhesion or insurance contract, in which parties have unequal bargaining positions and one party may be required to accept the terms and conditions imposed by another party. While parties are free to contract, they must respect a social, restrictive force called "public order." This concept of public order is imposed by Article 354.1.a of Civil Code, which stipulates that a contract is considered void when "the contents of the contract contravene the public order and [or] good customs." Although the word "public order" is a powerful concept that can invalidate a contract, yet there is no legislative definition.

References

LL Art. 13; AC Award No. 62/04, 82/06, 027/18

In labor relations, the freedom of employment contract is not absolutely free. To protect the ones who have weaker bargaining position, the state, through legislations or regulations, put restrictions on freedom of contract. Article 13 of the Cambodian Labor Law stipulates that "the provisions of this Labor Law are of the nature of public order except for there are express derogations to such provisions." To put it in a simple term, the provisions of the Labor Law are public order provisions which must be observed by private acts: unilateral decisions, contracts, and agreements. Unilateral decisions include documents or regulations conceived by the employer.

Contract is an act, written or verbal, realized by mutual agreement of the employer and an employee-worker. Convention is an agreement concluded between the employer and the unionized employees-workers. Any provisions in these documents (internal regulations, contracts, collective agreements) that are contrary to the provisions of the Labor Law or its implementing instruments, such as sub-decrees or Prakas, are void automatically. For example, an employment contract with unfavorable terms and conditions made with a person who needs the money for medical support to her sick father may be considered void.

The *ordre public* sets minimum standards for labor practices. Therefore, any benefits accorded by the employment contracts, collective bargaining agreements, or by arbitral awards to the

worker-employees that are higher than those required by the *ordre public* provisions of the Law are recognized.

References

LL Art. 13, 57, 72, 137, 141, 183; PK No. 004 (MoLVT) 5 Jan 2000; PK Nos. 142 and 143 (MoLVT) 10 Jun 2002

As indicated in Article 13 of the Labor Law, provisions of the Labor Law are of the nature of public order unless there are express derogations from such provisions. For example, Article 72 states that the suspension of employment contract will result in the suspension of the employer's obligation to pay unless there is/are provisions stipulates otherwise. And the derogation is expressed in Article 183, by which female worker-employees are entitled to half wage pay.

Under Article 57, the requirement to employ the apprentices (one tenth of total worker-employees in an enterprise or establishment) can be derogated if the enterprise accepts to pay apprenticeship taxes, the amount of which is determined by the Prakas 004, dated 5 January 2000 of the Ministry of Labor and Vocational Training (at an annual rate of 1% of the total annual wages paid of all worker-employees).

Article 137 stipulates that the daily working hours cannot exceed eight hours and 48 hours per week. But the provision of Article 137 can be derogated by the Prakas of the Ministry of Labor and Vocational Training in favor of the preparatory or complementary work that must be performed outside the general work of the enterprise (Article 141).

E. Publicity

References

LL Art. 14, 361; PK No. 377. 15 Sept 2015 (MoLVT-MoJ), PK No. 659 (MoLVT-MoEF), 6 Jun 2016

Awareness of labor rights helps maintain the stability and tranquility of the workplace. In this regard, the Labor Law requires all employers to make the Law accessible to all worker-employees, especially to the representatives of the worker-employees. The failure to comply with this requirement will result in a fine from 10 to 30 days of daily reference wage.

SECTION TWO

ROLES AND FUNCTIONS OF THE DIFFERENT LABOR ORGANIZATIONS

In the Cambodian labor sector, there are many actors who are interacting to produce services and goods and contribute to the country's economy. They are workers or employees and employers as well as workers' (also called worker-employees' unions) and employers' organizations (also called employers' associations). According to the Labor Law and Law on Trade Union, the workers' organizations are also called "worker-employees' unions and those of the employers are called employers' associations. This Section will cover the organizational and registration arrangements and rights and duties of each actor. It also covers the role of the government to intervene in the labor sector.

A. Worker-employees' organizations

a. Introduction to worker-employees' organizations

The worker-employees' organizations are established pursuant to the right to the freedom of association. Freedom of association is enshrined in Article 42 (new) of the Cambodian Constitution and Article 2 of the International Labor Organization's Freedom of Association and Protection of the Right to Organize Convention 1948 (No.87).

The worker-employees are associating themselves for the purpose of building a collective voice to engage with the employer(s) in order to promote and protect the interests of the members. Worker-employees' organizations are called labor unions. Workers-employees can organize themselves at the enterprise levels, sector level, or national level.

b. Personnel delegate

References

LL Art. 283; LTU Art. 4, 38, 39; PK No. 302 (MoLVT), 2 July 2018 Cl. 1; AC Award No. 189/11, 170/14

In an enterprise or establishment with eight or more worker-employees can elect representative or representatives to act on their behalf and engage with the employer. This representative is called the "**personnel delegate**." Once duly elected, the personnel delegate represents its voters, but also all the worker-employees in that enterprise or firm. The representative is directly elected by the eligible worker-employees in the enterprise or establishment.

c. Election of the personnel delegate

References

LL Art. 285, 286; LTU Art. 38, 39, 40

1. **Eligibility of voters:** To be eligible for voting, the worker-employees must be at least 18 years old and have worked in the enterprise or establishment at least three months and have never been deprived of the voting right.

References

LL Art. 285, 286; LTU Art. 38, 39, 40; PK No. 302, 2 July 2018 (MoLVT) CL. 1, 2, 3, 6, 10.

2. **Voters and voting constituencies:** In the election of the personnel delegates, if an enterprise or establishment has more than 51 worker-employees, voters must form two voting constituencies. The first voting constituency will vote for the personnel delegates who represent ordinary worker-employees. The second voting constituency will vote for the personnel delegates who represent the managers, those who have tertiary education diploma, and those with high skills. If there are less than eight people in the second voting constituency, elections will be held with one combined constituency.
3. **Registration of voters**: Worker-employees must register for election.
4. **Candidates:** Worker-employees can volunteer to stand as candidates for the election or be nominated by the labor union (normally members of the union). Candidates must be at least 18 years old, have worked in the enterprise or establishment for at least 3 months, and must be able to read and write Khmer. The number of candidates nominated by the union cannot exceed the number of allocated seats. Foreign worker-employees can also stand as candidates but, in addition to the foregoing criteria, they must have right to stay in Cambodia until the end of the term of the personnel delegate.

References

LL Art. 287, 289, 291, 292; LTU Art. 33, 34, 35, 36, 38, 42; PK No. 302, 2 July 2018 (MoLVT) Cl. 2, 3, 6, 10; AC Award No. 67/04, 07/06, 203/12, 109/13, 170/14.

5. **Place of election:** The election should be held in the enterprise or establishment during working hours.
6. **Organizer of elections:** The election must be organized by the employer at its materials and financial costs.
7. **Election procedure:** There is no fixed voting procedure for the election of personnel delegates. For example, there is no legal procedure to specify whether the voting is cast on each individual candidate or list of candidates under the proportional voting system. The employer will consult with the person (s) who volunteers to represent worker-employees for election purpose or with representatives of the trade union(s) if the union is present in the enterpriseor

establishment to set procedure of election and date of election.

8. **Preparation of elections:** At least three days before the election date the employer must post the election proce dure and the list of candidates. These postings must be accessible to the worker-employees.

9. **Quorum:** The quorum must be more than half of the reg istered voters. If the quorum is not met, the election should be reorganized after 15 days. No quorum is re quired, but the election must follow the procedure used in first election.

10. **Voting:** Voting take place by secret ballots. In order to not disrupt the works, the voters can take turn to vote. They will have two hours break to scrutinize and choose the candidates they prefer.

11. **Contesting the election of the personnel delegate:** All complaints related to the personnel delegate, for example, the right to stand for election and the irregula rities of the election, must be lodged with the Labor Court.

12. **The winner(s):** If the proportional voting system is chosen, the voters can vote as many candidates from the list as they prefer to fill the required seats of the personnel delegates. For example, if there are five candidates and the number of allocated seats is three, the voters must choose only three candidates from list. The candidates who receive the top majority will be elected. In the foregoing example, the top three candidates will win the election.

13. **Term:** The personnel delegate would serve a term of two years and can be re-elected. The term ends by death, resignation, termination of employment contract.

d. Assistant personnel delegate

Every personnel delegate is assisted by an assistant personnel delegate. The formalities and procedure for the election of the assistant personnel delegate are generally the same manner as those of personnel delegate and the requirements for the election of the personnel delegate apply *mutatis mutandis* to those of the assistant personnel delegate. The assistant personnel delegate will replace the personnel delegate who dies, resigns from the position, or whose employment contract terminates.

Number of personnel delegates and assistants required in an enterprise or establishment.

The number of personnel delegates in an enterprise or establishment is allocated as in below table:

	Less than 8 workers	8 - 50 workers	51 - 100 workers	More than 100
Number of delegates	0	1 (one)	2 (two)	2 + 1 for every additional 100 worker-employees
Number of assistant delegates	0	1 (one)	2 (two)	2 +1 for every additional 100 worker-employees

For example, if an enterprise employs 150 worker-employees, the number of personnel delegates should be two, but if it employs 200 employees and workers, the number of delegates should be three.

e. Responsibilities of the personnel delegate

References

LL Art. 284; LTU Art. 41; PK No. 302 (MoLVT) 2 July 2018 Cl. 4

Between the worker-employees and the employer, the personnel delegate is a spokesperson for the worker-employees to the employer. In this regard, he or she conveys grievances on salary issues, the application of labor law, regulations, or the implementation of the collective agreements.

Between the worker-employees and the labor inspector, the personnel delegate brings complaints to the labor inspector on the issues of application of laws and regulations that are under the inspector's jurisdiction.

Health, hygiene, and safety protection: The personnel delegate monitors and calls for the proper implementation of the labor regulations concerning health, hygiene, and safety of the worker-employees.

Internal regulations: The personnel delegate is consulted in the drafting of the internal regulations of the enterprise or establishment and provides written inputs to the draft or to the amendment of existing internal regulations.

Collective bargaining agreement: In case there is no labor union in the enterprise, the personnel delegate can enter into a provisional collective bargaining agreement with the employer. The term of this collective bargaining agreement should not exceed two years. In case a collective bargaining agreement is later executed between the most representative labor union and the employer, then the provisional agreement must come to an end.

References

LL Art. 95, 284; LTU Art. 41; PK No. 302 (MoLVT), 2 July 2018 Cl. 4

Layoff of worker-employees: The employer must consult with the personnel delegate when it plans to dismiss the worker-employees because of reduction of activities or reorganization of the enterprise or establishment. In this regard, the law provides for the personnel delegate to provide written inputs to such measures.

Reference

PK No. 302 (MoLVT) 2 July 2018 Cl. 7

Support from the employer: The employer is obligated to provide the personnel delegates a place of work, meeting room, supplies, and area for posting information. The employer provides the personnel delegate two hours per week from work to perform their representation duties and retain the same wage and accessory wage of the delegate for this time.

f. Labor union at enterprise level

References

ILO C87 Art. 2; LL Art. 273, 279, 280; LTU Art. 4, 6, 7, 10.

The labor union is another representative entity of worker-employees at the enterprise level. Unlike the personnel delegate, whose election is organized with the assistance of the employer, a labor union is established by the worker-employees independently from the employer to represent its members. A labor union can be formed in an enterprise or establishment with a minimum of 10 worker-employees. Each worker-employee, is entitled to join, not to join, or to leave the union. There can be more than one union in an enterprise/establishment.

References

LL Art. 274, 275, LTU Art. 14

A labor union is a legal entity, therefore it has the right to bring a lawsuit in court against an individual or entity, can be sued in its own name, can own a movable or immovable property in its own name, can receive donations without prior approval from any authority, and can contract with any party.

The main functions of the labor union are to study, promote and defend the rights and interests of those individuals covered by its charter. For example, the labor union monitors for violations of the Labor Law and can put forward its grievances to the employer or the government to address any violations.

References

LL Art. 271; LTU Art. 49; AC Award No. 054/18.

Membership in the labor union: As stated above, a worker or employee is free to form or join a labor union. If a worker or employee who is already a member of one union seeks to join another union within the same enterprise or establishment, the latter union must inform the employer of the new member and the worker will become a member of the latter union.

References

LL Art. 129, 281; LTU Art. 22, 26; PK No. 300 (MoLVT) 2 Jul 2018 CL. 2, 3, 4; AC Award No. 03/03, 94/04, 91/07.

Duties of members of the labor union: Each member of the labor union must pay membership due, the amount of which is determined by the union charter. Members can pay the dues directly to the union or allow the employer to deduct the due amounts from their salaries and transfer them to the union bank account. The deduction is applied at the same time of salary payment.

Generally, the employer has no right to deduct the salary of a worker or an employee. However, the worker or employee can authorize deductions for dues to the union to which the worker or employee belongs. To prove that a worker or employee has accepted a membership in a particular union and agreed that his or her salary be deducted, that worker or employee must write a consent letter to the employer to allow it to deduct their salary.

The collective bargaining agreement cannot stipulate the deduction of salary in favor of union membership due or it becomes null and void by operation of law. However, the worker-employee may authorize in writing the employer to deduct the salary to pay union membership dues.

References

PK No. 300 (MoLVT) 2 July 2018 CL. 1, 2, 3, 4, 5; AC Award No. 018/18, 104/19, 115/19.

Union dues may be deducted from a worker-employee according to the following procedure:

1. A labor union can request the employer to deduct the worker-employee salary
2. The deduction of salary for membership must be stipulated in the charter of the requesting union

3. There must be a written approval from the concerned worker-employee who is a member of the requesting union. The request for deduction must be attached with the worker-employee's written approval
4. The request must b e submitted to the employer at least 10 days before the date of deduction
5. The deducted amount of due must be transferred to the bank account of the requesting union

The worker-employee can refuse the deduction of salary to pay the membership due at any time but must submit a letter to the union that he or she is member at least 15 days before the date of their salary payment. The union is responsible for providing a copy of the letter to the employer at least five days before the date of salary payment.

References

AC Award No. 46/10, 050/12, 54/18

There are instances where the salary of a worker-employee was deducted twice to pay dues to two labor unions in the same establishment. For example, the salary of worker A was deducted for union X and union Y at different times. Worker A registered with union X and later she registered with Y. The employer deducted the salary twice to unions X and Y and refused to cancel the amount due to union X since worker A had signed two letters of approval to both unions. In this case worker A is only the member of union Y and the employer was ordered to cancel the membership due to union X.

References

LTU Art. 5, 49, 50;, 59 (new); PK No. 99 (MoLVT) 21 April 2004 Art. 19 (Establishment of Arbitration Council) AC Award No. 180/16, 243/16 021/18

Rights of labor union members: In accordance with the provisions of the laws, regulations, collective bargaining agreement, members of a labor union have the right to be represented by the union, including in connection with the disputes with the employer, communication with the employer. For example, the union can represent its members in the negotiation with the employer to resolve certain grievances or disputes, in the conciliation with the officials of Provincial Labor Department or Ministry of Labor and Vocational Training's Dispute Department, and in arbitration proceedings before the Arbitration Council. Members of a union also have the right to elect the leaders and the governing body of the union, stand for election of leadership positions of the union, participate in the union activities.

References

LL Art. 267; LTU Art. 13; PK No. 301 (MpLVT), 2 July 2018 Cl. 1, 3, 4 and attached forms

Organizational structure of the labor union: The labor union is entitled to adopt its own charter or constitution, and administrative regulations (internal rules of the union) to govern its internal administration. The labor union is led by a leadership team, generally comprising the president, vice-president, secretary, and treasurer or finance officer.

A general assembly of all union members is organized annually to review the financial statements and adopt budgets for the next year, review activities, conduct strategic planning, examine issues and challenges, and adopt certain resolutions.

References

LTU Art. 20 (new); CC Art. 21

Qualification of the labor union leadership: The union leaders and the person responsible for the administrative affairs must meet the following criteria:

1. For Cambodian nationals, they must be at least 18 years old or If they are minors, they must have reached the age of 16 and are declared by court or deemed to have been emancipated (if they are married minors). They must self declare that they have actual and legal address

2. For foreign nationals, they must be at least 18 years old or If they are emancipated minors, they must also have been working in Cambodia and can read and write Khmer. In addition, they have the right to stay and have permanent residence in Cambodia in compliance with the Law on Immigration of Cambodia

References

LTU Art. 13, 20 (new); PK No. 249 (MoLVT), 27 June 2016 and attached form

Charter of the labor union: The charter or the constitution of the union is highest hierarchy of legal instrument of the union. The charter must meet the minimum content requirements:

1. Name, logo, address, and sample seal of the union

2. The description of the objectives of the labor union and scope of coverage by occupation or sector of the union. The charter can cover all the worker-employees of the enterprise/establishment or a category or certain categories of worker-employees.

3. Membership of the union and rights and duties of each member

4. The method of maintaining financial records and the publication of annual financial statement of the union

5. Determination of quorum for meetings, which is at least 50%+1 of all members of the union, concerning the decision to go on strike, the amendment of the charter, and the general assembly.

6. The number of votes necessary for the decision to go on strike must be at least 50%+1 of the quorum

7. The procedure for the election by secret votes of the leaders

8. The term of the leaders and those responsible for administrative affairs and possible re-election

9. Determination by the general assembly of the union of the monthly membership due and the method of payment.

10. Qualifications of the union leaders and the persons responsible for the administrative affairs.

Reference

PK No. 249 (MoLVT), 27 June 2016 Attachment 3-A

Administrative Regulations: A labor union is required to have internal administrative rules of operation. The Ministry of Labor and Vocational Training has provided a template called "Administrative Regulation" of such regulations. The regulation must describe how the general assembly should proceed, how the meetings should be called and organized and minutes to be taken, how the resolutions of the labor union are passed, powers of the leaders, disciplinary actions, how amendment to the existing administrative regulations can be made, and the publication of these rules.

References

ILO C87 Art. 2; LTU Art. 12, 14, 20 (new), 80; PK No. 249 (MoLVT) 27 June 2016 Cl. 1, 2, 3, 5, 6; PK No.250 (MoLVT) 27 June 2016 Cl. 2 AC Award No. 221/16, 225/16 036/17, 002/18

Registration of the union: According to the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), a labor union can be established without previous authorization. However, in order to obtain the legal entity status and to receive certain legal protection, the union must be registered with the Ministry of Labor and Vocational Training (either the Provincial Department of Labor and Vocational Training if the union is based in the province or the Department of Labor Disputes of Ministry of Labor and Vocational Training if the union is based in Phnom Penh).

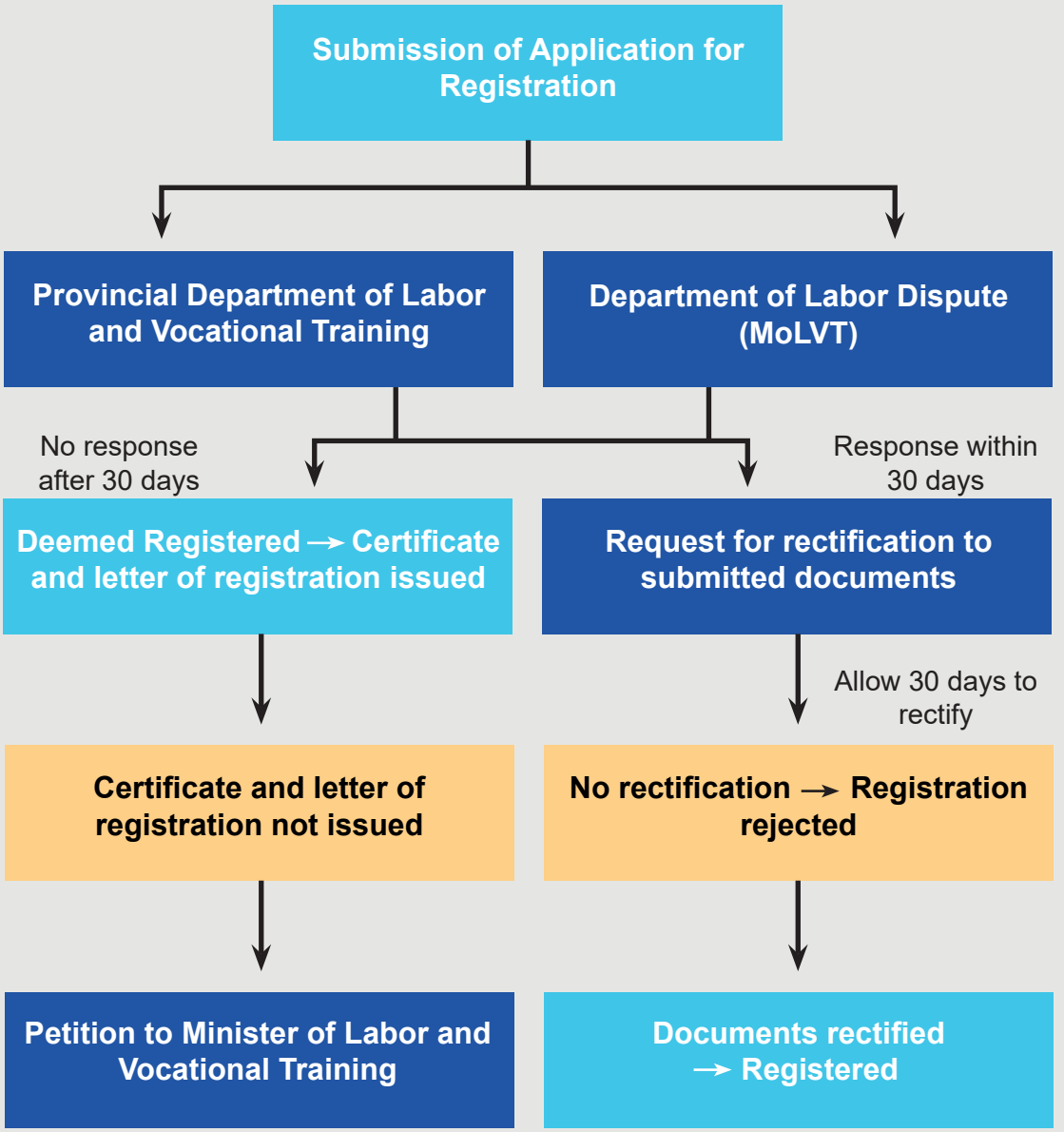
A union that is not registered or whose registration is delayed or cancelled but still conducts its activities is deemed illegal, which are liable to written warning and, if not abiding by such warning, are liable to a fine not exceeding five million riels (approx. US$1,250).

The application for union registration comprises the following documents:

1. Application form (3 copies)
2. Charter of the labor union (3 copies)
3. Administrative regulations (3 copies)
4. List of leadership team (3 copies)
5. Brief biography of each member of the leadership team attached with 4 cm by 6 cm photograph (3 copies)
6. Self-declaration of each member of the leadership on education and criminal clearance (3 copies)[4]
7. Minutes on the election on the establishment of the union (3 copies)
8. List of members participating in the election to establish the union (3 copies)
9. Written undertaking to provide information on bank account (3 copies)
10. If the leader it is a foreigner, letter from competent authorities certifying the right to stay and permanent address of residence (3 copies)

[4] Though the Criminal records are not required under the amendment to the Law on Trade Union Article 20 (new), the Prakas No. 249 has not yet amended this requirement.

Flow Chart of Application Process



References

PK No. 249 (MoLVT) 27 June 2016 Cl. 4; PK No. 251 (MoLVT) 27 June 2016 Cl. 2

The Department of Labor Disputes must issue the certificate of registration and related letter within 30 working days from the date of receiving the application. The registration is deemed successful if there is no response from the Department after the 30-day period has lapsed. The applicant union can again submit a request to the registration unit to issue the certificate of registration and a letter confirming the registration. If after five days of such request no response is provided, the union can petition to the Minister of Labor and Vocational Training to remedy the problem.

Fifteen days after the application for registration, the applicant union must follow up on the progress of the registration with the registration unit. If the application is rejected, the applicant union can also submit a petition to the Minister of Labor and Vocation Training.

References

LTU Art. 16, 20 (new); PK No. 249 (MoLVT), 27 June 2016 Cl. 4

Delay of registration: The registration of a labor union can be delayed based on the following grounds:

1. The objectives of the union are not intended to protect or promote the rights and interest of the people the union charter intends to cover
2. The union lacks independence because it is under the influence of the employer
3. The union does not provide enough documents as required (see "Registration of the union" above)
4. The charter of the union does not meet the minimum requirements of contents as required by the Trade Union Law and related regulations
5. A member or members of the leadership team does not meet the qualifications required by the Law on Trade Union
6. The name of the applicant union is misleadingly identical or similar to the name of the union that has already been registered
7. The objective or the coverage of the union is not clear and is likely to deceive the public
8. The applicant union is being sued
9. Information is not so clear that requires clarifications

Representativeness of a labor union: In an enterprise or an establishment there may be more than one union. Some may be more representative than the others. The representativeness of a labor union refers to its legal capacity to represent the worker-employees. It is measured by the number of worker-employees who are members of a particular labor union. A labor union that has the largest membership may attain the status of most representative union. The other unions are minority unions.

References

LL Art. 277; LTU Art. 10.1, 54 (new), 59 (new)
AC Award No. 014/20

Minority labor union: A minority labor union must fulfill the legal criteria for any union under the law:

1. The labor union must be duly registered as stated above
2. Its membership is evidenced by the slips of salary deduction for membership dues
3. It must have at least 10 members

The roles of the minority union include the provision of legal and professional training to its members, legal advice, and advice on labor market; the representation of its members in individual disputes and collective disputes that are not arising of the implementation of the collective bargaining agreement; regular participation in the collaboration mechanisms established at the workplace; provision of data concerning its members and administrative supports to its members.

References

LTU Art. 54 (new), 56, 60; PK No. 303 (MoLVT) 2 July 2018 Cl. 3, 4, 5, 6, 15.
AC Award No. 187/16

Most representativeness of a labor union: The labor union that attains the status of most representativeness is entitled to bargain on behalf of all workers in an enterprise or establishment, even those worker-employees who may not be its members. There are three ways to obtain this status:

1. If in an enterprise or establishment **there is only one union**, this union would receive a most representative status (MRS) in that enterprise or establishment if it meets the following requirements:

   (1) it is duly registered
   (2) its membership is evidenced by the slips of salary deduction for membership dues
   (3) its membership is at least 30% of the worker -employees in an enterprise/establishment
   (4) it has programs and activities that provide professional, cultural, and educational services to its members.

2. If in an enterprise or establishment there are **more than one union**, a union may receive an MRS if it can secure the support of other unions join it in a particular initiative to bargain with the employer so the combined membership makes up at least 30% of the total number of workers-employers in an enterprise. For example, the membership of union A represents 20% of the total number of worker-employees in an enterprise, union B represents 15%, and union C represents 10%. Union A can acquire MRS if it secures the support of union B to achieve a combined membership of 35% of all worker-employees. Likewise, union C can acquire MRS if it secures the support of unions A and B to achieve a combined membership of 45% of all worker-employees.

3. If the above criteria cannot be met, a union can initiate an election to garner at least 30% of votes of the total worker-employees in the enterprise or establishment. The election must follow the following procedure:

   (1) All worker-employees in an enterprise/establish ment have the right to vote

   (2) The union which initiates the election conducts a campaign by presenting to the voters its own programs to be carried out in case it obtains MRS. This campaign is conducted outside the working hours, or during working hours if the employer so agrees

   (3) The election is organized after working hours, or during working hours if the employer so agrees. The vote must be conducted by secret ballots. The counting of the ballots and the declaration of the results must be made public immediately after the voting is closed

   (4) The minutes of the election must be signed by the representatives of all the participating unions

   (5) If the election is in favor of MRS, the organizing union mustsecure a certification from the Depart ment of Labor Disputes of the Ministry of Labor

and Vocational Training, which is the MRS certifying authority.

(6) The members of the union's leadership team are the only persons who are permitted to file a request for certification. The request must be accompanied by (1) an application for MRS certification (1 copy); (2) copies of registration letter or letters of recognition of union leaders (2 copies); list of members who have membership cards (2 copies); minutes of the election attached with the list of unions standing for election and list of voters (2 copies). These documents must be submitted to the Provincial Department of Labor and Vocational Training, if the unions are based in the provinces, or to the Department of Labor Disputes of the Ministry of Labor and Vocational Training, if the unions are based in Phnom Penh.

(7) The duration of the MRS lasts for two years from the date of certification.

g. Federation

References

ILO C87 Art. 2, 3, 4, 5, 6, 7; LTU Art. 10

Worker-employees have the right to establish and join organizations of their own choosing. By the same token, the unions themselves have the right to establish and join the federation of their own choosing as well. A federation of unions is an alliance of local unions, unions of the same profession or unions of the same economic activities. A federation can be formed by at least seven local unions that are duly registered. The federation has similar rights as local unions, namely the right to be established without prior authorization, draw up its charter or statutes, elect its representatives, organize its administration and activities, formulate its programs, and not be liable to be dissolved or suspended by administrative authority.

h. Confederation

The right to establish and join the federation is also applicable to that of the confederation. The confederation is a voluntary alliance of federations. The confederation can be established by at least five federations that are duly registered.

B. Employers' organizations

References

ILO C87 Art. 2, 3; LL Art. 267, LTU Art. 9, 10, PK No. 249 (MoLVT) 27 Jun 2016

Employers have the right to establish or join employers' association of their own choosing without previous authorization. That association has the right to draw up their constitution or charter and administrative regulations to govern themselves so long as that constitution or charter and administrative regulations do not contravene public order and the applicable laws. They are free to elect their representatives. They also have the right to formulate their programs and activities. The employers' association can be established by at least nine enterprises or establishments. This is known as sectoral association, such as the Garment Manufacture Association of Cambodia (GMAC) representing the garment industry in Cambodia; Phnom Penh Hotel Association representing hotel and resort businesses in Phnom Penh; the Cambodia Footwear Association representing the enterprises manufacturing footwear products; the Association of Banks in Cambodia and Cambodia Microfinance Association representing respectively the banking and microfinance institutions.

An employers' association is established for the purpose of research, training, promoting the interests and protecting the rights as well as moral and material interests, collectively and individually, of persons covered by the charter of the employers' association. The employers have the right to establish a federation of employers by at least six employers' associations that have been duly registered. The federation of employers represents the employers at the national level. For example, the Cambodia Federation of Employers and Business Association (CAMFEBA) is a federation of employers representing employers in Cambodia.

References

LTU Art. 13, 21 (new); PK No. 249 (MoLVT), 27 June 2016 CL. 3 and attached forms

Charter of employers' association: Like the charter of the labor union, the charter of the employers' association is highest legal instrument of the association. The charter must have minimum required contents:

1. Name, logo, address, and sample seal of the employers' association
2. The description of the objectives of the employers' association and scope of coverage of the association
3. Membership of the employer's association and rights and duties of each member

4. The method of maintaining financial records and the publication of annual financial statement of the association
5. Determination of quorum for meetings, which is at least 50%+1 of all members of the association, the amendment of the charter, and the general assembly
6. Determination of the lockout procedure
7. The procedure for the election by secret votes of the leaders
8. The term of the leaders and those responsible for administrative affairs and possible re-election
9. Determination by the general assembly of the members of the employers'association of the monthly membership due and the method of payment.
10. Qualifications of the union leaders and the persons responsible for the administrative affairs.

Leadership of the employers' association and their qualifications: Like the labor union leadership, the employers' association is led by a president, vice-president(s), a general secretary, a treasurer. They must be at least 18 years old, self-declare on the actual and legal address of residence. For foreign leaders, they must be at least 18 years of age, have the right to stay and have a permanent residence in Cambodia in accordance with the Law on Immigration of Cambodia, and have invested or worked at least two consecutive years in Cambodia.

Administrative regulations of the employers' association: Employers' association can establish their own rules for their internal rules of operation. The regulations may stipulate provisions on the general assembly called "administration regulations", conduct of meetings and minutes, decisions in the association, disciplinary actions against members, amendment and publication of the regulations.

Registration of the employers' association: The provisions of the Law on Trade Union and the Prakas on Procedure on Registration of Labor Union and Association of Employers (No. 249 dated 27 June 2016) are applicable to both the labor union and employers' association.

References

LL Art. 268; LTU Art. 11, 12; PK No. 249, (MoLVT) 27 June 2016 CL. 3; PK No.250 (MoLVT) 27 June 2016 CL. 2

The application for employers' association registration comprises the following documents:

1. Application form (3 copies)
2. Charter of the employers' association (3 copies)
3. Administrative regulations (3 copies)
4. List of leadership team (3 copies)
5. Brief biography of each member of the leadership team attached with 4 cm by 6 cm photograph (3 copies)
6. Self-declaration of each member of the leadership on education, criminal clearance, (3 copies)
7. Minutes on the election on the establishment of the employers' association (3 copies)[5]
8. List of members participating in the election to establish the employers' association (3 copies)
9. Written undertaking to provide information on bank account within 45 days of the date of registration of the employers' association (3 copies)
10. If the leader it is a foreigner, letter from competent authorities certifying the right to stay and permanent address of residence (3 copies).

The process of registration of the labor union applies mutatis mutandis to the registration of the employers' association. The registration provides the association with the rights and benefits conferred by the laws (See "Labor union at enterprise level: Registration of the union" above).

C. Bargaining Unit

References

ILO C154 Art. 2; LTU Art. 54 (new), 69, 72.

Collective bargaining refers to negotiations between the employers' organizations or their representative organizations and workers or their representative organizations for the purpose of determining working conditions and terms of employment (e.g. wages, benefits, allowances, working time, annual leave, etc.); regulating relations between employers and worker-employees or unions (e.g. rights and responsibilities of each party to ensureproductive communications and workplaces); and/or regulating relations between employers' organizations and workers' organizations.

[5] Though the Criminal records are not required under the amendment to the Law on Trade Union Article 20 (new), the Prakas No. 249 has not yet amended this requirement.

Only the most representative union (See "Most representativeness of a labor union" above) that has the exclusive right to collectively bargain with the employer. In case no unions have MRS, they can form a "bargaining council." The conditions for the formation of the bargaining council are to be determined by the Prakas of the Minister of Labor and Vocational Training (not yet adopted at the time of writing).

D. Government labor unit

a. Department of Inspection and labor inspector

References

SD No. 283, 14 Nov 2014 Art. 15; LL Art. 343; PK No. 318 (MoLVT), 7 Aug 2017 Cl. 1

The Department of Inspection is subordinate to the General Department of Labor of the Ministry of Labor and Vocational Training. The Department of Inspection plays an important role in inspecting employment conditions and ensuring compliance with the laws and regulations. The Department of Inspection is responsible for developing regulations related to labor conditions, and monitoring the implementations of the laws and regulations related the general labor conditions, hygiene, and labor safety. It strengthens the implementation of the Labor Law and international conventions related the labor conditions, hygiene, labor safety, and labor rights. The Department fields and supervises the officers or agents to inspect the labor conditions at the enterprise or establishment level and reports to all labor irregularities and violations.

The inspection is conducted by the labor inspector, who is an officer appointed after taking oath of office. The inspector must abide by the code of ethics adopted by the Ministry of Labor and Vocational Training and shall perform his or her duties impartially and sincerely without disclosing all trade secrets or business processes even after leaving the jobs. The tasks of the inspector are to ensure the Labor Law and related regulations are properly implemented; provide technical advices to the worker-employees on the means to effectively implement to laws; and report all violations that are not covered by the provisions of the Labor Law. Labor inspector can report about labor violations to his or her superior and request intervention from relevant authorities to deal with those violations.

References

LL Art. 345, 346, 347

Power of the labor inspector: A labor inspector, at the expense of the Ministry of Labor and Vocational Training, can call technical experts with different areas of expertise to jointly conduct an inspection to assure the proper application of the legal provisions concerning hygiene, workers' safety, and to investigate whether the substances or materials and the processes used have any negative effects on the worker-employees.

For legal compliance, he or she can access the facilities to be inspected without notice and interview the employer or worker-employees with the presence of a witness, access all documents that are maintained by the employer in accordance with the legal provisions on working conditions, or take samples of substance or materials used for purpose of analysis.

After the inspection, the inspector can present his or her findings to the employer or his representative and to the worker-employees. The inspector requires the employer to take necessary steps to comply with the laws within a period of time. In case of a finding of an imminent and serious danger to the health or safety of the worker-employees, the labor inspector can require the employer to take immediate actions to address that danger. Lastly, the inspector can impose fines against those who violate the Labor Law and its related regulations.

b. Department of Labor disputes

References

LL Art. 303, 304, 305, 306; PK No. 283 (MoLVT), 14 Nov. 2014 Cl. 16

The Department of Labor Disputes is also subordinated to the General Department of Labor. The Department is responsible for the resolution of labor disputes through conciliation in case there is no other procedure stipulated by a collective bargaining agreement. The officials of the Department are nominated by the Minister of Labor and Vocational Training to conduct conciliation of collective disputes brought to the Department when disputes cannot be resolved at the enterprise/establishment level. The Department serves as the Secretariat of the Arbitration Council. If the disputes cannot be conciliated by the nominated officials of the Department within 15 days of the nomination, except for justified absence of the parties, they are forwarded through the Secretariat to the Arbitration Council.

The Department of Labor Disputes is also responsible for the preparation of labor regulations and strengthening the application of the Labor Law and international instruments concerning labor rights and the right to establish professional organizations.

The Department is responsible for the registration of the labor unions and employers' organizations and collective bargaining agreements and the issuance of the most representative status to the labor unions.

E. Tripartite organization

a. Labor Advisory Commission

References

LL Art. 357; SD No. 47, 11 May 2006 Art. 1, 2 and SD No. 135, 22 Sep 2015 Art. 7 (new)

The Labor Advisory Committee is an assembly of representatives of the employers, employees, and the government working together with a view of improving labor conditions and addressing labor issues. In this regard, the Committee is tasked to research and collect data concerning employments, occupations, wages, domestic movements of workers and migrations, moral and material conditions of workers/employees, hygiene, and labor security. Specific tasks of the Labor Advisory Committee include making recommendations on minimum wages. The Committee passes a resolution by favorable, anonymous votes. If anonymity cannot be reached on a certain issue in two separate meetings, the resolution is passed by a majority of members who cast votes.

The Committee is composed of 14 government representatives, seven union representatives, and seven employers' representatives:

- Minister of Labor and Vocational Training or his representative, Chairperson
- Representative of the most representative union at national level, Vice Chair
- Representative of the most representative of the employers' organization at national level. Vice Chair
- Representative of the Ministry of Economy and Finance
- Representative of the Ministry of Commerce

- Representative of the Ministry of Industry, Mining, and Energy
- Representative of the Ministry of Health
- Representative of the Ministry of Agriculture, Forestry, and Fishery
- Representative of Ministry of Women's Affairs
- Representative of Ministry of Environment
- Representative of Ministry of Public Work and Transportation
- Representative of Ministry of Social Affairs, Veterans, Youth Rehabilitation
- Representative of Ministry of Interior
- Representative of Ministry of Justice
- Representative of Ministry of Tourism
- Representative of the Council of Development of Cambodia
- Six representatives of the workers/employees of the most representative unions at national level
- Six representatives of the most representative employers' organizations at national level

b. National Council for Minimum Wage

References

LMW Art. 16, 17

As mentioned, one of the responsibilities of the Labor Advisory Committee is to make recommendations as to the minimum wage. This duty seems to be entrusted to the National Council for Minimum Wage under the Law on Minimum Wage passed on 6 July 2018. The Council is tasked to conduct scientific study on matters related to the minimum wages, coordinate and facilitate all relevant stakeholders to study and discuss the minimum wage, make recommendations as to the minimum wage, benefits and the scope of application of the minimum wage to the Minister of Labor, and to disseminate the information and promote social dialog on the minimum wage.

The Council is composed of 48 members, of which one third respectively from the government, representatives of workers/employees, and representative of employers.

SECTION THREE

OPENING AN ENTERPRISE OR ESTABLISHMENT

Before operating an enterprise, the owner must declare the opening of the enterprise to the Ministry of Labor and Vocational Training. The declaration of the opening of the enterprise provides certain information to the Ministry's officials on the identity, nature, and location of the enterprise, internal regulations governing the worker-employees employed in that enterprise, and the movement of labor in the enterprise. That information can, for example, help the Ministry's inspectors to keep track of the compliance with laws and regulations concerning labor.

When closing an enterprise, the owner must file a declaration of closure with the Ministry in order to discharge itself from the obligations to the worker-employees and the government.

A. Distinction between the opening of an enterprise and the registration of a company or a non-profit organization

The registration of the company or the non-commercial organization has its purpose of declaring that the company or organization exists as a legal entity. The registration of a commercial company occurs with the Ministry of Commerce and the registration of a non-profit organization occurs with the Ministry of Interior.

References

LL Art. 17, 369

The declaration of the opening of an enterprise or establishment has the purpose of providing information to the Ministry of Labor and Vocational Training about the location of the enterprise employer, worker-employees, etc. so that the government can monitor labor compliance in that enterprise or establishment, among other things. The declaration must be made before the enterprise starts its operations. An employer who starts the operations of the enterprise or establishment without submitting a declaration to the government may be liable to a fine of 61 to 90 days of the daily reference wage (40,000 riels per day of violation).

The entities that are required to declare the opening of its

enterprises or establishments are those in the industrial, commercial, mining, artisanal, services, agricultural land transportation, fluvial transportation sectors. These enterprises can be public, semi-public, or private.

B. Procedure for the opening of an enterprise or establishment

The owner or the management of an enterprise must apply for the opening of the enterprise or establishment. The application consists of two declarations: the declaration of opening of the enterprise and a declaration concerning staff. The application must be submitted to the Department of Labor Inspection of the Ministry of Labor and Vocational Training if the enterprise is located in Phnom Penh; to the Provincial/ Municipal Office of Labor and Vocational Training if it is located in the province or in a municipality.

Reference

PK No. 288 (MoLVT) 5 Nov 2001 Cl. 2

The declaration of opening of the enterprise provides the information, among other things, about the date of opening, address of the enterprise, name and nationality of the owner of the enterprise, form of the enterprise (sole proprietorship, limited company, etc.), type of enterprise (industrial, commercial, service, artisanal, agricultural, or construction enterprise), total number of worker-employees (disaggregated by sex-female and male, nationality, range of age - 15 to 18 years of age), number of worker-employees under 18 years old who stay in the enterprise facilities (disaggregated by sex), types of night work for women or children, types of machinery used, hazardous materials used, weekend (Sunday or other week-day).

The declaration concerning staff lists the personal data of each worker-employee. These include the position, sex, nationality, date of birth, serial number of the employment book, monthly salary, method of payment of salary, date of employment, level of education or professional level, number of hours worked in a week.

C. Changes in the enterprise

After the opening of the enterprise, if there is change of address of the enterprise, production line, owner, or if the enterprise is closed, the owner or management must file a notice of change within 30 days from the date when the change occurs to the same authority that receives the application for the opening of enterprise.

References

LL Art. 21; PK No. 288 (MoLVT) 5 Nov 2001 Cl. 3

If there is staff change, the owner or the management of the enterprise must file the notice of staff change with the same authority that receives the application for the enterprise opening. Staff change occurs when there is recruitment of a new worker-employee or termination of any worker-employee.

The notice of staff change must be filed within 15 days of the date of recruitment or termination. For an agricultural enterprise, the time limit for the report is 30 days.

The owner or management of the enterprise does not need to provide notice of a staff change in case of occasional or casual employment and whose consecutive working days are less than 30 days. The worker-employee is hired for occasional employment when he or she is assigned to take a temporarily vacant job for a fixed duration or when the volume of work is temporarily increased. Also, the notice is not required for intermittent employment with a duration that does not exceed three months in 12 consecutive months. For example, from January to December, a worker works in March, June, and September; the filing of notice of staff change for this intermittent work is not required.

The notice of staff change contains the same information as that provided in the notice of opening of the enterprise.

D. Closing

References

LL Art. 18, PK No. 288 (MoLVT) CL. 3 AC Award No. 07/20

The closing of the enterprise or establishment must be notified to the Department of Labor Inspection of the Ministry of Labor and Vocational Training if the enterprise is located in Phnom Penh; to the Provincial/Municipal Office of Labor and Vocational Training if it is located in the province or in a municipality. The notice must be filed within 30 days of the date of closure.

SECTION FOUR

INTERNAL REGULATIONS OF AN ENTERPRISE OR AN ESTABLISHMENT

An enterprise or establishment that employs eight or more worker-employees is required to have a document called internal regulations. An enterprise or establishment that does not have that document may be fined from 10 to 30 days of the daily reference wage.

The internal regulations are a unilateral act of the employer, though the employer is required to consult with the personnel delegate and the regulations must be approved by the labor inspector before taking effect. The internal regulations are usually incorporated by reference in the employment contract. Even if the reference to internal regulations is omitted in the employment contract, the regulations are binding on all worker-employees in the enterprise or establishment.

The internal regulations are a set of rules that must be consistent with the provisions of Labor Law and collective agreements. They apply to the employer and worker-employees concerning the employment conditions, benefits, health and safety, and discipline. It is optional for an enterprise of less than eight worker-employees to establish internal regulations.

A. Process of developing the internal regulations

a. Contents of the internal regulations

The internal regulations are a unilateral act of the employer because they are developed by the employer. Even though it is required to consult with the representative of the worker-employees (personnel delegate), the employer is not bound by his or her inputs.

References

LL Art. 22, 23, 27; SCN No. 14 (MoLVT), 16 Aug 2002; AC Award No. 94/04, 76/05, 181/16, 019/17.

The internal regulations adapt the general provisions of the Labor Law and the collective agreement to the type of enterprise. The regulations may include adapted provisions related to conditions of hiring, calculation and method of payment of wage and wage accessory, in-kind benefits, working hours, leave, notice, hygiene and safety of the worker-employees, obligations and disciplinary sanctions that may be imposed on worker-em

ployees. The internal regulations may also include provisions on prevention of sexual harassment, obligations of confidentiality.

- **Conditions of hiring:** The internal regulations may describe the conditions under which people can be accepted into the enterprise or establishment employment. They may be required to complete different forms, including medical clearance and periodic health examination, initial examination of physical fitness. The internal regulations may include provisions on different types of employment contract, for example the fixed duration contract, unlimited duration contract, probation period, apprenticeship, etc.
- **Calculation and payment of wages and accessory wage:** The internal regulations may set out the wages, accessory wages/salaries, bonuses, mode of wage payment and deduction (e.g. tax deduction; settlement of advances by the employer).
- **In-kind benefits:** It is a provision of non-monetary benefits, including vehicles, meals, uniforms, equipment, tools. The internal regulation stipulates under what conditions these items of in-kind benefits can be provided and how they should be used and protected.
- **Working hours:** The internal regulations may include how working hours are allocated, for example, into daytime working hours and night shift, break hours, overtime.
- **Rest and Leaves:** Provisions regarding weekends, public holidays, annual leaves, special leaves, sick leaves, and maternity leaves (or possibly paternity leaves) may be included in the internal regulations.
- **Notice:** The internal regulations may include notice period for the termination of employment contract, for extension of employment contract, and for resignation, etc.
- **Hygiene and safety measures:** The employer must develop measures on how to maintain the cleanliness of the working place, water and air quality, noise control, lighting, food safety, and generally the measures to maintain the health of worker-employees.
- **Obligations of worker-employees:** Internal regulations may set out obligations such as respect for working hours, respect for the instructions of the supervisors, provisions regarding hygienic and safety measures, the terms and

conditions of the employment contract, and the collective bargaining agreement, if any. Generally, the section on the obligations of worker-employees provide for the disciplinary requirements for the worker-employees.

- **Sanctions applicable to worker-employees:** Internal regulations may also set out sanctions applicable to those who do not respect their obligations. The sanctions must be proportionate to the severity of the misconduct.

A sample of the internal regulations can be found in the Attachment to the Announcement No. 14, dated 16 August 2002 of the Ministry of Labor and Vocational Training.

b. Control of the internal regulations

References

LL Art. 24, 25, 30; SCN No. 14, 16 Aug 2002 (MoLVT); AC Award No. 81/05, 116/15, 181/16, 001/17, 02/17.

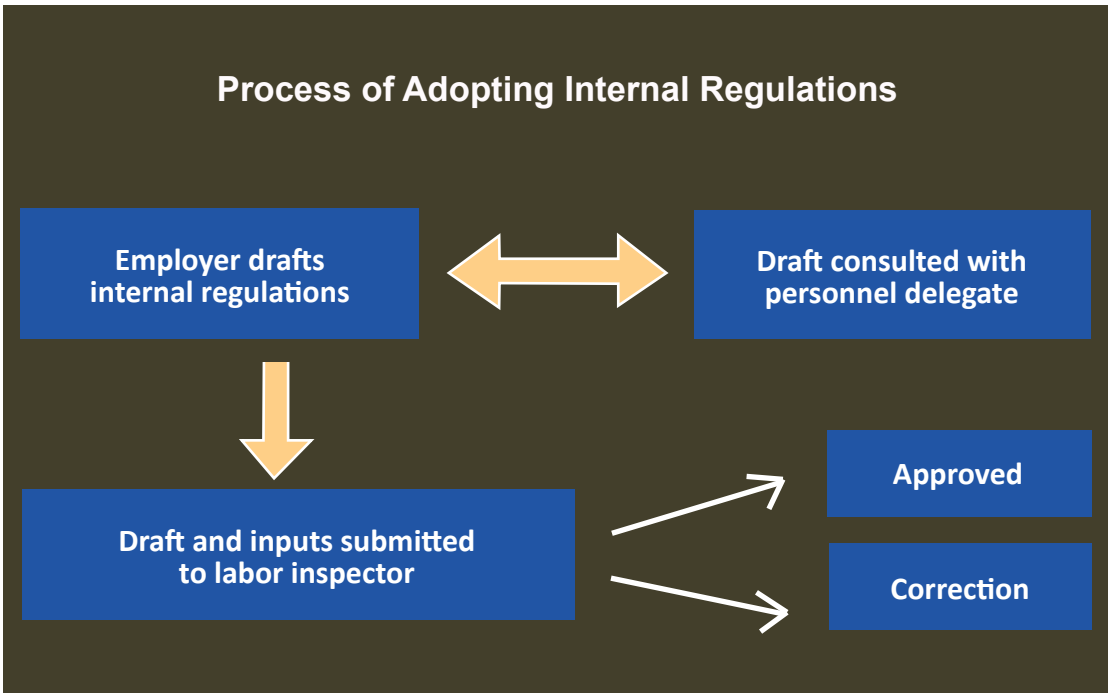
The internal regulations are a document that is initiated by the employer. It provides for rules that are applicable to all worker-employees who accept the employment with the employer. Without control, the rules may go so far as to suppress or restrict the rights and freedoms of the worker-employees provided for by the laws, regulations, and collective bargaining agreement.

In order to avoid negative impacts on the rights and freedoms of the worker-employees, the Labor Law establishes a consultative process and supervisory authority to control the legality of the internal regulations. In this regard, a newly opened enterprise or establishment must prepare the internal regulations (initial version) and submit to the personnel delegate(s) of worker-employees for comments and inputs within three months of the opening. Then, the internal regulations are submitted to the labor inspector for review and approval.

In Phnom Penh, the internal regulations must be submitted to the Department of Inspection of the Ministry of Labor and Vocational Training.

In the provinces, they must be submitted to the Provincial Department of Labor and Vocational Training. Based on the labor inspector's review, if any content is missing or is contradictory to the laws and regulations in force or the existing collective agreement, the labor inspector can send the regulations back to the enterprise or establishment for correction. The approval must be made within 60 days from the date of submission.

Once approved, the internal regulations are applicable to all workers—current or future worker-employees. The amendment to the existing version of the internal regulations must follow the same procedure as stipulated for the preparation of the initial version.



c. Publicity

References

LL Art. 30; SCN No. 14, 16 Aug 2002 (MoLVT); AC Award No. 63/06

The internal regulations must be accessible to all worker-employees. This means they should be posted in a place that is easily visible to them, for example, at the entrance of the recruitment room. Another way to publicize the internal regulations is to attach the copy of the regulations to the employment contract when the contract is given to the worker-employees.

B. Penalty for operating an enterprise or establishment without internal regulation

Reference

LL Art. 361

An enterprise or establishment that operates without internal regulations is subject to a fine from 10 to 30 days of daily reference wage.

C. Connection between the internal regulations and the employment contract

The rights and duties of the worker-employees are defined in the employment contract. The employment contract usually contains the address of the worker-employee, position, salary, mode of payment, job description, working hours, employment starting date and duration of the contract, place of employment, probation period (if any), notice of termination or renewal, etc.

References

LL Art. 65 AC Award No. 94/04, 41/05, 019/18

Obligations are also set out in the internal regulations, such as those listed in **a. Contents of the internal regulations** above. The internal regulations will be binding on all worker-employees. The internal regulations are fixed rules that apply to all worker-employees unless occasionally amended.

Some employment contracts may incorporate the internal regulations by reference. In such case, the duties set out in the internal regulations are added to those spelled out in the employment contract. Even if the contract has not incorporated internal regulations by reference, the worker-employees in an enterprise or establishment are deemed to accept the duties imposed by the internal regulation of that place.

SECTION FIVE

EMPLOYMENT DOCUMENTS

When a person is hired by the employer, he or she is required by law to possess certain documents. These include certificate of physical aptitude, work permit, employment card, payment book.

A. Certificate of physical aptitude

References

LL Art. 247, PK No. 09 (MoLVT) 19 Jan 1994 CL. 1, 3, 5, 6; PK No. 714 (MoLVT-MoEF) 19 Jul 2018 CL. 4

A person, either Cambodian or foreigner, must undertake a medical examination to certify that he or she is apt for the work assigned. The medical examination is conducted by the Department of Labor Health of the Ministry of Labor and Vocational Training. The person can have the examination at the Department of Labor Health if he or she lives in Phnom Penh. The medical staff of the Department will conduct examination at the enterprise or establishment in Phnom Penh or in the province if such examination is requested by the employer located in the province. After the examination, the Department will issue a medical certificate to certify the physical aptitude for official use. The examination bulletin will collect data regarding the following:

- Height, weight, thorax perimeter
- Disease history
- Eyes: right and left
- Ear, nose, throat
- Blood circulation system
- Heart, blood pressure, pulse
- Lung X-ray
- Genital-urological organs
- Neuro system
- Orthopedic system
- Paraclinical examination

The medical file of each worker-employee is a confidential document and cannot be shared with the employer, union, or a third party so they cannot identify any medical issue of the worker-employee. In practice, the examining medic provides his or her conclusion in the examination bulletin. This bulletin serves as a certificate of physical aptitude.

The worker-employer will submit the medical bulletin above to the employer and is forwarded to the Department of Occupation of Ministry of Labor of Vocational Training (in Phnom Penh) or the Provincial Department of Labor (if they are in the provinces) for application for an employment card.

The examination fees are as follows:

Physical aptitude examination	Fees (riels)
Cambodian worker-employee	
Examination at the Department of Labor health	20,000
Examination at enterprise/establishment in Phnom Penh at the request of the enterprise/establishment	24,000
Examination at enterprise/establishment in the Province at the request of the enterprise/establishment	28,000
Foreign worker-employee	
Examination at the Department of Labor health	100,000
Examination at enterprise/establishment in Phnom Penh at the request of the enterprise/establishment	110,000
Examination at enterprise/establishment in the Province at the request of the enterprise/establishment	120,000

B. Employment card

References

LL Art. 32, 34, 35;
PK No. 197 (MoLVT) 20 Aug 2015
CL. 1, 5.

An employment card (in Khmer a Cambodian employment book or *Sievphoev Kangea Chon Kampuchea*) is used to identify and track the employment history of the working person. An enterprise or establishment cannot employ a person who does not possess an employment book. The worker-employee must apply for the card with the Department of Occupation and Manual Labor of the Ministry of Labor and Vocational Training within seven days of the employment start date (if the applicant is in

Phnom Penh) or Provincial Office of Labor and Vocational Training (if the applicant is in the province).

The card contains the information about the name, birthdate, and birthplace of worker, skill and education, special trait of the worker, name and address of the enterprise, date of entry into an enterprise or establishment, position in the enterprise, and salary. It also records the information on the exit from the employment: Name and address of enterprise, exit date, last salary, last occupation and other indemnities. The employer cannot register any appreciation of performance of the worker-employee on his or her employment card. When the worker-employee quits or is terminated by the enterprise, the employer must record the date of exit from the enterprise, last position and salary, and other indemnities and submit it to the Labor Inspector for visa within seven days of the date of termination.

Worker-employees working on farm are not required to have an employment card, although they can apply for it.

C. Work permit

A work permit is an identity card of the worker-employee (In Khmer *bann samkorl kammaka-niyochit*). It is supplied with the employment card. The work permit records the name, sex, date of birth, position, and the establishment at which the concerned worker-employee works.

D. Conditions for the employment of foreign workers

References

LL Art. 261, 263, 264; LIV Art. 14.6, 18; PK No. 196 (MoLVT) 20 Aug 2014 Cl. 1, 2, 3

In recruiting worker-employees the enterprise or establishment must give priority to the Cambodian people. This priority must apply to liberal profession as well, including attorney office, notary office, bailiff office. The enterprise or establishment can recruit foreign workers only for the specialist, technician or specialized, professional positions and when Cambodian people are not available for these positions. The enterprise must request for prior approval from the Ministry of Labor and Vocational Training for the recruitment of foreign people. The Ministry's approval is granted only if the number of foreign workers currently employed by the enterprise or establishment does not exceed 10% of the total number of Cambodian worker-employees. Of this number the foreign workers can occupy the following positions:

- Office employees (3%)
- Employees or workers with specialization (6%)
- Employees or workers without specialization (1%)

In the request to employ foreign workers, the applicant enterprise must provide explanation of why foreign workers are needed. The enterprise or establishment must attach to the request the Table of Foreign Worker Quota. In addition, the enterprise or establishment employing foreign workers must register the employment contracts of those workers with the Department of Occupation and Labor of the Ministry of Labor and Vocational Training (for workers in Phnom Penh) or Provincial Department of Labor and Vocational Training (for workers in the province)

TABLE FOR THE REQUEST OF QUOTA OF FOREIGN LABOR YEAR…

No.	Employment and Tasks	Number of Cambodian Workers			Number of Foreign Workers			Miscellaneous
		Current	Additional Needs	Total	Currently	Additional Need	Total	
	A. Administration							
	Director - Deputy Director							
	Accounting							
	B. Section ...							
	C. Section ...							
Total								

Phnom Penh, Date

Director of the Company

The quota of 10% foreign worker-employees can be increased upon the request by providing the details of the expertise, techniques, or professional specialization of each foreign applicant to be recruited and the explanation of why such increase is needed.

For foreign investment projects, the employer is allowed to hire foreign nationals for the positions of management personnel and experts, technical personnel, and skilled workers, but only when the qualification and expertise are not available in Cambodia among the Cambodian populace. In consideration of the permission to hire foreign nationals, the investors bear the obligation to provide adequate and consistent training to Cambodian employees, gradually promote Cambodian staff to senior positions.

E. Application for foreigner's employment card and work permit

References

PK No. 195 (MoLVT) 20 Aug 2014 Cl. 2, 3

The foreigners who possess valid visas to stay for a definite time in Cambodia can apply for employment cards and work permits. A work permit is actually a worker-employee's identity card (See sample of that card at the end of this Section).

After the acceptance of the foreign worker-employee into the job, the head of the enterprise arranges an application to request the work permit and employment card from the Ministry of Labor and Vocational Training. The application must be attached with:

- A copy of certification on the number of the Cambodian and foreign employees
- A copy of passport
- A copy of the employment contract
- A copy of a 6-mionth valid certificate of physical aptitude issued by the competent authorities of their home country or by the Department of Medical Inspection of the Ministry of Labor and Vocational Training if they have already resided in Cambodia.
- A receipt of annual duty and service fee (400,000 riels)

For those who are permanent residents of Cambodia, they must supply the same documents as above, with the exception that they must provide a document issued by the Ministry of Interior certifying that they are permanent residents of Cambodia.

F. Extension of foreigner work permit and employment card

References

PK No. 195 (MoLVT) 20 Aug 2014 Cl. 2

The application for extension of work permit and employment card must supply the same documents as those for starting employment in Cambodia, except for the certificate of physical aptitude, which should be issued by the Department of Labor Medical Inspection of the Ministry of Labor and Vocational Training (See **Application for foreigner's employment card and work permit** above).

G. Payment book

References

LL Art. 39; PK No. 269 (MoLVT) 11 Oct 2001 CL. 1, 3

Another required document for the employment is the Payment Book, which must be retained and recorded by the employer. The book must follow the format prescribed by the Ministry of Labor and Vocational Training. If an enterprise wishes to use a different format but contains the same information and control system, it must request for approval from the Department of Labor Inspection of the Ministry (for enterprises located in Phnom Penh) or to Provincial Office of Labor and Vocational Training (for enterprises located in the province).

When all pages of the Book have been recorded, the enterprise or establishment must keep it for three years. The labor inspector may request for examination of the Book at any time. This Book must record:

- The name of the worker-employee
- Nationality
- Date of employment
- Position in the enterprise
- Family situation (Wife and number of children)
- Salary (either daily or monthly?)
- Family allowance
- Overtime indemnities
- Payment in lieu of notice or termination payment
- Annual leave payments
- Other premiums
- Total amount to be paid

- Deduction, which consists of amount borrowed from the enterprise, advance, deduction of leave, contribution for social security scheme, salary tax)
- Total amount deducted
- Net payment
- Initial of worker-employee
- Other remarks

H. Government placement office

References

LL Art. 258; Dir No. 26 (MoLVT) 27 Dec 2000

The Ministry of Labor and Vocational Training establishes a National Agency for Occupation and Labor to assist people who are seeking jobs. Now, a website is created to facilitate the registration and application for employment seekers. It provides the information about vacant positions, training programs offered mostly by private institutions, and platform of job application (http://www.nea.gov.kh/kh/register/seeker).

The website of the National Agency for Occupation and Labor is: http://www.nea.gov.kh/kh/nea/home_page.

The government requires the owners of the enterprises or establishments to report about vacancies to Department of Occupation and Labor the Ministry of Labor and Vocational Training in 15 days (30 days for agricultural enterprise) after the employment admission or termination. From these reports the Ministry enters those vacancies in a database. The applicants may apply online. The Ministry sends the list of applicants to various enterprises or establishments for consideration.

The vacancy reports should include the information should follow the table below:

Kingdom of Cambodia
Nation Religion King
Table on vacancies to be filled not later than [date]

Establishment [name]

Address…

Telephone… Fax:…

No.		Vacancy Position	Sex	Age / Range	Number of Labour	Professional Skills Needed	Woking Time	Wage

Done on [date]

Director of enterprise / Establishment/company

Cambodian Work Permit (Front)

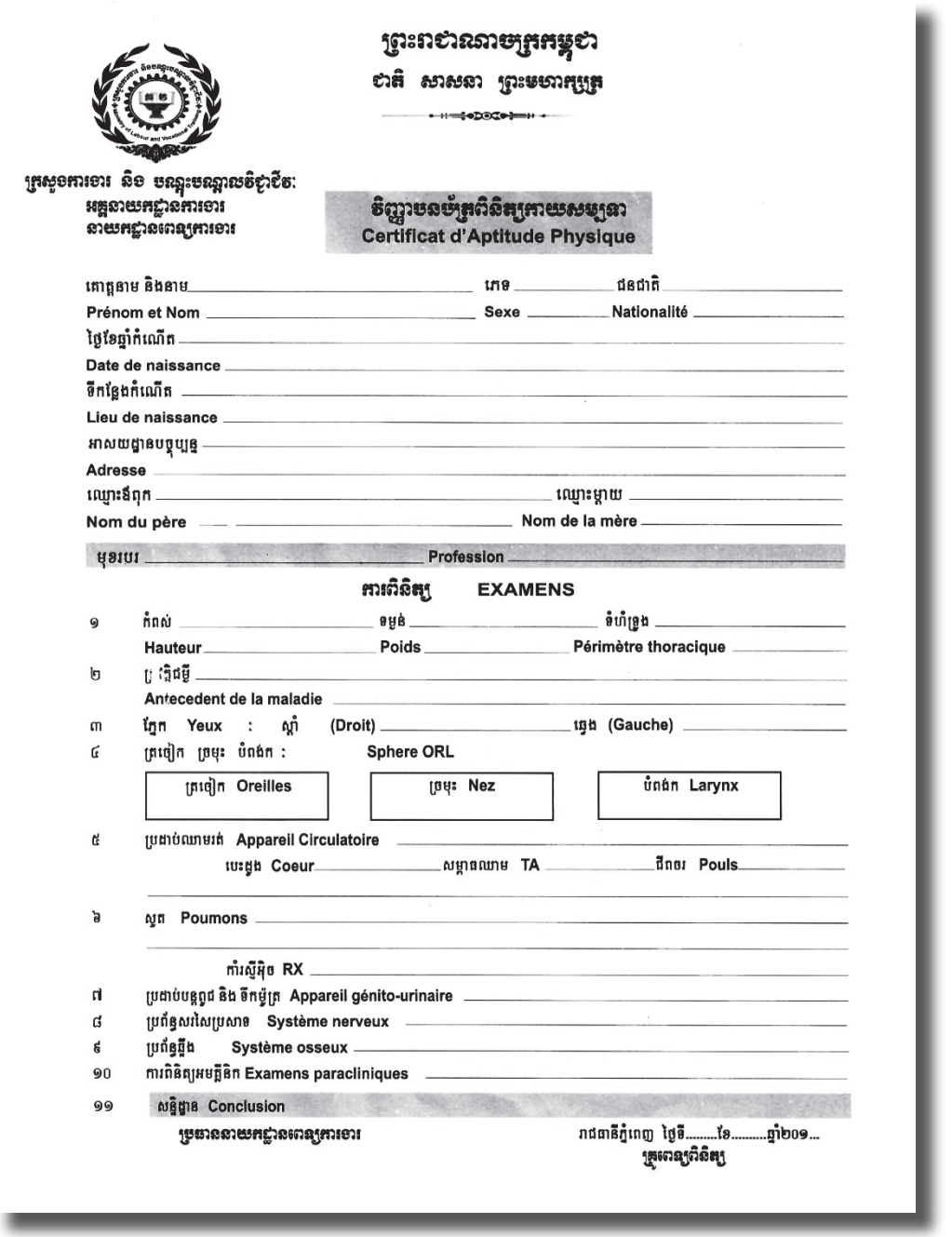
Cambodian Work Permit (Recto)

Foreign Work Permit

Cambodian Employment Card

Foreign Employment Card

Certificate of Physical Aptitude



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

ក្រសួងការងារ និង បណ្តុះបណ្តាលវិជ្ជាជីវៈ
អគ្គនាយកដ្ឋានការងារ
នាយកដ្ឋានពេទ្យការងារ

វិញ្ញាបនប័ត្រពិនិត្យកាយសម្បទា
Certificat d'Aptitude Physique

គោត្តនាម និងនាម _____ ភេទ _____ ជនជាតិ _____
Prénom et Nom _____ Sexe _____ Nationalité _____
ថ្ងៃខែឆ្នាំកំណើត _____
Date de naissance _____
ទីកន្លែងកំណើត _____
Lieu de naissance _____
អាសយដ្ឋានបច្ចុប្បន្ន _____
Adresse _____
ឈ្មោះឪពុក _____ ឈ្មោះម្តាយ _____
Nom du père _____ Nom de la mère _____
មុខរបរ _____ Profession _____

ការពិនិត្យ EXAMENS

១ កំពស់ _____ ទម្ងន់ _____ ទំហំទ្រូង _____
Hauteur _____ Poids _____ Périmètre thoracique _____
២ ប្រវត្តិជម្ងឺ _____
Antecedent de la maladie _____
៣ ភ្នែក Yeux : ស្តាំ (Droit) _____ ឆ្វេង (Gauche) _____
៤ ត្រចៀក ច្រមុះ បំពង់ក : Sphere ORL

ត្រចៀក Oreilles	ច្រមុះ Nez	បំពង់ក Larynx

៥ ប្រព័ន្ធចរាចរឈាម Appareil Circulatoire _____
បេះដូង Coeur _____ សម្ពាធឈាម TA _____ ជីពចរ Pouls _____
_____
៦ សួត Poumons _____
_____
កាំរស្មីអ៊ិច RX _____
៧ ប្រព័ន្ធបន្តពូជ និង ទឹកម៉ូត្រ Appareil génito-urinaire _____
៨ ប្រព័ន្ធសរសៃប្រសាទ Système nerveux _____
៩ ប្រព័ន្ធឆ្អឹង Système osseux _____
១០ ការពិនិត្យអមគ្លីនិក Examens paracliniques _____
១១ **សន្និដ្ឋាន Conclusion**

ប្រធាននាយកដ្ឋានពេទ្យការងារ

រាជធានីភ្នំពេញ ថ្ងៃទី.....ខែ.....ឆ្នាំ២០១...
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SECTION SIX

EMPLOYMENT CONTRACT

The employment contract is a contract that is specially governed by the Labor Law, on the one hand, and the general rules of contract law, on the other hand. People are free to contract, though some exceptions may apply with respect to the constitution and the public order. For example, when the Labor Law sets the floor of benefits for the worker-employees, then the parties cannot lower the floor by mutual agreement. The floor of benefits is least favorable benefits or working conditions accorded by law to the worker-employees. Those benefits are of public order. For example, parties cannot make an agreement to pay and receive a salary less than a minimum wage. The wage that is paid higher than the minimum wage is above the floor of benefits. The working hours of less than eight hours a day and 48 hours a week is also considered above the floor of benefits because they are more favorable to worker-employees.

Some of the Labor Law provisions are not of public order or mandatory so parties can derogate from them. For example, the Labor Law calls for salaries to be paid twice a month, this provision is not mandatory. The employer and worker-employees may agree to have the salaries paid once a month (Article 116) to reduce the accounting burden on the employer. Another example is the provision on probation. The provision of Article 68 of the Labor Law is not mandatory. Although the Labor Law states that an employer can be put a worker-employee on probation, the employer can waive the probation period.

The Labor Law provides self-help remedies that allow the parties to exit from the contractual relationship. For example, a party can terminate another party without resorting to the court when the contract is breached by serious misconduct.

A. Definition

Employment Contract

References

LL Art. 65; CC Art. 664; AC Award No. 062/13.

An employment contract is a contract that creates a labor relationship between the worker-employee and the employer. It is created by the promise of a party (worker-employee) to perform a work for another party (employer) and that other party promises to provide wage for the work performed. The employment

contract can be oral or in writing. For example, anowner of a company hires an information technology specialist to work in his company to maintain the computer system of the company and the owner of the company promises to pay him 5,500,000 riels per month. By agreeing to maintain the computer system and by paying for the work, the specialist and the owner of the company create a labor relationship that binds them.

B. Forms of contract

References

LL Art. 65; AC Award No. 229/16

The law recognizes oral and written contracts. In addition to the rules of the Labor Law, the employment contracts also follow the rules governing the general contracts (common rules for contracts). Therefore, employment contracts follow rules under the Civil Code, including the general rules of contract formation, contract implementation, and of contract termination. For example, the employment contract must follow the rules of offer and acceptance, the rules that set the grounds for termination, etc. The employment contracts bear their particularity in that their benefits must be equal or over the floor of benefits set by the Labor Law.

a. Oral Contract

An oral contract is made in spoken language, meaning a party offers verbally and another party also accepts verbally. For example, a construction contractor hires a worker for a house construction and offers a weekly pay of 340,000 riels. This offer is made verbally and the worker accept it. The contract is formed.

Oral contracts are vulnerable to miscommunications between parties. For example, in the above case if the worker understands that the weekly wage offered was 390,000 riels, then a dispute arises as to whether the offer was 390,000 or 340,000 riels. If witnesses stood by during the conversation between the contractor and the worker, then the dispute may be resolved by the clarifications from those witnesses. But if the conversation was made only between the two persons, the dispute may be hard to resolve. So, in oral contract proof of communications is needed. Still, if the witnesses cannot recollect the conversation or are not willing to assist in the dispute resolution, disputes may remain. A positive feature about oral contracts is that parties are quick to have an agreement that responds to many situations, especially in everyday life.

b. Written Contract

Because of the disadvantages of the oral contract as illustrated above, a written contract is often the preferred option between parties. A party offers its terms and

another party accepts those terms which are put on paper. A written contract is formed. The advantage of the written contract is that all the terms are recorded and can be referred to when a dispute arises. The disadvantage is that the terms may not be clear, so interpretation is needed.

C. Types of employment contract

a. Fixed duration contract

General characteristics of the fixed duration contract

References

LL Art. 67.1; 67.8, 73 para. 5; AC Award No. 10/03, 245/13, 266/13.

A fixed duration contract is an agreement between the employer and the worker-employee under which the employer employs and the worker-employee performs a job for a fixed duration. This form of employment contract is generally called by its acronym—FDC, and generally limited to a maximum duration of two years.

An employment contract for a duration of six months, 12 months, 18 months, or 24 months is a fixed duration contract. The duration cannot be extended beyond 24 months, even tacitly. A six-month contract can be extended many times up to a maximum of 24 months. For example, it can be extended for six times with three months each time. At the end of the 24th month, the fixed duration contract is automatically ended (See below **Unlimited duration contract, Transformation of an employment contract from FDC to UDC**)

Requirement to be in writing and to fix the end date

References

LL Art. 67, 67.7, 67.8; AC Award No. 035/14, 064/16.

The fixed duration contract must be in writing and expressly specify the end date. The end date will tell the parties that the contract ends on such date unless it is duly extended by notice. In any case, the total duration of the contract does not exceed 24 months. The 24th month is the turning point of the employment contract. If the employment passes the end of the 24th month, the contract will continue through and become another form of employment called "undetermined duration contract."

Usage of the fixed duration contract

References

LL Art. 66, 67

The Labor Law states that a person may be hired either in a fixed duration contract for a specific task or in an undetermined duration contract. A fixed duration contract may be used for the purpose of replacing a worker-employee who is temporarily absent from work (for example, when he or she is on leave of

absence, maternity leave); of performing seasonal work (work that repeats every year, for example, harvest season); of performing occasionally increased volume of work or unusual activities of an enterprise.

References

LL Art. 67.3, 67.4, 67.5, 67.6

A fixed duration contract can have precise end date (as mentioned above) or imprecise end date.

Because the end date cannot be determined precisely for some types of work, the fixed duration contract may have an approximate end date. This kind of contract is called "**Fixed Duration Contract with Imprecise End Date**". This can happen with work carried out during a season such as harvesting crops in a seasonal work; in the replacement of a worker-employee who is temporarily absent, such as when a worker-employee is on sick leave or on scholarship or on serving military obligation; or occasional periods of extra work or unusual activity of the enterprise, such as when an enterprise may require temporary hiring due to occasionally increased volume of work. In such cases, the duration of work may only be approximated. The contract ends at the time when the season is over, the replaced worker-employee returns to work, or the work returns to its normalcy. In these kinds of work, the employer must clearly communicate to the prospective worker-employee about the purpose of hiring and other key information about the nature of work and, importantly, the approximated duration of the contract. The contract can be renewed many times but it may remain the fixed duration contract with imprecise end date.

Employment contract based on daily or hourly work for a short duration occupation, where the payment is made daily, weekly, or bi-monthly, is also considered as Fixed Duration Contract with Imprecise Term.

b. Undetermined duration contract

General characteristics of the undetermined duration contract

References

LL Art. 67.2, 67.7, 67.8; AC Award No. 10/03, 08/13, 104/14.

An undetermined duration contract is an employment contract where the end date is not specified. It is commonly called UDC. It may also arise by operation of law when an employment contract is concluded verbally, or when a contract is signed for a fixed duration but is renewed one or more times and the total

duration of the contract exceeds two years. Since the law does not require that a UDC worker-employer work full time, a UDC may be used for part-time work as well.

Writing is not required

References

LL Art. 67.7, 67.8; AC Award No. 118/14, 092/15.

A UDC does not need to be in writing. An employment contract, even if it is intended to be an FDC, is legally considered as a UDC when it is not put in writing. But, as indicated in the section **Written contract** this oral contract is open to dispute because parties may have different interpretations.

Usage of the undetermined duration contract

The unlimited duration contract is often used for the permanent worker-employee and when the nature of work does not have end date. An employer who needs worker-employees for a permanent, lasting activity of the business may hire a permanent worker-employees under the undetermined duration contracts. A worker-employee who seeks job security may generally prefer to have an undetermined duration contract. For example, administrative or financial work of an office is the one that may last until its closure, so the employer may hire a permanent staff under the undetermined duration contract. A bicycle manufacturer, whose business is perpetual, may hire worker-employees under the UDC because the business can carry on indefinitely until, for example, the market pressures, competition, or other factors lead to closure.

Transformation of an employment contract from FDC to UDC

References

LL Art. 67.2, 67.7, 67.8, 73 para 5; AC Award No. 271/13, 266/15.

A worker-employee who works in an enterprise continuously may be transformed from fixed duration contract to unlimited duration contract. The transformation may occur by written or tacit extensions of the fixed duration contract until the employment of the worker-employee passes the dividing line at the end of the 24th month.

For example, worker-employee A works signed a fixed duration contract with a manufacturing enterprise B for a term of six months. Before the end of the six-month period, the enterprise notified A in writing that it would extend the contract for another 12 months. Ten days before the end of the 18th month, if B fails to notify A of the end of contract, the contract will be extended automatically for another six months. Again, before

the end of the 24th month, if the enterprise did not bother providing a written notice and employed A as usual, then A has passed the dividing point (between FDC and UDC) and obtained the unlimited duration contract by operation of law.

c. Comparison between fixed duration and undetermined duration contracts

For easy understanding of the distinction between the fixed duration contract and undetermined duration contract, it is useful to recapitulate the characteristics of the two types of contract in a table.

Characteristics	Fixed duration contract	Undetermined duration of contract
Formality	**Must be in writing or it is an unlimited duration contract**	**Writing is not necessary**
Term	**Maximum 2 years**	**No term limit**
Extension	**Notice is required** **Without notice, contract extended for a period equal to initial term**	**Extension not needed**
End date	**Must be specified; if not clear, approximate end date must also be specified**	**No end date**
Transformation	**FDC becomes a UDC if the contract is extended beyond 24 months.** **FDC becomes an UDC if no notice duly given after total 24 months**	

d. Probation contract

References

LL Art. 68; AC Award No. 180/13, 109/15.

The Labor Law treats probation as an employment contract. Probation clause may be also inserted in the employment contract that sets a condition of satisfactory performance for the continuation of the contract after a specified period. In such case, probation forms an integral part of the employment contract. Probation is a period during which the employer evaluates the performance of a worker-employee and the worker-employee has an opportunity to demonstrate their aptitude for the jobs and to familiarize themselves with the work conditions of the enterprise. So, the offer of employment is not definitive. The employer can terminate the contract if the performance of the worker-employee is not satisfactory to it. The worker-employee can also terminate the contract if he or she is not satisfied with the work conditions of the enterprise. The termination can be made without prior notice or being liable to any indemnity.

References

LL Art. 68, 5, 6; AC Award No. 102/16.

The employment contract does not necessarily include the probation clause. Usually, the employer requires the worker-employee to go through a probation. If the contract does not include the probation period, the employer cannot subject the worker-employee to probation. A probation clause may be included in either fixed or undetermined duration contracts. The probation period varies with the employment status:

- maximum of one month for ordinary workers (persons who perform manual work for remuneration under the direction of the employer);
- maximum of two months for specialized workers; and
- maximum of three months for employees (persons who do not perform manual work).

D. Formation of an employment contract

References

LL Art. 65; CC Art. 311, 336; AC Award No. 084/15, 001/16.

Employment contracts are subject to the rules of general contract laws. Therefore, the rules of contract formation are governed specifically by the Civil Code. A contract is validly formed when the parties have the intention to create, modify, or terminate the obligations. The will of a party must meet with the will of another party. This is called the “meeting of minds” or a free will agreement. In an employment contract, there must be free

will agreement between the employer and the employee to create contractual obligations. Sometimes, for some reasons, the "meeting of minds" criterion is not fulfilled because the intention of the employer and that of the worker-employee are not met. There may be miscommunications between the employer and prospective worker-employee. For example, the employer states that it would offer a wage of $13 per day, while the worker-employee hears the wage of $30 per day and accept the employment. Or an employer lures the prospective worker-employee to accept a job promising a high wage, which turns out to be untrue. In these situations, there are defective expressions of intention. The defective expression of intention affects the validity of the contract. There are several situations where a contract is made of defective expression of intention.

a. Defective expression of intention

There are many forms of defective expression of intention: mistake; fraud; misrepresentation; abuse of position of vulnerability; threat, duress, intimidation; act of receiving excessive benefits:

References

CC Art. 346; LL 67.3

- **Mistake:** A person may make mistake regarding a term of the contract. In the example above, because of poor hearing, the worker-employee is confused with the sounds of 13 and 30 and believes he is offered $30 per day. But this could be too common a mistake that the worker-employee could enforce the wage term purportedly offered by the employer or the employer could rescind the contract considering the type of work and the skills that the worker-employee has. They can rectify the mistake.

  For a party making mistake to rescind the contract, two requirements must be met:

  (1) the mistake of a party must be on the important point or points on which the contract was formed, and

  (2) that the other party may be aware or could have been aware of this mistake.

The contract can be rescinded because the expression of the intention is defective. In the fixed duration contract with imprecise duration, where a person is hired to replace an absent worker-employee, when concluding the contract, the employer must explain to the hired person about the important points of the contract and its approximate duration. Those important points, besides remuneration and benefits and working conditions, are the nature of the contract and the end point of the contract.

For example, Employer A hires worker-employee B to take the post of X who is on leave for some time. A must explain the important points of the contract, that is, B is to replace X who is absent (nature of the contract), and B's employment will end automatically when X returns to work (end point of the contract). This is to clear up a possible mistake on the part of B that he may have been offered a permanent job or an undetermined duration contract. A must explain to B about the approximate duration of the contract to clarify to B that he is not hired on an undetermined duration contract (because (1) if A is silent about the end point of the contract, B may mistakenly understand that the duration is undetermined or (2) if A fixes a term exceeding two years, B would understand that he is hired on UDC).

References

CC Art. 347; LL Art. 83.a.1, 83.b.2

- **Fraud:** Fraud is an act of deceiving a person that leads another person into expressing his or her intention based on that deception. Fraud causes another person mistakenly believe in the essence or the important point(s) of the contract. For example, a worker-employee, who is 16 years old, uses a fake identity card to raise his or her age to 18 in order to obtain a job. Because of his or her physical appearance the employer accepts him or her. The employer's expression of intention is defective because the employer does not intend to enter into a contract with an under-age person. Had the employer known that the identity card is faked, the employer would not hire that person. The employer can rescind the employment contract.

References

CC Art. 348; LL Art. 83.b.2; AC Award No. 012/16.

- **Misrepresentation:** Representation is a statement of facts made by parties, which may be found in the preamble (whereas section), covenant and warranty sections of a contract. Parties execute the contract relying on those representations. When the representation is untrue it becomes misrepresentation. Misrepresentation may be made intentionally or unintentionally. Misrepresentation is another form of fraud if it made intentionally. The effect of this kind of misrepresentation is that the party expressing the intention may rescind the contract based on fraud.

  An example of fraudulent misrepresentation is the false statement about qualifications in order to secure a job. A person applying for a job submits a resume falsely claims a master's degree in management and five years' experience in managing a company, provides a false statement about his qualifications in order to get a job. The employer can rescind the contract.

  Even if the misrepresentation is made unintentionally, the party who enters into the contract based on false information can still rescind a contract.

References

CC Art. 349, AC Award No. 012/16

- **Abuse of circumstances:** This abuse occurs when a person, due to his or her superior social or economic position, uses that position and causes the other person to conclude a contract because the latter has no choice or alternative to refuse the offer. For example, a poor person, who is burdened by a sick husband and needs money to pay for medical treatment of her husband, seeks an employment with an employer. The employer, who knows she is in financial hardship, offers employment benefits lower than other employees of the same qualifications. She accepts the lower benefits offered by the employer because she cannot spend more time to hunt for an alternative job. She is under the pressure to accept the offer. The woman has a defective expression of intention because her decision to accept the offer is under great pressure of needing the job. If she had not been burdened by the family health, she would have looked for a fair employment with other employers.

References

CC Art. 350; AC Award No. 028/20.

- **Duress:** Duress occurs, for example, when a person threatens another person with some kinds of physical or reputational danger in order to compel the latter to enter into a contract. The forms of threat include threat of danger to the person concerned, threat of causing harm to a third party, for example members of family. Duress can occur in the context of forced labor, though it is rare these days. A person can be kept in a place and forced to sign a contract. Another form of duress, which have been frequently reported, is the confiscation of travel documents from a worker to prevent him or her from leaving the country. There are defective expressions of intention in these situations so the persons affected by these schemes can rescind the contracts.

References

CC Art. 351; LL Art. 46

- **Act of receiving excessive benefits:** Act of receiving excessive benefits is an act that one party takes advantages of another party's economic hardship, ignorance, or lack of experience to obtain excessive benefits from that other party. This situation is similar to that of the abuse of circumstances. The only difference is the magnitude of benefits that the exploiting can obtain that are "excessive." For example, a person signs a party contract accepting a wage almost double less than the general wage for the same job. Although the parties are free to contract, the term of the contract is unfair to the person who lacks the knowledge about the labor market. It is still difficult to determine how much a benefit is excessive.

b. Contracts that are illegal, against ordre public, or good customs

References

LL Art. 13; CC Art. 354, 357; AC Award No. 285/14.

In some cases, the parties meet their minds, but the substance of the contract is against the mandatory provisions of the law(s), ordre public, or good customs. Contracts that are formed with such offending content are called illegal contracts, contracts against ordre public, and contracts against good customs. These contracts, even though the parties have free wills to conclude them, they are void and null from the beginning. A party can ask for the annulment of the contracts. Examples of illegal contracts are contracts to employ a person for wage lower than minimum wage; contracts to prohibit worker-employees from joining the trade union. Examples of contracts against ordre public include those that prevent the prospective worker-employees from marriage during the first year.

c. Capacity to enter into a contract

References

CC Art. 14, 15

The general rule is that a contract must be realized by the free will of the parties. A person can freely express his or her will only when he or she understands about the legal consequences of his or her expression. A person who lacks the discernment or judgment about the object of the contract is said to lack the capacity to enter into a contract.

References

CC Art. 16, 17, 18, 24, 26, 28, 30; LL Art 177, 181.

The person who lacks the capacity to enter into a contract includes the minor, a person under 18 years of age and 15 years of age with respect to an employment contract. A contract concluded by a minor without approval from the person who has parental authority, or a guardian may be rescinded.

A person under general guardianship and the person under curatorship lack capacity to enter into an employment contract with an employer. A person under the general guardianship is the person who lacks permanent ability to discern and make judgment on the legal consequences of his or her act because mental disability. A person under curatorship is a person whose ability to discern and make judgement is substantially impaired due to mental disability.

E. Guaranty against the employment contract

References

CC Art. 900; LL Art. 44; AC Award No. 264/15, 019/18.

Guaranty is a contract in which a person promises to the creditor that he or she will implement the obligation of the debtor in case the debtor is in default and that the creditor accepts that promise. There exist some practices where an employer may ask the prospective worker-employee or incumbent worker-employee to have a person to guarantee the performance of the worker-employee's obligations. The employer may ask the prospective worker-employee or incumbent worker-employee to deposit some amount of money or titles (e.g. property title) to guarantee the performance of the obligations of the same.

While the guaranty in form of cash or property title deposit is strictly prohibited by the Labor Law, personal guaranty is not. The Arbitration Council struck down the requirement that the drivers deposit of $300 to guarantee their performance before accepting into the employment.

SECTION SEVEN

EMPLOYMENT CONDITIONS AND BENEFITS

Two main aspects of benefits that a worker-employee can enjoy are: statutory or regulatory benefits and contractual benefits. Statutory or regulatory benefits are determined by laws or government regulations. Contractual benefits result from the agreements between the employer and the worker-employees, for example, benefits determined by the collective bargaining agreement, or individual employment contracts. Another form of benefits is granted under the policy of the enterprise or establishment. Contractual or policy benefits cannot be less or worse than statutory or regulatory benefits. Another type of benefits results from the tripartite negotiation among the employers, employees, and the government.

A. Statutory/regulatory benefits

a. Working hours

References

LL Art. 137, 141; PK No. 142 CL. 1, PK No. 143 CL. 3 (MoLVT), 10 Jun 2002; PK No. 80 (MoLVT) 1 March 1999 Cl. 1, 3; AC Award No. 92/13.

As a general rule, there are two parameters when treating working hours. The employer must respect both in order to comply with the law. The first parameter is that a worker-employee is limited to working up to 48 hours a week. As a rule, an employer cannot employ a worker-employee more than 48 hours a week otherwise it violates the law. Also, the employer may not employ a worker-employee more than eight hours a day. If the employer allows worker-employees to work less than eight hours a day, the shortfall of eight hours is considered the benefit the employer granted to the worker-employees.

Excess not allowed	Excess not allowed	Excess not allowed	Excess not allowed	Excess not allowed	Excess not allowed	
8 Hours	8 Hours	8 Hours	8 Hours	8 Hours	8 Hours	
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday

Daily working hours

References

LL Art. 139; PK No. 80 (MoLVT) 1 March 1999 Cl. 1,2, 4; AC Award No. 259/14, 089/15, 213/16.

The above rule may be flexible. For example, if the employer employs a worker-employee to work more than the regular eight hours a day because of unusual increase of work, the excess of eight hours becomes an overtime work, except, for example, when the worker-employees work extra hours to compensate Saturday afternoon off.

With respect to overtime work, the employer must secure the consent of personnel delegates, or at least half of worker-employees in an enterprise (if there is no personnel delegate in the enterprise).

Overtime (with consent of worker-employees)						
8 Hours	8 Hours	8 Hours	8 Hours	8 Hours	8 Hours	
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday

References

LL Art. 141.1; PK No. 142 (MoLVT) 1 March 1999 Cl. 1, 3, 4.

The employer may arrange some (or all) worker-employees to work five and half days a week. In this regard, worker-employees have to work an extra one hour daily up to four hours a week so they can compensate their time off on Saturday afternoon. The employer must have consent from the representative unions or personnel delegates and must inform the provincial department of labor and vocational training (for province-based enterprises) and department of labor inspection of the Ministry of Labor and Vocational Training (for Phnom Penh-based enterprises).

1	1	1	1		Extra hours worked to compensate Saturday afternoon off.	
8 Hours	8 Hours	8 Hours	8 Hours	8 Hours	Compensated time off 4 Hours	
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday

Weekly working hours

References

PK No. 143 (MoLVT), 10 Jun 2002 Cl.1, 2, 3, 4; AC Award No. 104/14.

Under normal circumstances, the employer cannot employ worker-employees more than 48 hours a week. For example, the employer cannot employ worker A for 10 hours on Monday and Tuesday, eight hours on Wednesday and Saturday, and then reduces his or her working hours on Thursday and Friday to six hours without his or her consent.

However, to respond to the changes in the intensity or needs of the production or services, the employer can re-allocate unusual working hours for 12 consecutive weeks under the conditions that: (1) the average weekly working hours must not exceed 48 hours; (2) daily working hours must not exceed 10 hours; (3) the extension of the daily working hours must not exceed one hour. The re-allocation must be informed to the Provincial Department of Labor and Vocational Training (for province-based enterprises) and Department of Labor Inspection of the Ministry of Labor and Vocational Training (for Phnom Penh-based enterprises) at least seven days before the implementation of these arrangements. The table below illustrates the re-allocation of unusual working hours for 12 consecutive weeks:

Week	W1	W2	W3	W4	W5	W6
Hours	60	54	48	44	44	44

Week	W7	W8	W9	W10	W11	W12
Hours	60	54	48	44	44	44
Average	**48 hours**					

For these unusual working hours, the employer must secure the consent of the representative unions, personnel delegates, or at least half of the worker-employees in the enterprise (if there is no personnel delegates or unions in that enterprise). It must provide transportation to worker-employees if they travel to and from the workplace to their home at night, use attendance scanning machines. The attendance records must be kept for three years for labor inspectors or labor courts.

For those weeks where the working hours exceed 48 hours, the employer must pay overtime to the worker-employees.

Night working hours

References

LL Art. 144 (amended); Cir. No. 185 (MoLVT) 14 Aug 2007; AC Award No. 054/15, 063/19, 081/19.

Night work is defined as a period between 10 pm to 5 am, which is seven hours. Nighttime is a period of eleven hours which includes some portion of the period from 10 pm and 5 am. For example, a period of 11 hours from 6 pm to 5 am is considered nighttime because it includes the portion of 22:00 to 5:00.

It is important to distinguish between nighttime and night work because the work in portion of nighttime from, for example, 6 pm to 10 pm is considered as daytime work, while the portion from 10 pm to 5 am is considered as night work. Worker-employees who work eight hours, spanning from 6 pm to 2 am, pass through four hours of day work (6 to 10 pm) and another four hours of night work (10 pm to 2 am). The hourly wages are treated differently in this situation. In the first portion of 6 to 10 pm, the worker-employee receives regular day work wage, while the portion of 10 pm to 2 pm, he or she will receive 130% of the day wage rate.

Night time (11 hours)	
Day work	**Night work**
Up to 10 pm	10pm - 5am (7 hours)
Regular day wage (100%)	Night wage (130%)

Irregular working hours for certain worker-employees

References

PK No. 316 (MoLVT) 29 Nov 2001 Cl. 1, 2

Because of the nature of their work, certain worker-employees, such as those who maintain the machinery and installation, cleaners, receptionists, drivers, facilities repair persons, guards, can be employed in irregular working hours. They may not share the same working hours with regular worker-employees. The employer must maintain a list of those worker-employees that is readily accessible to the labor inspectors. The re-allocation of working hours for regular worker-employees (overtime, Saturday afternoon compensatory time off) are also applicable to these worker-employees. For example, while a regular

worker works from 7 am to 4 pm, a cleaner or a receptionist may start his or her working hours earlier than those of the regular worker-employees and finish after eight hours work. They may work at nighttime and are paid the same way as regular workers (some portion as day work and other portion as night work).

Day and night work shift

References

LL Art. 138, 139 (new); Cir. No. 185 (MoLVT) 15 Aug 2007) AC Award No. 063/19.

In a busy enterprise, there could be up to three work shifts within the 24 hours - two day-shifts and one-night shift. For example, the first shift starts from 6 am to 2 pm, the second shift from 2 pm to 10 pm, and 10 pm to 6 am. The first two shifts are considered day-shifts and the last one is considered night shift. The last shift, spanning from 10 pm to 6 am, covers night work of seven hours (from 10 pm to 5 am) and one-hour day work (5 am to 6 am).

The rate of night work is 130% of that of daytime work. If the rate of daytime work is 40,000 riels, the night work is 52,000 riels.

Compensation for working hours lost to work interruption

Reference

LL Art. 140

This is a compensation required of the worker-employees for working hours lost to a temporary suspension of all work in an enterprise or establishment or to the general business slowdown due to accidental causes or force majeure. These circumstances include bad weather, holidays, festivals, or local events. The Ministry of Labor and Vocational Training can issue a Prakas to allow the employer to extend the daily working hours to compensate the working hours lost. At any rate, the following conditions must be respected:

- Making up for lost hours will not be authorized for more than 30 days per year;
- The compensation for time lost due to the suspension must be implemented within 15 days after the date of resumption of the work (for agricultural enterprise, the compensation must be made within one month from the date of resumption)
- The extension of the working hours cannot exceed one hour per day
- The daily working hours cannot exceed 10 hours.

b. Wage

References

LL Art. 102, 103; AC Award No. 224/14, 011/19.

Wage is a remuneration that is paid to the worker-employees in consideration of their labor or services rendered to or to be rendered to the employer. Wage can be in-kind but must be able to be valued in money. Wage is determined by the employment contract or by law. Wage consists of a base wage and wage accessories.

Base wage

It is a gross salary before contributions (for example, contributions to social security funds or provident funds) and does not include bonus or overtime. Base salary is the remuneration that is specified in the employment contract.

Wage Accessories

There is no legal definition of wage accessories. Wage Accessories are derived from the French word accessoire de salaire. The inter-ministerial announcement of Ministry of Social Affairs, Labor, and Veterans and Ministry of Industry, Mining, and Energy dated 26 December 1996 gives some examples of wage accessories, such as food allowance, overtime, attendance bonus, transportation allowance, uniforms. Generally, wage accessories consist of the following:

- **Overtime:** Overtime is compensation for the hours worked in addition to the regular working hours of the enterprise. For example, the normal working hours is eight hours a day, and a worker-employee works 10 hours a day, then the extra two hours are considered as overtime work. If a worker-employee works in the shift from 2 pm to 12 pm, and the regular working hours are from 2 pm to 10 pm then the extra hours from 10 am to 12 am are considered as overtime work.

- **Commission:** Certain worker-employees are employed with the remuneration paid in wage plus commission. A commission is remuneration paid to a worker-employee for the work done more than the pre-determined results.

- **Premium and indemnities:** A premium is a reward given by the employer to the worker-employees, for example, for their satisfactory performance or for the hardship of the employment positions, for risky employment. Examples of premium include 13th month bonus, attendance bonus, output bonus, cost of living allowance. A premium can be rewarded based on the employer's goodwill or by virtue of the contract. The employer can withdraw goodwill premium but cannot do it when it is a contractual premium unless allowed by certain procedures determined by the contract. Another example is found in announcement of the Ministry of Social Affairs, Labor, and Veterans No. 06 dated 3 March 1997,

in which the Ministry and the Garment Manufacturers Association in Cambodia agreed that when the enterprises in this Association make profits in a given year, they would provide an annual bonus to the worker-employees. Seniority bonus (in the textile and footwear manufacturing enterprises) is also included in the premium too. For example, in the announcement of the Ministry of Labor and Vocational Training No. 41 dated 7 March 2011, after one-year employment the worker-employees are entitled to a seniority bonus for every month. The amount varies with the length of employment that is $2, $3, $4, $5, 6$, $7, $8, $9, $10, and $11 respectively for those who have worked for 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 years.

- **Indemnity** is a legal entitlement that the employer owed to the worker-employees, for example indemnity for the termination of employment, seniority indemnity.

- **Profit sharing:** This is a distribution of profit to the worker-employees. The enterprise may have program to motivate the performance of the worker-employees by sharing certain percentage of the net profits earned by the enterprise.

- **Sum paid as gratuity:** Gratuity is a sum given to the worker-employees as a reward in recognition of their outstanding performance or for a special event (for example, wedding allowance, special award given by the president of the company). For example, an employee has an outstanding performance by demonstrating an innovative skill to overcome a project challenge.

- **In-kind benefits:** It is a non-monetary element of the wage. The employer may provide certain in-kind compensation to the base salary, for example, lunch meal, phone card, housing.

- **Family allowances for the part exceeding the legal amount:** It is a sum that the employer pays to the worker-employees to support their families, for example, allowances to support the schooling for children under the charges of their parents up to a certain age limit. It could be allowances for spouses. The law may require the employers to provide the family allowance support at certain amount per child. Article 103 of the Labor Law recognizes as family allowances only the part that exceeds the amount set by law. For example, if the law requires that the employer must pay 40,000 riels for child allowance support and the employer pays 50,000 riels for the same, the amount of 10,000 riels is the element of wage, that is this amount is the wage supplement.

- **Compensation for leave indemnity:** Compensation for leave indemnity (French: *Indemnité compensatoire de congé*) is a compensation paid at termination of the employment when the worker-employees have not spent all or part of their leave.

- **Amounts paid by the employer during incapacity leave:** This an allowance is paid to the worker-employees when the worker-employees suffered work accident and become incapacitated.

- **Amount paid by the employer for maternity leave:** This is an amount that is paid to the worker-employees when they are on maternity leave.

Wage based on outputs

References

LL Art. 116 para. 4; LMW Art. 7

Output-based pay is a form of wage payment based on the number of products made. Output-based payment is allowed under the Labor Law. Worker-employees who work on the output basis will receive the wage according to the number of units of products produced. For example, if a worker produces shirts at $1 per piece, she will receive $200 for 200 shirts produced in a month. The output varies with the skills, productivity, or sometimes physical health of the worker. If the wage falls below the minimum wage because of low outputs, the workers can still receive a wage equal at least the minimum wage. In the early example, if the worker produces only 150 shirts in a given month, he can still receive a wage of at least $182 (minimum wage) instead of $150.

Service charge

Reference

LL Art. 134; AC Award No. 29/03, 28/04, 042/16, 004/18.

Worker-employees who work in certain enterprises, such as restaurants, hotels, entertainment parlors, are entitled to the service charge which are received by the employer and is designated "for service."

Amounts that are excluded from wage

Reference

LL Art. 103; AC Award No. 065/16.

These amounts include the amounts that the employer may pay to the worker-employees for health care or medical treatment, legal familial allowances, transportation fare, benefits granted exclusively to the worker-employees to facilitate the accomplishment of their duties.

c. Treatment of wages

Payment of Wage

References

LL Art. 113, 115, 116, 365; PK No.442 (MoLVT) 21 Sept 2018 Cl. 1; AC Award No. 274/13.

Payment of wage can be made in paper money (for example, bank notes or check) or metallic money[6] (for example, gold or silver) that are considered legal tender. Payment in alcoholic drinks, medicines, or drugs are strictly prohibited. Unless the worker-employees agree on other modes of payment (for example transfer to account), wage payment must be made physically to the concerned worker-employees at the working place or office of the employer.

The employer cannot pay wages to worker-employees in places such as alcoholic stores, retail stores, or entertainment places, except for those working in these places. Violations of these restrictions can incur in a fine of 31 to 60 days of daily reference wage (which is now 40,000 riels per day).

The periods of payment for workers and employees are different. According to Article 116 of the Labor Law, for workers, they must receive payment at least twice or month, whereas employees will receive it at least once a month. Workers are those provide manual labor to the employer, while the employees provide non-manual labor to the employer. However, the Ministry of Labor and Vocational Training issued a Prakas to start implementing these periods of payment from 2019 by requiring the employers to pay worker-employees 50% of the base wage at the end of second week of each month and the rest of base wage and accessory and other benefits at the end of the fourth week of the month. This Prakas applies to both the workers and employees.

Mode of Payment Per Prakas No. 442

	First bi-weekly payment	Second bi-weekly payment
Amount of payment	50% of base wage	50% of base wage + accessory wage + other benefits

For the persons who are remunerated by commission, the payment must be made at least once every quarter.

[6] French word: monnaie métallique.

Proof of payment

References

LL Art. 118, 119; AC Award No. 05/13, 155/13, 361/14.

Wage disputes may occur during the employment or after the termination. When there are disputes about the payment of wages, the employer bears the burden of proof that it has paid the wages. The evidence to be proved by the employer includes the acknowledgment of receipt of payment by the worker-employee, witnesses, or the records on the payment book (mandatorily maintained by the employer).

Despite the fact that there may be an annotation on a piece of paper that the worker-employees "already have received all payment of wage and other wage accessory" or any kind of writing by the worker-employees of the equivalent meaning, this is not necessarily interpreted that a worker-employee has renounced his or her rights, in whole or in part, conferred by the employment contract, including the right to claim salary. The worker-employee can still challenge those annotations.

Also, when a worker-employee receives a payment slip without contesting the veracity or accuracy of the statement therein, but when later he or she realizes that payment of his or her wage and wage accessory or indemnities have not been made, only partially made, incorrectly made, or not made in accordance with the laws, regulations, or the employment contract, he or she still has the right to claim for correct payment.

Statute of limitation of wage claim

References

LL Art. 120; AC Award No. 030/13, 190/14, 098/15.

The time limitation for a worker-employee to claim the unpaid wage is three years from the date of payment. This means that the worker-employee will lose his or her right to sue the employer in court or other forum for payment of his or her unpaid wage if the worker-employee did not claim for payment within three years from the date of payment.

All the debts owed to the worker-employees, including base wage, accessory, and all other debts related to the employment contract, for example, benefits and indemnities from the termination of the contract have the same statute of limitations.

Deduction of wage

References

LL Art. 126, 127, 128; AC Award No. 66/10, 143/15.

It is strictly prohibited to deduct any part of the wages to pay the recruitment agents. It is a personal obligation of the concerned worker-employees, meaning those agents can claim their commission only from those worker-employees and not from the employer. They have no rights to the wages of the worker-employees.

The cost of supplies that the employer has procured for the workers cannot be deducted from their wages. But the employer can deduct the following from the wages of the worker-employees:

- the price of tools or equipment that the worker-employees has not returned to the employer when they ceased their jobs with the employer;
- the price of materials that the employer has provided to the worker-employees, but they have kept them for their own use;
- the amount of money that the employer has advanced to the worker-employees to buy those materials mentioned above;
- the amount of money that the worker-employees owe the employer's store.

These deductions cannot exceed the portion that is necessary for supporting the family livelihood needs. For example, if a worker-employee earns $250 and his monthly spending for the necessary livelihood is $200, the employer cannot deduct his wage more than $50 because the amount left cannot meet his family necessary livelihood. Again, the deduction can apply to the part of the wage that is susceptible to garnishment or assignment. That part will be determined in the next section: **Garnishment and assignment of wage.**

The advances made by the employer besides those for the purchase of the tools, equipment, or materials for the employer's business use may be repaid to the employer by way of gradual reimbursement from the worker-employee's wage and only the part that can be assignable or garnish-able (See next section on **Garnishment and assignment of wage**).

Garnishment and assignment of wage

References

LL Art. 130, CCP Art. 382, 383

Garnishment is a court order to a person or an entity in possession of the debtor's monetary asset to freeze that asset in order to pay the debt to the creditor. In the case of garnishment of salary, a court may order the employer to retain certain part of the wage of the worker-employee in order to satisfy its obligations owed to a third party, for example, to pay alimony to a spouse.

References

LL Art. 130, CC Art. 501, 502, 503

An assignment of claim is an agreement between the creditor and the assignee that allows the assignee to claim, for example, the debt from creditor's debtor. In order for the assignment can be asserted against the debtor, that assignment must be notified to the debtor. In the case of assignment of salary, the worker-employee is the creditor, the employer is a debtor, and the assignee is a third party. An assignment of salary is an agreement of the worker-employee that allows the employer to allocate certain amount of his or her wage for the benefit of a third party, for example, to pay alimony, rent. While the garnishment is compulsory, assignment is voluntary. Garnishment or assignment cannot be applied to the whole wage of the worker-employee. Only part of it can be garnished or assigned. This will allow the worker-employee to keep some portion of his or her wage to afford the basic necessities to live.

The part of the wage that cannot be garnished or assigned is shown in the table below:

Wage	Range of salary (Times minimum wage)	Amount that can be garnished or assigned
Wage	14 MW	50% of wage
	13 MW	
	12 MW	
	11 MW	
	10 MW	30% of wage
	9 MW	
	8 MW	
	7 MW	
	6 MW	
	5 MW	
	4 MW	
	3 MW	20% of wage
	2 MW	
	Minimum Wage: MW	0%

- If the minimum wage is $190 and the salary of a worker-employee is $546 (about 3 times the minimum wage), the amount that can be garnished or assigned is up to $109 (20% of the salary).
- If the minimum wage is $190 and the salary of a worker-employee is $1,900 (10 times the minimum wage), the amount that can be garnished or assigned up to $570 (30% of the salary).
- If the minimum wage is $190 and the salary of a worker-employee is $2,280 (12 times the minimum wage), the amount that can be garnished or assigned is up to $1,140 (50% of the salary).
- Garnishment or assignment cannot be applied to the wage that is below or equal to the minimum wage.

Lien on employer's property

When the employer is in default on wage payment, the worker-employees can put a lien on the employer's property. This means the worker-employees have a security interest in its property. Wage for this purpose includes paid annual leave, payment in lieu of notice, and seniority indemnity.

References

LL Art. 122 (new), 123; LIS Art. 32, 33, 57; CC Art. 781, 785

The employer may be in default on the obligations to other creditors besides the worker-employees. In this case, there may be competing claims on the employer's property. The worker-employees have preferential rights over the movable and immovable property of the employer that it currently has or had in the past six months prior to the declaration of bankruptcy. For example, Employer A has two trucks, one car, equipment to produce clothes, and a plot of land in Phnom Penh.

Employer A has paid salary to worker-employees for three months, starting from June to September 2019. On October 1, 2019, Employer A files for bankruptcy. There are three more creditors to claim for their debts. In this case, the worker-employees have preferential rights or priority of claim on the vehicles, equipment, and the land of the Employer A over other creditors. The person in charge of administering the estate of Employer A must sell the movable and immovable property to satisfy the wages of three months claimed by the worker-employees. The balance of the sale proceeds will go to other creditors.

Suppose Employer A knew in April 2019 that its business was not going well, and it wanted to transfer the land to a brother-in-law in order to avoid possible liquidation when it declares bankruptcy. The worker-employees still have security interest in the land that was transferred six months ago and can ask the administrator of the Employer's estate to repossess the land and sell it to satisfy their indebted wages. The worker-employees can file a civil lawsuit to get a judgment to attach the property of Employer A to pay their debts too.

Preferential rights accorded to the worker-employees are superior to those of the public treasury as well. Even the money that is levied by the treasury after the date of default must be returned to the worker-employees.

d. Minimum wage

Concept of minimum wage

References

LMW Art. 4, 5, 6, 9

Minimum wage is the lowest limit of wages that is determined by the Minster of Labor. Any agreements to provide a wage below the minimum wage are null and void. The minimum wage

is applicable without regard to any profession or occupation but can be varied with the regions due to their different economic conditions and costs of living.

In determining the minimum wage, various criteria are considered such as inflation, cost of living, productivity, competitiveness, situation of labor market, and profitability of the business sector. These criteria can be adjusted from time to time according to the economic activity, professions, occupations, or regions of the country. Below is the table of minimum wage for workers in the garment industry over the time period 1997 to 2020:

Year	Minimum wage (US$)	Percentage increase from previous year	Percentage increase from base year (1997)
1997-2000	40		
2000-2006	45	12.5	12.5
2007-2010	50	11.1	25.0
2010-2013	61	22.0	52.5
2013	80	31.1	100.0
2014	100	25.0	150.0
2015	128	28.0	220.0
2016	140	9.4	250.0
2017	153	9.3	282.5
2018	170	11.1	325.0
2019	182	7.1	355.0
2020	190	4.4	475.0

National Council of Minimum Wage

References

LMW Art. 12, 13

The National Council of Minimum Wage is a body attached to the Ministry of Labor and Vocational Training that studies the conditions of the minimum wage based on criteria described earlier and determines the figure or the variance of the minimum wage and makes recommendations to the Minister of Labor and Vocational Training for final adoption of the minimum wage.

The Council of Minimum Wage is composed of at least 49 full-right members, of whom one third are the representatives of the Royal Government, one third are representatives of the worker-employees, and one third are representatives of the employers. The Council is chaired by the Minister of Labor and Vocational Training or his or her representative.

e. Overtime wage

References

LL Art. 139 (new); PK No. 80 (MoLVT) 1 Mar 1999; AC Award No. 127/14, 044/17.

As has been introduced in the previous section, overtime is a time worked after the regular working hours, which is up to eight hours a day. The rate of overtime is 150% of the rate of the regular hours in daytime work. For example, a worker starts his or her work at 7 am and end at 3pm. So, any overtime work starts from 3 pm. Suppose he or she works from 3 pm to 5 pm, he or she will earn two hours overtime. at a rate 1.5 times regular working hour rate.

If a worker starts his or her work at 2 pm, the regular work (daytime work) must end at 10 pm. But if he or she extends the work from 10 pm to 1 am, he or she will earn 3 hours overtime.

The rate of overtime for daytime is 1.5 times the regular working hour rate, while the overtime for nighttime rate is twice the regular working hour rate.

If the overtime work is on the weekend, the rate will be twice that of the regular work.

	Day time	Night time
Time worked	8 hours + X hours	8 hours (until 10 pm) + X
Overtime rate	1.5X	2X

f. Annual leave

Regular worker-employees

References

LL Art. 166, 169
AC Award No. 41/13, 113/14

Subject to the provisions of the collective agreement or individual contract, worker-employees can enjoy **paid** annual leave at a rate of 1.5 days for a full month work (26 days per month). In principle, when the worker-employees are absent from work their contracts are suspended. This means their full month work is not met because of the contract suspension so they would not earn 1.5 annual leave per month. However, this rule does not apply if their absence is for:

- Weekend
- Paid holiday
- Sick leave
- Maternity leave
- Annual vacation (before termination)
- Special leave

For example, if an enterprise allows two days off for weekend (Saturday and Sunday), the worker-employees will work approximately 22 days a month, but in this case they are still entitled to 1.5 days annual leave per month even though they work less than those in a different enterprise who are given one day off per week (and approximately 26 days per month).

Also, in an enterprise that works 26 days per month, if the worker-employees take 3 days off for Khmer New Year in April, even though they work only 23 days in April, they still earn 1.5 days annual leave for that month of April. The same applies for the special leave of 2 days in a particular month. If a worker-employee is on 90 days maternity leave, her annual leave of 1.5 days per month is still retained during the three-month period.

Non-consecutive work

If a worker-employee does not work for consecutive months, the annual leave would be calculated pro rata. Suppose worker-employee AB works as in the table below:

January	Worked
February	No work
March	Worked
April	Worked
May	Worked
June	No work
July	Worked
August	Worked
September	Worked
October	Worked
November	Worked
December	Worked

This worker-employee worked only 10 months so he will earn an annual leave of:

$$AL = \frac{18}{12} \text{ x number of months worked}$$

- 18 is the annual leave the worker-employee is entitled to if he or she work consecutively in the year
- 12 is 12 months per year
- Then, the pro rata annual leave that the worker-employer will earn is 15 days.

Irregular worker-employees

In an enterprise where the working hours are fluctuating due to irregular production, for example, the worker-employees are considered to have worked consecutive months only if the average working day is 21 days. Suppose worker-employee AB works as in the table below:

Month	Number of Days
January	22
February	20
March	22
April	21
May	22
June	20
July	19
August	20
September	21
October	21
November	22
December	22
Average	**21**

Worker-employee AB will earn an annual leave of 18 days.

Annual leave for senior worker-employees

References

LL Art. 166, Para. 4; AC Awards No. 013/17, 019/17, 044/17

A senior worker-employee enjoys an increase of one day annual leave after his or her service of three years in the enterprise. Therefore, after three years he or she will earn 19 days annual leave from the fourth year. After the sixth year, she is entitled to 20 days annual leave (18 days +2 days). The increase of paid annual leave can be illustrated in the following table:

Period of employment (Year)	Annual leave increase (day)	Annual leave entitlement (day)
0-3	0	18
4-6	1	19
7-9	2	20
10-12	3	21
13-15	4	22
16-18	5	23
19-21	6	24

Exercise of annual leave

References

LL Art. 166, 167; AC Award No. 31/12.

Worker-employees can exercise their right to annual leave after one year of service unless otherwise provided by agreement or policy. For example, a worker has worked for six months and she wants to take a vacation of two days with her family. During the past six months she accrues an entitlement to nine days annual leave. However, she cannot exercise her right to take two days off because her employment has not passed one year. She can take leave only after the completion of one-year employment.

Annual leave that has not been used can be claimed as monetary compensation, but this right to compensation can be exercised at the end of the employment only. In this regard, any employment contract or a collective agreement that sets forth the provisions allowing worker-employees to waive their right to annual leave in order to receive monetary compensation is considered null and void.

It may be a public policy to encourage worker-employees to take time off after work. Worker-employees cannot accumulate their annual leave for three consecutive years without taking leave in order to claim monetary compensation. They can carry forward only any part of the annual leave that exceed 12 days per year. But if in a particular year if the worker-employee does not take leave, the entitled leave in that particular year is not waived by him or her. The table below explains this concept of carrying forward of annual leave:

Accumulation of Annual Leave

Accumulation of unspent annual leave

	Annual Leave (days)	Leave taken (days)	Accumulated annual leave (days)	Annual leave that can be carried forward (days)
Year 1	18	0	18	**18**
Year 2	18	0	36 (18+**18**)	**24**
Year 3	18	0	42 (18+**24**)	**30**
Year 4	19	0	49 (19+**30**)	**7** (19-12; In the 4th year, worker-employee can no longer accumulate leave)

Accumulation of spent annual leave

	Annual Leave (days)	Leave taken (days)	Accumulated annual leave (days)	Annual leave that can be carried forward (days)
Year 1	18	0	18	**18**
Year 2	18	6	30 (18+**18**-6)	**18**
Year 3	18	3	33 (18+**18**-3)	**21**
Year 4	19	10	30 (19+**21**-10)	**7** (See above)

g. Special leave

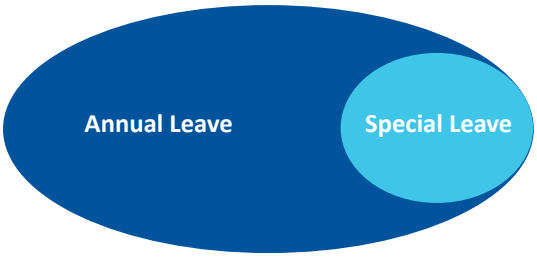
Special leave is a paid leave under special circumstances. The special leave is granted to the worker-employees so they can attend special events that directly affect their families. They can take up to seven days special leave per year.

References

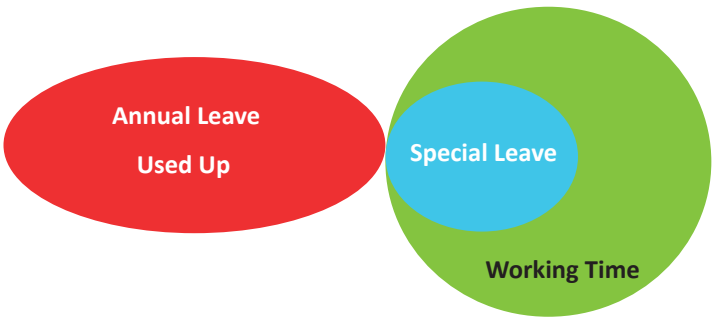
LL Art. 169, 171; PK No. 267 (MoLVT) 11 Oct 2001 Cl. 1, 2, 3, 4; AC Award No. 24/13, 107/15, 019/17, 042/19.

Special events are defined as wedding ceremony of the concerned worker-employee; baby delivery; wedding ceremony of the worker-employee's children; death or sickness of husband, wife, father, or mother of the worker-employee. So special leave can be applied to immediate family members. For ease of understanding of the special leave, it is useful to capture its characteristics in the following diagrams:

Special leave is part of the annual leave



Special leave is part of the working time



Exercise of special leave

Basically, special leave is considered part of the annual leave. Special leave is charged to the annual leave if the annual leave is not exhausted. For example, if a worker-employee has saved 10 days annual leave and she wanted to spend three days to take care of her sick father in the hospital. In this case, she can apply for special leave because she still has 10 days annual leave. She must use three of the 10 days annual leave to see her father.

If she has used up her annual leave, she can still apply for a special leave. In this case the special leave may be calculated against the working time. To keep her working time intact, she must compensate the time lost to the special leave. She cannot use the annual leave of the next year to compensate the special leave currently taken.

The last paragraph of Article 171 of the Labor Law and Article 3 of the Prakas No. 267 dated 11 October 2001 of the Ministry of Labor and Vocational Training requires a worker, who has used up his or her special leave, to work to compensate their days off for special leave. He or she may be asked to work in daily working hours for a maximum 10 hours a day or a maximum 54 hours a week. For example, worker A take a special leave of two days (16 working hours). He may work 10 hours a day for eight days to compensate the working days lost to the special leave. He or she does not need to work eight consecutive days as long as within three months he or she can completely compensate 16 hours lost to the special leave. The making up hours are paid at the normal rate wage.

A key difference between annual leave and special leave is that the application for special leave must be provided with the compelling reason stated above, while the annual leave does not necessitate the reason. The employer can negotiate with the applicant of annual leave to reschedule the leave time.

h. Sick leave

References

LL Art. 71.3, 72.1; AC Award No. 016/15.

By law, sick leave is not paid leave. The absence of the worker-employees due to sickness entails the suspension of their employment contracts, even with the certification by the physician. The period of suspension is allowed up to six months. During this period of suspension, they are not paid.

The enterprise or establishment may stipulate in its internal regulations to allow paid sick leave.

i. Maternity leave

References

LL Art. 182, 183; LLS Art. 39, 55; PK No. 184 (MoLVT) 25 Apr 2018 Cl. 7 (new); AC Award No. 27/13, 12/14, 115/16, 058/19.

Female worker-employees are entitled to take maternity leave for 90 days. Maternity leave is a paid leave, but they are entitled to half pay of wage and accessories wage only. However, female worker-employees are entitled to paid maternity leave only after they have worked in an enterprise for at least one year.

In addition to maternity leave, the Social Security Fund Health Care Scheme will also provide maternity indemnity for 90 days pre and post-natal leave. This indemnity is equal to 70% of the daily average contributable salary. **(See Section Fourteen: Introduction to the Social Security Fund; Benefits under the Social Security Health Care Scheme)**

j. Breastfeeding and day care

References

LL Art. 184, 185, 186; AC Award No. 335/14, 350/14, 172/16, 187/16, 017/19.

Within one year after the date of baby delivery, female worker-employees can take one hour off every day to breastfeed the baby. Female worker-employees can make arrangements with the employer to allocate 30 minutes in the morning and another 30 minutes in the afternoon for breastfeeding. Absent such arrangement, they can take one hour off in the middle of working hours. This breastfeeding time cannot be deducted from the normal leave that they are entitled to under the Labor Law, internal regulations of the enterprise, collective bargaining agreement, or local usages (for example, sick or annual leave).

If the enterprise employs more than 100 female worker-employees, including girls, it must arrange a breastfeeding room and a daycare facility within the enterprise premises or the location nearby.

If the enterprise cannot afford a daycare facility for babies of more than 18 months in age within the premises of the enterprise, the mothers can keep their babies in any daycare facility and the employer must reimburse the cost of such daycare facility.

k. Public holidays

References

LL Art. 161, 162, 163; AC Award No. 07/16, 013/17, 088/19.

Public holidays are days off that are determined and announced by Prakas of the Ministry of Labor and Vocational Training. Every year, the Ministry makes an advance announcement of the public holidays for the next year. For example, public holidays for 2019 are announced in October 2018. Public holidays are paid holidays. There is no fixed number of public holidays. The determination of public holidays is the discretion of the Ministry based economic conditions, productivity, and competitiveness of labor force. When they are announced, the number of public holidays will be fixed for that particular year. For example, in 2019 there are 29 public holidays; workers are entitled to the total 29 days off. If any public holidays fall on Sunday, the worker-employees still enjoy a day off on another day of the weekdays. For example, if public holidays fall on Saturday, Sunday, and Monday, the worker-employees will enjoy a day off on Tuesday.

Worker-employees receive their normal pay when they take the day off for a public holiday. Those who work on hourly or daily basis will receive the same amount they will otherwise earn if the public holidays fall on their working days. For example, worker-employee A works four hours a day in a week; if a public holiday falls on his working day, that worker-employee will be compensated in the same amount of wage of four hours.

Worker-employees, who work on a quantity basis will be compensated for the same amount of wage as if they work on that or those public holidays.

Necessity of work on public holidays

References

LL Art. 164; PK No. 10 (MoLVT) 4 Feb 1999 Cl. 1, 2, 3, 4; AC Award No. 312/15, 194/15,164/16.

If an enterprise cannot stop its production or service activities on the public holiday(s), it can ask the worker-employees to work on such days. But this requires the consent of the concerned worker-employees. Worker-employees who consent to work on public holiday will receive the wage for such days and, in addition, an amount of indemnity that is equal to the wage of normal working days.

By way of example, the Ministry develops a formula for calculating the wage and indemnity on public holiday. There are two scenarios where (1) the worker-employees agree to work full day (8 hours) of the public holiday and (2) the worker-employees work certain hours of the public holiday. The worker-employees will receive:

Scenario One (Full day): Monthly Wage + $\frac{\text{Monthly wage}}{26}$ x number of public holidays worked); where 26 is the number of working days per month.

Scenario Two (Part-time): Monthly Wage + $\frac{\text{Monthly wage x 12}}{\text{52 x 48}}$ x number of hours worked on a public holiday); 12 is number of months in a year; 52 is the number of weeks in a year; and 48 is the number of working hours in a week.

l. Weekly time off

References

LL Art. 145, 146, 147, 148, 149, 152, 154; PK No. 100 (MoLVT) 101 Apr 2002 Cl. 2, 4.; AC Award No. 53/13.

Worker-employees may work up to six days a week. They are entitled to have a weekend of at least 24 consecutive hours. The employer cannot employ the same worker-employee more than six day a week. In principle, they must rest on Sunday. But the employer can deny a Sunday weekend if work stoppage on Sunday affects the public interest or disrupts the normal functioning of the enterprise or establishment. In this case, the employer must rearrange the schedule for the worker-employees to rest on another day of the next week, for example, Monday.

Work rotation on Sunday

The employer can arrange work rotations, with some working, while others resting on Sunday. The enterprises that can legally impose work rotation are as follows

- Enterprises/establishments producing instant foods
- Hotels, restaurants, drink shops
- Natural flower shops
- Hospitals, hospices, shelters, retirement centers, mental disorder centers, dispensaries, health centers, pharmacies
- Bathing establishments
- Enterprises of press and information, spectacles, museums, exhibitions
- Enterprises of vehicles for hire
- Enterprises of electricity, water, and energy supplies
- Enterprises of land transportation, except railways
- Industries that utilize delicate materials
- Industries where work interruption will cause the loss or reduction of quality of the products being produced or manufactured
- Industries that carry out work to provide security, health safety, or public utility

Suspension of weekly time off

References

LL 151, 160; PK No. 100 (MoLVT) 101 Apr 2002 Cl. 2, 4.

The employer can suspend the weekend of some worker-employees, except women and children less than 18 years old, when it is necessary for them to execute urgent work in order to save or prevent imminent danger to the enterprises and staff, or to repair damaged materials, facilities, or buildings of the enterprises. The suspension of weekend applies to the following enterprises or establishments:

- Enterprises/establishments of public work, such as cleaning, garbage collection, road repair, drainage system
- Enterprises/establishments providing services of repairing or connecting water or gas pipes, house or building repair or roofing
- Enterprises/establishments of construction concerning outer work
- Enterprises/establishments of making bricks concerning outdoor work
- Enterprises/establishments of mining concerning open-air work

- Enterprises/establishments of water transportation
- Restaurants/establishments and open-air sales facilities
- Enterprises/establishments of fruit or vegetable harvesting or collection
- Enterprises/establishments of mollusk or fish rearing
- Enterprises/establishments fish sauce or salt production
- Enterprises/establishments of canned fruits, vegetables, or fish
- Enterprises/establishments of loading delicate products or raw materials
- Enterprises/establishments of agriculture or fishery.

The employer must obtain permission from the labor inspector to suspend the weekend by providing an explanation about the circumstances of such suspension, date and duration of the suspension, the number of worker-employees who are suspended and the procedure of the compensation of time off.

Suspension of weekly time off for certain enterprises

Reference
LL Art. 155

Work stoppage due to bad weather: Certain enterprises cannot function in bad weather, so they are compelled to stop the work. If the work stoppage lasts several days, the employer can cut the weekends of two days per month. For example, an enterprise cannot function for four days in August because of heavy rain. In this case the employer can reduce the weekend by two day during August or the next month. So, instead of enjoying four days of weekend, the worker-employees can take two days of weekend in that month.

Reference
LL Art. 156

Seasonal industries: Some industries operate seasonally so they cannot operate full time. They may accelerate their production without taking a weekend. In this case they may suspend some weekends for the sake of their production. The employer must request permission from the labor inspector to suspend the weekends.

Industries producing delicate materials: Some industries may rush to produce materials or consumers goods that may be easily spoiled or damaged by the bad weather. They must also request permission to suspend the weekends from the labor inspector.

B. Benefits under Social Security Schemes

In 2002, Cambodia promulgated the Law on Social Security Schemes for those Persons Governed by the Provisions of the Labor Law to establish Social Security Schemes for worker-employees working in private enterprises or establishment. The Social Security Schemes under this Law provide for pension and occupational risk/accident benefits. This Law was abrogated by the new Law on Social Security Schemes promulgated on 2 November 2019.

The new Law on Social Security Schemes covers pension, health care, occupational risk/accident, and unemployment benefits. The new Law covers both private worker-employees and public servants. The details about the contributions to and benefits from being members of the Social Security S chemes will be dealt with in Section Fourteen: Introduction to the Social Security Schemes.

C. Benefits accorded by tripartite Labor Advisory Committee

The Ministry of Labor and Vocational establishes a tripartite Labor Advisory Committee to advise on the minimum wage and working conditions of the worker-employees. It is composed of representatives of the government, labor unions, and employers' organizations. The Committee meets and issues decisions on the working conditions of the worker-employees. So far, the Committee has issued a decision on the attendance bonus, housing or transportation allowance, and seniority bonus for garment worker-employees.

a. Attendance bonus

References

SCN No. 230, 25 Jul 2012; AC Award No. 181/12 Union; Full bench resolution dated October 2017; AC Award No. 055/19, 098/19.

The Labor Advisory Committee has issued a decision to provide attendance bonus to the worker-employees in the **garment and footwear industries** to motivate their regular attendance to the work. The bonus is 10 US Dollars per month.

The bonus is given on the condition that worker-employees come to work regularly without absence. But there are different interpretations on the word "come to work regularly as per the number of working days of every month without absence." The employer has argued the worker-employees must come to work all working days of the month, meaning 26 days per month in most garment enterprises; if the worker-employees miss even one day for whatever reason, the bonus will not be given.

The Arbitration Council interprets that the bonus must be fully given to the worker-employees if the absence is legally sanctioned, for example annual leave, sick leave, special leave. If the absence is not legally sanctioned, even a single day, the bonus may be fully withheld.

Some enterprises set a policy on attendance bonus, for example, if the worker-employee takes leave of absence one day for personal matter during the first two weeks of the month, his or her attendance bonus will be reduced to US$5 from US$10 bonus; if a worker-employee takes leave of absence for one day for personal matter during the last two weeks of the month, his or her bonus will be reduced to US$5 from US$10.

b. Transportation and housing allowance

In the same decision above, the Committee determined that worker-employees in the garment and footwear industries are entitled to a transportation and housing allowance of US$7. New worker-employees who have worked 13 days or less will receive US$3.5, while those who have worked 14 days or more will receive full allowance of US$7 for the month. The worker-employees who work on daily or weekly wage will receive a transportation or housing allowance of US$0.27 per day.

c. Seniority bonus

References

SCN No. 041/11, 07 Mar 2011; AC Award No. 81/13, 250/15.

In the garment and footwear industries, worker-employees are provided with seniority bonus after one year of services. Worker-employees whose length of services is 11 years or longer are eligible for bonus capped at US$ 11 per month.

Seniority length (year)	1	2	3	4	5	6	7	8	9	10	11
Bonus amount per month in USD	0	2	3	4	5	6	7	8	9	10	11

d. Meal allowance

Referring to SCN N0.041/11 above, worker-employees who volunteer to work overtime based on the employer's request will be provided with a free meal or meal allowance equal to 2,000 riels (0.50 cents USD) per day.

D. Contractual and policy benefits

Contractual benefits may be determined by collective agreement. Contractual benefits may also be provided as a result of negotiation between the employer and an individual worker-employee. Some benefits and working conditions of the worker-employees are usually also pre-determined by the employer in form of staff policy.

a. Benefits provided by collective agreements and individual contracts

The most representative union negotiates with the employer for better benefits and working conditions than the ones established by the law. For example, they may negotiate for better benefits regarding wage, weekend, leave, and other allowances, separation packages, etc.

At a personal level, an employee may negotiate for a better salary, allowances, leave. For example, an experienced employee may ask for better salary and other benefits. All the negotiated benefits will need to be spelled out in each individual employment contract.

b. Benefits under the enterprise policy

The enterprises often establish a set of policies to be accepted by the worker-employees. For example, they may set a range of salaries, which varies with the positions and qualifications of the worker-employees, family allowance, weekend, annual leave, sick leave, administrative leave (for example, leave to make ID cards), housing allowance, child allowance, medical expenses, etc.

SECTION EIGHT

SUSPENSION AND TERMINATION OF EMPLOYMENT CONTRACT

As a general rule, during a period of suspension, the employer has no obligation to pay the worker-employee and the worker-employee is not obligated to work for the employer. In general, a suspension may be implemented when the business of an enterprise has slowed. For example, when purchase orders drop, the employer may decide to suspend employment contract. Suspension can also be implemented for disciplinary reasons or when the worker-employees are sick or on leave. In theory, the suspension can affect the employment seniority of the worker-employees, but the Labor Law adds some complications in case of employment suspension. For example, the Labor Law treats annual leave as a suspension of work, but the period of suspension during the annual leave does not reduce the length of seniority of the worker-employees; this also for maternity leave.

The termination of an employment contract may occur for various reasons. The employer may terminate the worker-employee's employment contract because of the end of the employment duration, cessation of businesses, worker-employee's misconduct, or *force majeure*. Also, the worker-employee may terminate the employment contract because he or she does not want to continue the work with the employer or because of the employer's misconduct.

Disputes can occur when the termination is not lawful. Readers are asked to pay attention to grounds of termination.

A. Suspension of the employment contract

a. General rule and exception to suspension

References

LL Art. 71, 72, 183, 166; AC Award No. 312/14, 16/15.

A suspension of an employment is the temporary holding off of the performance of obligations under the employment contract of all parties. As general rule, during this period of suspension, the main obligations under the contract–the obligation of the worker-employees to work and the obligation of the employer–to pay are held off.

However, there are some exceptions to this general rule, that is, the employer may retain the obligation to pay worker-employees if the legal or contractual provisions or provisions of a collective agreement stipulate otherwise. For example, while maternity suspends the employment contract, the law still provides the mothers to receive half of their wage and the accessories wage after one year of employment. Also, the employer may not be obligated under the law to compensate the worker-employees during their sick leave; but the employer may be obligated to pay if the employment contract or internal regulations provide for paid leave, although the contract is suspended. The period of annual leave is a period of contract suspension, but because the law (Article 166 of the Labor Law) stipulates otherwise, the employer still bears the obligation to pay worker-employees.

During the suspension period, the employment contract is suspended but not dissolved. The worker-employees must return to work after the end of the period of suspension. Upon resumption of work, the worker-employees will receive their remuneration under the contract.

While the main obligations of work and payment under an employment contract are suspended, worker-employees still owe some obligations to the employer. The worker-employees owe duties of loyalty and confidentiality to the employer. The breach of these duties may be considered serious misconduct. During the period of suspension, worker-employees cannot divulge trade secrets to other persons or employers or accept a job that competes with the suspending employer. The employer may have obligations to worker-employees too. If the employer has provided accommodation to the worker-employees, its obligation will continue during this period of suspension.

b. Effect of the suspension on the employment seniority

References

LL Art. 72.3; AC Award No. 82/14.

Except for provisions to the contrary, during the period of suspension, worker-employees still enjoy their employment seniority. For example, worker-employees are suspended for two months from work due to the loss of order of goods produced by a garment factory. The worker-employees of that factory can still maintain their seniority during or at the end of their employments. For example, they have an employment contract with a duration of two years. The employer cannot deduct two months from the twenty-four months of the contract duration

in order to determine their seniority. In other words, their seniority cannot be reduced to 22 months.

This suspension of the contract does not entail the suspension of the mandate of the union (*mandat syndical*) or the mandate of the personnel delegate. For example, the union leaders or personnel delegates, during the period of suspension, can exercise their functions as representatives of the worker-employees. In this regard, they can convene meetings of union members, can enter in the enterprise premises to represent their members.

B. Events that trigger the suspension of the employment contract

The suspension of the employment contract is triggered by certain events, some related to the employer and other related to the employees.

a. Events related to the employer

References

LL Art. 71.1, 71.10, 71.11; AC Award No. 257/14, 255/15.

The employer can declare the suspension of the employment contracts of the worker-employees based on the following grounds:

- The closing of the establishment following the departure of the employer who joins in the service of national defense or military service

- Force majeure sustained by the employer for a period of not more than three months. For example, when the enterprise factory has been flooded and the factory cannot operate, the employment contracts may be suspended. Another example is when the government imposes a lockdown during pandemic disease.

- The enterprise suffers a serious economic or material hardship, or any other hardship that necessitates the suspension of the enterprise activities not more than two months. For example, a garment factory has suffered a short supply of cloth due to a disease outbreak and the employer can suspend employment contracts up to two months.

b. Events related to the worker-employees

References

LL Art. 71.2, 71.4, 71.5, 71.6, 71.8, 71.9, 248; LSS Art. 12 ; AC Award No. 171/13, 257/14, 333/15.

The employer, at its own initiative or at the worker-employee's request, can suspend or permit the suspension of the employment contracts based on the following grounds:

- The worker-employees are to join the service of the national defense or military service. In this case, the employer will put the worker-employees in suspension.
- The worker-employees are sick for a duration not more than six months and duly certified by the physician. The absence due to sickness can be extended to more than six months until a replacement is found.
- The worker-employees are not available for work due to work-related accident or occupational disease. Work-related accident is an accident which occurs during working time or when they work for the employer, with or without remuneration, at any place. For example, the accident may occur when operating machinery at the working place or may occur accident during a commute to the workplace. Occupational diseases may be caused, for example, by exposure to hazardous conditions or substances.
- When female worker-employees are on maternity leave or maternity-related sickness. In this case, it appears that the obligation to work is suspended, but the employer may have an obligation to pay half of the worker-employee's wage and accessory benefits (rather than the obligation to pay full wage).
- Absence from work of the worker-employees that is authorized by the employer in accordance with the law, collective agreement, or individual agreement. For example, some employers allow the employees to take leave of absence (leave without pay) for them to undergo a short training course.
- Preservative suspension imposed by the employer, that is restraining worker-employees from coming to work for a certain period for causes provided for by the internal regulations. For example, a worker-employee is suspended from work as provided by the internal regulations pending a decision on disciplinary action.

- When worker-employees are on paid leave. The period of suspension includes the leave itself plus the delay caused by the travel. For example, an employee was on 10 days leave, but his return was delayed for another two days due to flight cancellation. The period of suspension is therefore 12 days.
- When a worker-employee is put in detention but short of sentence, his or her contract is suspended.
- When force majeure occurs to worker-employees. For example, when worker-employees are stuck in an area where the travel to and from that area is restricted by the government so they cannot come to work, the employer may suspend their employment contract for a period not more than three months.

C. Behaviors in the workplace

References

LL Art. 83; AC Award No. 28/14, 218/16.

When worker-employees are in the workplace, decent behavior is expected of them. They must be punctual, respect the rules and regulations of the workplace, cooperate with other worker-employees and the employer, be loyal to the employer (that is not act against the interests of the employer), work diligently, take care of the employer's property, perform their work with care, respect other worker-employees' rights and freedom (that is not use violence or insults against them and the employer), respect and help maintain discipline, safety, and hygienic measures, avoid the commission of crimes (theft, fraud , incitement to commit illegal acts, intentionally damaging the property of the employer and other worker-employees), maintain the duty of confidentiality (not disclose the privileged information of the employer). Worker-employees must provide accurate information concerning their qualifications and comply with the terms and conditions of their employment contracts.

By the same token, employers must not exploit the vulnerable position of worker-employees by inducing them to enter into contracts with terms and conditions that they would not otherwise agree to, dishonor obligation to pay wages, be late in payment of wage, refuse to assign adequate work to workers-employers who work on an output-basis, condone sexual harassment committed by supervisors, discriminate the worker-employees because of their affiliation with a labor union or

organization, or for their religious or political beliefs, or national origin, etc. The employer must respect and treat worker-employees with dignity, maintain and enforce hygienic and safety requirements and measures.

D. Notion of misconduct

a. Misconduct generally

According to Black's Law Dictionary, misconduct is generally defined as "A transgression of some established rule of action, a forbidden act, a dereliction from duty, unlawful behavior…improper or wrong behavior." As applied to worker-employee's behavior, misconduct is referred to as "conduct of employee [evincing] willful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design." As to the employer, misconduct may occur, for example, negligence to protect worker-employees' safety.

Misconduct may encompass two kinds of wrongful act: Intentional, wrongful act and unintentional, wrongful act. These wrongful acts violate the right of another person and, consequently, inflict harms—in form of physical injury, property damage, economic loss, social consideration (reputation), or mental pain—to that person.

References

CC Art. 742; AC Award No. 006/15

An intentional wrongful act is an act that the actor has the will or intention to commit and foresees the occurrence of the result of his or her act. The actor accepts the intended result of that act. For example, a worker, who was not happy with a warning from the employer, put sands in the generator and, consequently, the generator stopped working. This act is an intentional, wrongful act because that worker intends to inflict harms to the employer's property or wanted to disrupt the operations of the employer's factory.

An unintentional, wrongful act is a negligent act that causes harm to another person. In other words, a person who owes a duty of care to another person fails to exercise that duty and as a consequence causes harm to another person. In order to determine that a person is negligent it is not necessary to inquire into the will or intention of that person, but one must compare the act of the allegedly negligent person with that of a control person, who has the same status in terms of job position or

experience. A control person, when foreseeing the occurrence of the negative result of his or her act, would therefore exercise his or her duty of care to avoid such result from occurring, while the allegedly negligent person would not care about the result. For example, a worker began his work in a garment factory in 2012 and his work was to check the fabric code before fetching it to the cutting table. In 2014 he fetched the wrong cloth without carefully verifying the fabric code. Despite the warning from the employer, he committed a mistake again fetching the wrong fabric and as a result 500 pants were wrongly cut. In this case, he was repeatedly negligent to avoid the wrong fabric despite the first warning about his mistake. In this situation, the control person would carefully check the code to make sure that he would fetch the right fabric.

b. Gravity of misconduct

References

LL Art. 26, 82, 84, 90 (new); AC Award No. 063/19.

Some wrongful misconducts are slight, some are grave. Disciplinary actions may vary with the gravity of misconduct. The sanctions against the misconducts can be varied but the serious misconduct could lead to dismissal. In Labor Law, there are two kinds of serious misconduct: statutory, serious misconduct and non-statutory, serious misconduct.

The statutory, serious misconducts are those enumerated or listed in the Labor Law. The Law divides statutory, serious misconducts into those committed by the worker-employees and those by the employer.

Non-statutory, serious misconducts are not enumerated in the Labor Law. The gravity of those misconducts will be determined by the court.

Statutory, serious misconducts committed by worker-employees are grounds for the employer to take immediate disciplinary action without judicial recourse. Most of them can be characterized as misconducts that are intended to harm the employer's property and the order and safety of the workplace. The following is the list of the statutory, serious misconducts:

- Theft, embezzlement, abuse of confidence
- Fraud at the time of concluding the employment contract (presentation of fake documents) or during the implementation of the contract (sabotage,

non-compliance with the terms of the employment contract, divulgation of the professional secrets)

- Serious breach of the disciplinary, safety, and hygienic rules
- Threat, insult, assault on the employer or fellow worker-employees
- Incitement of other workers to commit serious conduct
- Conduct political propaganda or demonstrations in the establishments.

References

CrimC Art. 278, 279.

Serious misconduct of the worker-employee may include criminal offense as well. For example, an employee who, without the knowledge or consent of the employer, solicits or accepts a gift, benefit, or promise from someone in exchange of performance or non-performance of his or her duties is liable to bribery. The bribery committed by a director or manager is an aggravated offense of bribery.

The statutory, serious misconducts committed by the employer give rise to damage compensation and even mental pain claims by the worker-employees when their employment contracts are terminated.
These misconducts are intentional and involve:

- Deception and inducement of the worker-employees to enter into a contract in which they would disagree with its terms and conditions had they not been deceived or induced
- Non-payment of salary, in whole or in part
- Repeated late payment of the wage
- Insult, threat, violence or torture of the worker-employees
- Failure to assign enough work to worker-employees who work on piece-work basis
- Non-compliance with hygienic and safety rules required by the regulations in force
- Worker-employee's resignation induced by employer's ill will.
- Unfair or unjust treatment of worker-employees [Art. 90 (new)]
- Repeated violations of the employment contract [Art. 90 (new)]

The non-statutory, serious misconducts are not provided for by the Labor Law. They may be stipulated in the employment contract, collective agreement, and/or internal regulations of the enterprise or establishment. The gravity of these misconduct may be determined by the court. For non-statutory, serious misconducts, the employer may take its own action against the worker-employees according to the disciplinary measures set forth in the employment contract, collective agreement, or internal regulations. However, the worker-employees may take the matter to the court to decide whether the gravity of the alleged misconduct deserves disciplinary measures. The court will look into the evidence and decide whether the misconducts are serious.

c. Principle of proportionality

References

LL Art. 22, 23, 24, 27, 31; AC Award No. 194/13, 135/14, 16/17.

Disciplinary action can be taken against an employee, but the sanction must be proportional to the gravity of misconduct. The Labor Law does not provide a definitive scale of disciplinary sanctions, but the employer can set out in its internal regulations the faults and corresponding levels of disciplinary sanctions that can be imposed on the worker-employees. Although the employer can set sanctions in the internal regulations, worker-employees, through their representatives, can participate in the development of such internal regulations to avoid arbitrary imposition of the sanctions by the employer. In addition, the employer must secure the prior approval from the labor inspector as far as internal regulations are concerned. In this regard, the labor inspector can review and evaluate if the sanctions set out in the internal regulations are proportional to the misconduct which may be committed by the worker-employees or not.

In enterprises of less than eight worker-employees which do not possess internal regulations, the employer can impose the following sanctions: warning, reprimand, employment suspension without pay for a period of not more than six days, and dismissal with or without notice depending on the gravity of the misconduct.

d. Pecuniary disciplinary sanction is not allowed

References

LL Art. 30, 28; AC Award No. 100/15, 136/16, 044/17.

In practice, disciplinary sanctions may range from verbal or written warning (with or without a record in the personnel file), to reprimand, temporary suspension, and to dismissal. The employer can consider the gravity of misconduct, but nevertheless the employer cannot impose pecuniary sanctions. For example,

if a worker negligently damages property of the employer, the employer cannot deduct the cost of the property from his or her wage. It may choose any other sanction besides a pecuniary one.

e. Double disciplinary sanction is not allowed for the same misconduct

References

LL Art. 28; AC Award No. 172/15.

The employer cannot impose a double sanction for the same misconduct committed by a worker-employee. For example, an employer issues a letter of reprimand to an employee who has exaggerated the cost of transportation during his mission to the province. Later, feeling unhappy with that employee, the employer issues a notice of dismissal for the same misconduct of exaggerating the cost of transportation. The dismissal is not permitted since the employee has received a reprimand sanction already.

f. Time limitations for disciplinary action for ordinary misconduct

References

LL Art. 26, para 1; AC Award No.117/09.

worker-employee committing a misconduct within time limits set out in the Labor Law. The time limitation for such an action is **fifteen (15) days** from the date the employer became aware of the misconduct. For example, a worker breached the safety measure for allowing an unauthorized person to enter the enterprise research and development office. This breach was reported to the manager two days after the event. The manager did not take the disciplinary action against that worker until the 20th day after the breach. The manager therefore loses the right to impose a disciplinary sanction because the action was taken 18 days after he knew of the breach. The manager can take disciplinary action on or before the 17th day of the breach.

g. Time limitations for dismissal for serious misconduct

References

LL Art. 26, para 2; AC Award No. 126/15, 218/16.

The time limitation for the termination of the employment contract based on serious misconduct committed by the worker-employees is shorter than that of the ordinary misconduct. The employer or his representative must take action to dismiss the faulty worker-employee within **seven (7) days** of the date it knew of such misconduct. Otherwise the employer will lose the right to dismiss.

E. Termination of the employment contract

References
LL Art. 73; CC Art. 414, 407, 408, 667.; AC Award No. 035/17, 003/18.

An employment contract may be terminated when the contract ends, by mutual agreement between the two parties, force majeure, by either the employer or the worker-employee because of the serious misconduct committed by a party, etc.

The termination of the employment contract must follow the procedures and be based on grounds set out by the law. The failure to comply with the termination procedure and grounds can render the termination illegal and subject the terminating parties to claims of damages. The obligations related to termination of the employment contract include the obligation to provide notification, compensation, and payment of damages.

The termination of an employment contract may be subject to the rules of the contract law. A material breach of the employment contract can be also a ground for termination. A material breach is deemed to have occurred, for example, when a party demands the non-performing party to perform its obligations under the contract within a specified and reasonable time; but despite the demand the non-performing party still does not perform its obligation by such time. For example, after a performance evaluation, an employer requires that an employee to improve performance in six months at a level required of his or her position; yet after six months the employee cannot attain the required level of performance. In this case, the employer may terminate the employee's contract for non-performance.

Another ground for termination of employment contract may relate to the transfer of a contractual position of party to a third party without the consent of the other party. The rights and obligations under the employment contract are of personal nature. This means an employer may not transfer its rights and obligations to a third person without the consent of the worker-employees and vice versa. For example, in enterprise A, the work is interrupted for period of time; enterprise A cannot transfer its worker-employees to work for enterprise B unless enterprise A secures the consent of its worker-employees. The same for the worker-employees. If a worker-employee wants to take leave, he or she cannot have someone to work in his or her place without the employer's consent. In these cases, the employer or worker-employees may terminate the contracts for lack of consent.

a. Obligation to provide notice

References

LL Art. 74, 75, 78; AC Award No. 21/10, 187/16.

The obligation to provide notification of termination is applicable to both the employer and the worker-employees. In the case of termination by the employer, the obligation to provide notice has the purpose to afford the worker-employee some time to prepare him/herself to leave and also looking for a new job. The worker-employee will finish his or her pending work or transfer it to another worker-employee. During this period of notification, the worker-employee can take some working hours off to find a new job.

In the case of termination by the worker-employee, the obligation to provide notice to the employer allows the employer to arrange for the recruitment of new worker-employee or attend to other matters.

References

LL Art. 68, 82, 85, 86; AC Award No. 04/11, 229/13..

Exceptions to the obligations to provide notice: There are some exceptions to the obligation to provide notice. The employer needs not notify the worker-employee of his or her termination when he or she is on the **probation period**.The employer needs not notify the worker-employee of his or her employment termination when **he or she has committed serious misconduct** as enumerated in the section **Gravity of misconduct**.

In case of ***force majeure***, the employer needs not notify the worker-employees of their termination of the contract if the employer is indefinitely impossible to perform its contractual obligation. The employer is in indefinite impossibility to perform its contractual obligations when the government orders the closure of the enterprise; when the enterprise is hit by a disaster (flood, earthquake, war) that disrupts its long-term operations; or when the employer dies and this necessitates the closure of the enterprise (for example when no one can take control of the enterprise). In the latter case, the employer can terminate the employment of the worker-employees without notification but must pay the indemnities to them in the amount equal to that the worker-employees would have received for the period of notice. For example, if a worker-employee is entitled to 15-day notice, the employer must pay 15 days compensation in lieu of notification.

An event of ***force majeure*** may also release a worker-employee from the obligation to provide notice when it is indefinitely impossible for the worker-employee to perform his or her employment obligations. The worker-employee's indefinite impossibility to perform his or her employment obligations includes, but not limited to, chronic diseases, insanity, permanent disability, or imprisonment sentence.

However, despite the general rule to exempt the obligation to provide notice in case of force majeure as allowed under Article 82 of the Labor Law, if the employer wants to terminate a worker-employee who suffers a chronic disease[7], insanity, or permanent disability, it must provide notice the worker-employee of such termination[8].

The exception to the obligation to notify applies also to the worker-employee. If the employer has committed a serious misconduct, the worker-employee can walk out without notification to the employer. Despite this, the worker-employee can still claim for benefits and damages.

b. Rights and obligations during the notice period

References

LL Art. 79, 81; CC Art 666; AC Award No. 187/16.

The obligations of the worker-employee and the employer remain even though the worker-employee is about to leave. The employer has the obligation to pay the wage and guarantee the safety and health of the worker-employee. For example, the employer is still liable for work-related accident of the worker-employee. Meanwhile, the worker-employee continue to owe duties of care and loyalty to the employer just as before the notification. For example, he or she must perform his or her work with care and remain loyal to the employer and cannot conduct any activities that conflict with the interest of the employer. However, during the notification period the worker-employees can two days off (with pay) a week to look for a new employment.

[7] Cross-reference Article 71.3.

[8] This obligation to provide notice is not consistent with Article 82, which does not require any party to notify in force majeure situation.

c. Obligation to compensate

References

LL Art. 73, 89 (new); AC Award No. 035/17.

When a worker-employee is terminated, the employer has an obligation to compensate that worker-employee. The compensation includes unpaid wage and accessory benefits, paid leave that is not used, and a termination package (severance pay or seniority indemnity, if applicable).

Exception to the obligation to compensate: This exception applies only to the employer. The employer has no obligation to provide notice and compensate if the worker-employee has committed a serious misconduct. This means the employer can fire the worker-employee immediately and the worker-employee is not entitled to the termination packages or seniority indemnity, or damages, although the right to payment of unpaid wage is not affected.

d. Obligation to pay damages

References

LL Art. 73 paras. 3 and 4, 91 (new), 94 (new) ; AC Award No. 022/18, 049/18.

The termination without grounds by a party may result in another party seeking damages.

The calculation of the amounts of damages in respect of fixed duration contracts are set out by the Labor Law, while those in respect of the undetermined duration contracts are to be determined by the court based on the proof of damages and the magnitude of those damages. The court may also determine the amount of damages, taking into account the local usages, type and extent of services under the contract, seniority, age of the worker-employee, amount of deducted wage.

The worker-employee can also accept a lump sum indemnity instead of actual damages, which is equal to the seniority indemnity that has been received and is to be received for the duration of the contract without proving the damages.

F. Termination of the fixed duration contract

References

LL Art. 73 para. 2, CC Art. 667

Fixed duration contract is terminated when the term of contract ends. Also, a worker-employee or the employer can terminate a fixed duration contract before its expiration only upon mutual agreement between the employer and the worker-employee; for a party's serious misconduct; or due to the event of force majeure.

The employer and the worker-employee can reach a mutual agreement to allow the worker-employee to find a new job and arrange certain compensation.

Misconducts of the employer or the worker-employee are enumerated in Article 83 of the Labor Law.

a. Worker-Employee's obligation to provide notice

References

LL Art. 73; AC Award No. 285/15.

Termination by the worker-employee's own will: The worker-employee can terminate the employment contract based on mutual agreement, employer's serious misconduct, force majeure, or employer's non-performance.

Also, the worker-employee can terminate the employment contract by his or her own will before the expiration of the contract, but may be liable for possible claims of damages from the employer. However, to avoid such possible claims, the worker-employee may request the termination from the employer. Only when mutual agreement is secured between the two parties that the worker-employee can terminate its employment contract, for example in the case of resignation. For the termination to be enforceable, the agreement must be signed by parties before the labor inspector. In this agreement, both parties can agree on the date of effective termination and termination packages. For example, in the agreement they can set the date of effective termination of the contract 15 days after the signing of the agreement.

Termination based on employer's serious misconduct: The worker-employee can terminate his or her employment contract before the expiration of the contract when the employer has committed serious misconduct. For example, a worker signs an employment contract for two years from 1 January 2020 to 31 December 2021. On 31 December 2020, there was an argument between himself and the manager and the latter hit his head with a club. The worker can terminate the employment right away without prior notification even though the contract has not expired.

Termination based on force majeure: The worker-employer can terminate the contract without prior notification in case of event of force majeure.

b. Employer's obligation to provide notice

References

LL Art. 73, 26; AC Award No. 200/15, 064/16, 218/16.

Notice of the expiration of the contract: Without mutual agreement, serious misconduct of the worker-employee, forced majeure, or non-performance of the worker-employee, the employer cannot terminate the employment contract before the expiration of the contract without being liable to possible claim of damages from the worker-employee. Notice serves to alert worker-employee to the end of the contract or to let the worker-employer know that his or her contract will be extended after the end of the contract period. For example, a worker signed an employment contract for one year. The employer has the obligation to notify the worker at least 10 days before the end of the contract. The period of notification depends on the duration of the contract.

Duration of the contract	Period of notification
More than 6 months	10 days
More than 1 year	15 days

Failure to follow the obligation to provide notice within the specified period will result in the extension of the contract for another duration equal to the initial duration.
As an illustration, the following table shows the period of notification and the consequences for failing to notify properly according to the stipulated period.

Duration of initial contract	Improper notification	Consequences
6 months	7 days	Contract is extended for another 6 months (duration becomes 12 months)
10 months	8 days	Contract is extended for another 10 months (duration becomes 20 months)
12 months	8 days	Contract is extended for another 12 months (duration becomes 24 months)
13 months	10 days	Duration of the contract exceeds 24 months, so the contract becomes unlimited duration contract

Termination by the employer's own will: As in the case of termination by the worker-employee's own will, the employer can terminate the employment contract based on mutual agreement with the worker-employer, serious misconduct of the worker-employee, or force majeure. The employer can still terminate a worker-employee based on the employer's own will before the expiration of the employment contract, but may be liable to pay damages to the worker-employee.

Termination based on the worker-employee's serious misconduct: In termination based on serious misconduct, the employer needs not notify the worker-employee. The employer must take action to terminate the worker-employee within seven days from the date it was aware of the worker-employee's serious misconduct.

Termination based force majeure: When an event of force majeure affects the enterprise, the contract may be terminated immediately, and the employer needs not notify the worker-employees. There is no definition of force majeure applicable to fixed duration contract. See circumstances of force majeure in the Section of **Termination of the Undetermined Duration Contract.**

c. Obligation to compensate

References

LL Art. 73 para. 4; CC Art. 400, 401

Obligation of the worker-employee to pay damages in the case of termination based on his or her own will: The worker-employee who terminates the contract based on his or her own will is liable to pay damages to the employer. The amount of damages is equal to the damages that the employer has sustained[9]. For example, the employer A has spent $300 on recruitment and $500 on training of computer to the newly recruited employee. At the end of the training, the employee terminates his or her employment, without the agreement of the employer, to accept a job offered by employer B. In this case, employer A has wasted its expenditure to recruit and train the employee[10]. Employer A may be entitled to the damages of $800 wasted on recruitment and training.

[9] The Khmer text of Article 73, paragraph 4 of Labor Law says: "The termination based on the worker-employee's own will, apart from the grounds provided for in paragraphs 1 and 2 of this Article, entitles the employer to damages that it has given to [lost to] the worker-employee."

[10] According to Article 400 of the Civil Code, the damages that are recoverable by the non-breaching party are wasted expenditures or increased expenditures or burden due to non-performance.

References

LL Art. 73 para. 3; AC Award No. 096/16.

Obligation of the employer to pay damages in the case of termination based on its own will: When an employer terminates a worker's contract without mutual agreement, serious misconduct, or force majeure), then the employer is liable to damages claimed by that worker. The amount of damages is at least equal to the wage the worker would have received until the end of the contract. For example, a worker signed an employment contract for two years. The employer fires him without grounds after twelve months of employment. The worker is entitled to damages at least equal to 12 months wage. If the worker can prove the magnitude of his damages, the court will examine the evidence and may award the damages more than the remaining wage the worker would have received at the end of the contract.

Damages ≥ Remaining days in the contract x Daily Wage

Remaining days = Total duration (days) of the contract – Number of days worked

Reference

CC Art. 744

Obligation of the employer to pay damages when the worker-employee terminates his or her contract for employer's misconduct: For example, if the employer or its employee has committed sexual harassment, the worker-employee may terminate his or her employment contract. The Labor Law is silent on the amount of damages that the worker-employee can claim. It is possible for the affected worker-employee to resort to the Civil Code for tort claim in court. That worker-employee must prove the magnitude of damages she has suffered.

References

LL Art. 73 para.6; AC Award No. 133/13, 201/13

Obligation of the employer to pay severance pay: Severance pay refers to the indemnity that the worker-employee is entitled at the end of his or contract or on early termination. The worker-employee is entitled to the severance pay except in case of serious misconduct. In the absence of a collective agreement which may set a different amount, the severance pay is equal at least to five percent of the wage that the worker-employee has received during the employment (i.e. received until the end date of the contract or until the date of early termination).

Absence of Collective Agreement

$$\text{Severance Pay} \geq \frac{5 \times (\text{Total wage that has been received})}{100}$$

For example, if a worker has worked for 10 months and received a total wage of $2,000 up to the date of termination. The worker is entitled to a severance pay of $100.
If the severance pay is stipulated in the collective agreement, it must be proportional with the wage and the length of employment.

With Collective Agreement

Severance Pay = Amount proportional with wage and with duration of contract

This severance pay is to be determined by the collective agreement

G. Termination of the undetermined duration contract

References

LL Art. 74, CC 407, 408, 414; AC Award No. 202/16, 005/18.

In general, an undetermined duration contract can be terminated by the will of a party by providing notice to the other. However, the termination of the contract by the employer must be based on valid ground in connection with the worker-employee's aptitude or conduct, or the necessary functioning of the enterprise. A serious breach of the employment contract can be ground for termination by a party too. A party can also terminate the contract based on the fault of another party or due to the *force majeure*.

A party who terminates the contract bears the obligation to provide notice, obligation to compensate, and obligation to pay damages, as may be applicable.

a. Worker-employee's obligation to provide notice

References

LL Art. 74, 75, 76, 78; CC 409; PK No. 315 (MoLVT) 29 Nov 2001

A worker-employee who wishes to terminate his or her employment contract must notify the employer in writing. The periods of notification vary with the lengths of employment of the worker-employee. Below is the table of minimum period of notification for worker-employees who work on the monthly basis[11] :

Length of employment	Period of notification
Less than 6 months	7 days
6 months-2 years	15 days
2-5 years	One month
5-10 years	Two months
More than 10 years	Three months

For a worker-employee whose contract is occasionally suspended, the period of suspension is not subtracted from the whole duration of the contract in order to calculate the duration of work for purpose of notification. For example, a worker was hired under an undetermined duration contract starting from 1 January 2005; he was suspended twice in 2007 and 2010 for a period of 10 days and 20 days respectively. He was terminated in 31 December 2014. Although his contract was suspended for a total period of 30 days, he is still considered to have worked 10 years. So, he would be entitled to notice of two months prior to the effective date of termination.

b. Exceptions to the worker-employee's obligation to provide notice

The worker-employee needs not notify the employer when the latter commits a serious misconduct against him or her or in case of force majeure. Force majeure occurs when the worker-employee is **impossible** to perform contractual obligations due to chronic disease, insanity, permanent disability, or imprisonment. A chronic disease that does not impair the ability of the worker-employee to perform his or her job is not considered related to a force majeure situation. For example, a worker who suffers from the HIV/AIDS can still perform his or her employment obligations even this disease is chronic.

[11] Article 75 stipulates that the method of calculating the duration of work for those workers-employees who do not work on a monthly basis will be determined by the Prakas of the Minister in charge of labor. Since there is no Prakas to define the term "monthly basis," it is perhaps understood as a worker-employee receiving a monthly salary.

c. Employer's obligation to provide notice

References

LL Art. 82, 83, 86; AC Award No. 144/12, 019/18.

The employer must provide the minimum period of notice of termination, which is the same as that of the worker-employee (See table in Section **"Worker-employee's obligation to provide notice"** above).

References

LL Art. 75, 76, 78; AC Award No. 022/18.

The statutory stipulations of the period of notice cannot be derogated or the notice becomes null by operation of law. For example, a worker who has worked for 10 months must be notified at 15 days prior to the date termination; the employer cannot notify him 13 days prior to the date of termination.

Failure to observe the period of notification or improper notification **by the employer** will result in the employer paying the worker-employee a compensation equal to the wage and all benefits that the worker-employee would have received if he or she is properly notified.

Length of work	Proper notification	Improper notification	Consequences
13 months	15 days	5 days	Employer must pay wage and benefits for 10 (15-5) days to the worker-employee
2 years and one month	One month[12]	15 days	Employer must pay wage and benefits for 11 (26-15) days or 7 (22-15) days to the worker-employee
12 years	Three months	20 days	Employer must pay wage and benefits for 52 (72-20) days or 46 (66-20) days to the worker-employee

Because the provision of Article 77 of the Labor Law requires that, in case of failure or improper notice, the employer compensate the worker-employee an amount equal to wage and benefits for the required period of notice, the employer may choose to terminate a worker-employee immediately and pay these wage and benefits in lieu of notice. In this case, the worker-employee is released from obligation to work and receives the termination package. For example, an employee has worked three year in an enterprise; the employer wants to terminate that employee without employing him till the end of the period of notice of one month. The employer may terminate his or her contract immediately and pay the employee one-month salary and benefits in lieu of notice.

[12] In some enterprises there are 22 working days, while others there are 26 working days per month.

d. Exception to the employer's obligation to provide notice

References

LL Art. 74, 82.3, 85.

The employer has no obligation to provide notice if worker-employee is in a probation period or internship, has committed serious misconduct. Also, the employer does not need to provide notice when an event of force majeure occurs and because such event a party (employer or worker-employee) is unable to meet his or her obligations of the contract for an indefinite period of time.

The employer can terminate the worker-employee's contract any time without notification during the probation or internship.

For an event of force majeure to discharge the employer's obligation to provide notice, that event must last for an indefinite period and not just temporarily. For example, the enterprise is ordered to close by the public authorities, natural disaster (flood, earthquake, war) that destroys the equipment or facilities and the enterprise is not operational for an indefinite time, the death of employer and the enterprise is close.

The employer still bears the obligation to provide notice when the force majeure is related to the worker-employee's health conditions, for example when the worker-employee suffers a chronic disease, insanity, permanent disability.

e. Statute of limitation for termination on serious misconduct

References

LL Art. 26; AC Award No. 126/15.

When the worker-employee has committed a serious misconduct, the employer also does not need to provide a notice. It can terminate the contract immediately within seven days from the date it was informed or aware of such serious misconduct. The delay of termination can result in the employer to have waived its termination right.

f. Obligation to compensate

References

LL Art. 89 (new), PK No. 443 (MoLVT) 21 Sept 2018, Cl. 1, 2, 3; AC Award No. 001/19, 040/19, 054/19, 024/20.

Obligation of the employer to pay seniority indemnity: In the old Article 89 of the Labor Law, the employer is liable to the worker-employee's dismissal indemnity of seven days of wage and accessory benefits at the end of the employment if he or she has worked from six to 12 months; and 15 days wage and accessory benefits if he or she has worked more than 12 months.

Article 89 (new) replaced the dismissal indemnity scheme with the new seniority indemnity scheme, starting from 1 January 2019. Under the current scheme, the worker-employee is entitled to 15 days wage and accessory wage per year and this seniority indemnity is paid twice a year, in June and December. The worker-employee is entitled to the remaining seniority indemnity of seven-days wage and accessory benefits, if he or she has worked in a period between one and six months[13]. For example, a worker-employee, who has worked four years and one and half month, is entitled to 60 days seniority indemnity (for the four years worked) and seven days remaining seniority indemnity.

A worker-employee, who has worked before 2019 and is continued working, will receive a back pay of his or her seniority indemnity in June and December in 2019 and after until all the amount of seniority indemnity is paid off, but the maximum amount cannot exceed six months back pay wage. Accessory wage is not factored in the calculation of seniority indemnity prior to 2019.

The worker-employee will not be entitled to a seniority indemnity if he or she is terminated for serious misconduct. However, if the worker-employee is terminated because of illness, he or she will be entitled to a seniority indemnity.

The payment of seniority indemnity based on Article 89 (new) of the Labor Law and Prakas No. 443 (Ministry of Labor and Vocational Training) dated 21 September 2018 is captured in below table.

[13] Article 89 (new) states that in case of termination of employment contract by employer in accordance with the provisions of the Labor Law the worker-employer is entitled to seven-days wage and accessory benefits for remaining seniority indemnity during the last period from one month to less than six months.

Seniority indemnity payment		
	Before 31 December 2018	**From 1 January 2019**
Payment for work-er-employ-ees in garment and foot-wear sectors	Twice a year: 15 days in June; 15 days in December	Twice a year: 7.5 days in June; 75 days in December
Payment for work-er-employ-ees be-sides garment and footwear sectors	Twice a year: 7.5 days in June; 7.5 days in December	Twice a year: 7.5 days in June; 7.5 days in December
Basis of calculation of seniority in-demnity	Calculated based on average wage of the year of back pay	Calculated based on wage and wage accessories
Seniority indemni-ty for work-er-employees work-ing more than one month but less than six months	7.5 days (for example, work-er-employee started working in November 2018)	
Seniority for worker-employ-ees working more than six months but less than one year	15 days (for example, work-er-employee started working in May 2018)	
Maximum, claimable seniority in-demnity	Six months	

At the termination of the undetermined duration contract, worker-employees will be paid seniority indemnity of the current year and the seniority indemnity back pay earned before 31 December 2018. The back pay of seniority indemnity is calculated based on the average wage of the last twelve months.

References

LL Art. 91 (new), 94 (new)

Obligation of the worker-employee to pay damages: A termination or dissolution of the employment contract without grounds (for example, serious miscconduct, without mutual agreement, force majeure, serious breach of the contractual obligations) by the worker-employee can result in the employer's entitlement to damages. Since there is no legal stipulation about the amount of damages that the employer can claim from the worker-employee, that amount should be determined by the court, which may consider different factors; for example local usage, the nature and scope of service provided under the contract, seniority, age of the worker-employee, and evidence that proves the existence and size of the damages.

References

LL Art. 89 (new), 91 (new); PK No. 443 (MoLVT) 21 Sept 2018, CL. 2, 3; AC Award No. 54/19, 015/20.

Obligation of the employer to pay damages: If the termination is initiated by the employer without proper grounds, the employer may be liable to pay damages claimed by the worker-employee. The worker-employee bears the burden to prove the amount of damages. Alternatively, instead of proving damages, worker-employee can accept a lump sum amount equal to seniority indemnity that has been received and is to be received during the employment contract.[14] For example, a worker had worked four years from 1 January 2016 to through 2 March 2019. He was terminated without ground on 2 March 2019; so he is entitled to 45 days of seniority indemnity that he has received for the past three years (1 January 2016 to 31 December 2018)[15] plus another seven days seniority indemnity to be received from 1 January to 2 March 2019 (period between one and less than six months). He is therefore entitled to a damage equal to 52 days of seniority indemnity.

g. Exceptions to the employer's obligation to compensate

Reference

LL Art. 89 (new)

Serious misconduct: The employer has no obligation to pay the seniority indemnity if the worker-employee is terminated for serious misconduct. But this is applicable only to the remaining (or the last six months) seniority indemnity because the seniority indemnity is required to be paid out every six months. For example, a worker working under an undetermined duration contract since January 2019 and is terminated for serious misconduct in November 2019 would not receive the seniority indemnity for the period July-December, though his or her seniority indemnity from January to June 2019 was supposed to have been paid already in June.

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[14] Since the duration of the contract is undetermined the phrase "seniority indemnity **to be received during the employment contract**" probably means seniority indemnity to be received for the remaining period of the last six months. For example, since the worker-employee is entitled to the seniority indemnity every six months for every year, if the worker-employee is terminated without ground in March the remaining seniority indemnity to be paid is 7 days (for the period January-March).

[15] According to Article 89 (new) of the Labor Law, coming into effect on 26 June 2018, worker-employees are entitled to a seniority indemnity equal to 15 days wage and accessory benefits per year. However, Prakas No. 443, dated 21 September 2018, of Ministry of Labor and Vocational Training stipulates that the seniority indemnity before 31 December 2018 is calculated based on the **average wage** of each year back pay. The accessory benefits are not factored in this calculation.

Reference

PK No. 443 (MoLVT), 21 Sept 2018, CL. 3

Resignation: Another exception to the employer's obligation to pay the backpay seniority indemnity is when a worker-employee resigns from the enterprise. The worker-employee will not be entitled to the remaining seniority indemnity. This includes seniority indemnity for the last six-month period of his or her employment and the outstanding back pay seniority indemnity prior to 2019.

h. Reinstatement

References

LL Art. 91 (new), 385; PK No.099, 21 Apr 2004 on Arbitration Council Cl. 34 .

In case of termination without grounds, the Labor Law generally provides for monetary damages. But the court may impose specific performance, including reinstatement. Prakas No. 099 dated 21 April 2004 on the Arbitration Council empowers the Arbitration Council to grant reinstatement remedy, though it does not provide specific circumstances under which a dismissed worker-employee can be reinstated.

The decision to reinstate is based on the power and authority granted by the Prakas to the arbitrators to provide full remedy, including civil compensation or other proper and just compensation, any violation of provisions provided in the Labor Law, implementing regulations under the Labor Law, collective bargaining agreements or other obligations arising from the professional relationship between employer and employee.

In case of collective disputes, if the worker-employees request for reinstatement instead of claiming damages and compensation for severance pay or seniority indemnity, the Arbitration Council may order the employer to reinstate the dismissed worker-employees to their former position.

The Arbitration Council based on the following grounds to reinstate the worker-employees:

- Non-compliance with the procedure for termination determined in the internal regulations of the enterprises and with provisions of the Labor Law (AC Awards in cases 035/15, 078/15, 092/15, 175/15, 201/15, 222/15, 236/15. 240/15, 251/15, 264/15, 307/15, 038/16, 209/16, 31/17)
- Termination without cause (AC Awards in cases 28/14, 82/14, 83/14, 104/14, 178/14, 308/14, 336/14)
- Termination based on discrimination against the union (AC Awards in cases 28/07, 123/07, 77/19)

H. Mass layoff

a. Mass layoff criteria and procedure

References

LL Art. 95; AC Award No. 41/13, 104/15, 149/15, 038/17.

Mass layoff is a termination of the contracts of multiple worker-employees due to the reduced activities or the internal reorganization of the enterprise, for example, when the enterprise is experiencing economic hardship due to the slow economic activities, when the enterprise finds it necessary to reorganize the workforce to meet the new technological requirements or to stay competitive. To prevent against discrimination or favoritism, mass layoff must observe certain criteria and procedures set out in the Labor Law.

There is no defined number of worker-employees in the Cambodian Labor Law that dictate the procedural requirements for mass layoff.

Before executing the mass layoff, the employer must draw a list of the worker-employees to be laid off taking into account their professional qualifications, work seniority in the enterprise, and familial burden.

Then, the employer must provide written notification to the representative of the worker-employees, stating the reasons of mass layoff and seeking his or her opinion on the measures taken to minimize the effect of this reduction on those worker-employees.

Mass layoff will apply to the worker-employees in the following order:

- Those have least professional aptitude
- Those who have least seniority. One year of seniority is added to those worker-employees who are married. If they have children, one year of seniority is added for each dependent child. For example, if a worker, who have worked five years and is to be laid off, will have a seniority of six years if he is married; and if he has four dependent children, his seniority will be 10 years.

  The employer must inform the labor inspector of the layoff plan and procedure. Upon request by the representative of the worker-employees, the labor inspector can convene a meeting of the employer and the representative to discuss about the consequences of the

layoff and identify means to mitigate these consequences.

b. Rehiring laid off worker-employees

Reference

LL Art. 95

The employer must give priority to rehire to the laid off worker-employees if the enterprise needs people to occupy the same type and position of employment. The period of priority retention is two years. If the enterprise is doing better and need rehiring, the employer must contact the laid off worker-employees by registered mails or personal delivery informing them of the availability of the employment and soliciting their interests. To facilitate this, the worker-employee must keep the employer informed of any change to his or her address or domicile.

I. Change of the status of enterprise

References

LL Art. 87 (new); AC Award No. 023/19.

The status of the enterprise may change when it is sold to a new employer, merged into another enterprise, etc. Although these changes may occur, the employment contracts are not changed with respect to the worker-employees in the old enterprise. This means the contractual relationships between the old workers and the new enterprise remain intact. For example, an enterprise E is sold to a new employer B. Worker-employees are transferred to employer B and their contractual benefits must remain the same as in the old enterprise even though they are now employed by employer B. The enterprise may stop its business due to insolvency. The employer may still owe certain obligations to the worker-employees, for example, unpaid salaries and accessory and other benefits. The employer must follow the insolvency procedure rather than dissolve the enterprise right away. In this situation, the worker-employees become the creditors in bankruptcy. The estate of the enterprise is administered by a trustee. The trustee will proceed with liquidation and distribute the proceeds of liquidation to the creditors/ worker-employees.

There have been some occurrences where the employer abandons the enterprise without explanation and did not pay the wage and wage to the worker-employees. The employer never comes back to accessories settle the debts of the worker-employees, and the enterprise is deemded dissolved. The worker-employees protest for their unpaid salaries and, especially, their severance pay or seniority indemnity.

Reference

LL Art. 2

A company can be different from an enterprise. Physical or legal entities can form an enterprise for the purpose of Labor Law. Those physical or legal entities can be an employer that establishes that enterprise only if it employs more than one worker-employee. In this way, if an enterprise is closed, it does not mean the company is dissolved, if the enterprise is created by a company. On the contrary, if a company is dissolved the assets of the enterprise are liquidated so the enterprise practically does not exist.

So, even if the enterprise is closed, the company still exists. The procedure for the closure of the enterprise is governed by the Labor Law and Prakas of the Ministry of Labor and Vocational Training.

References

LCE Art. 252-257; AC Award No. 226/16, 054/19.

A company cannot be dissolved without following the due process of dissolution. To complete the dissolution the enterprise must go through the following steps:

- The employer makes a decision about the dissolution
- The employer confirms its intention to dissolve the enterprise to the Ministry of Commerce. The Ministry of Commerce issues a certificate recognizing the intention to dissolve
- The employer notifies all the creditors (including the worker-employees) of its intention to dissolve and leave some time for them monitor the process of dissolution or make claims to the enterprise. The employer must attach the Ministry's certificate recognizing the intention to dissolve to the creditors.
- The employer proceeds with liquidation by selling its assets to obtain cash and distribute it to the creditors.
- When all the debts are completely settled with the creditors, then the employer decides on the dissolution.
- Finally, the Ministry of Commerce issues a certification of dissolution, which is the final act of **dissolution**.

SECTION NINE

EMPLOYER AND EMPLOYEE RESPONSIBILITIES

In the previous Sections, we have mostly dealt with the rights and benefits of the worker-employees and employers. As rights come with responsibilities, this Section will cover the responsibilities that each party, employer or worker-employee, has to bear in the workplace.

The employer provides worker-employees with accurate information about work benefits and conditions in its establishment or enterprise; makes sure that the worker-employees are paid on time; keeps the worker-employees safe; assumes the liability to the third party for its worker-employee's wrongdoing; prevents all forms of sexual violence against its worker-employees; upholds the compliance with the laws and regulations; and maintains private information of the worker-employees confidential.

The worker-employees must bear certain responsibilities towards the employer and their fellow worker-employees. The worker-employees must be sincerely present to the employer the information on their qualifications and experiences; owe duty of obedience to the employer and its representatives (e.g. supervisors); maintain the confidentiality of information or processes generated by the enterprise; take good care of the employer's property; and comply with and uphold the disciplinary, safety, and hygienic measures in the workplace.

A. Employer's responsibilities

a. Duty to represent true conditions of employment

References

CC. Art. 665, 347

The employer must clearly indicate to the worker-employees about the wage, working hours, and other working conditions. If the indication made by the employer turns out to be false, the worker-employee may rescind the employment contract based on fraud or mistake. If the rescission is based on fraud, the worker-employee must prove that the information provided by the employer differs from actual fact and has the intent to defraud him or her. In this case, the worker-employee can terminate the contract immediately and seek damages if he or she suffers a loss from this fraudulent act.

b. Duty to pay wage and benefits

References

LL. Art. 116, 117; LIS Art. 57 ; AC Award No. 085/19.

The employer must pay the workers twice a month—every bi-weekly period and employees once a month. If the payment is delayed without proper reason, the labor inspector may fix the date of payment. If the employer fails to pay the worker-employees even the date of payment is fixed by the labor inspector, the latter transmit the minutes of labor violations (*procès verbal*)[16] to the court, which may take preservative measure to freeze the property of the employer for forced execution to settle the debts owed to the worker-employees. The court may also appoint a provisional administrator to administer the property of the employer.

If the employer becomes insolvent, the labor inspector can also file bankruptcy and appoint a trustee or administrator to administer the estate of the employer to resolve the debts owed to the worker-employees. The trustee will liquidate all the assets of the employer to pay all creditors of the employer. The worker-employees will have first priority claims over wages from the proceeds of liquidation. This means the proceeds of the liquidation must be first distributed to the worker-employees and other creditors can only receive the rest of the proceeds.

When a worker-employee leaves the job, the employer must pay the worker-employee adequately, including salary and all benefits.

[16] Procès-verbal is a procedural act based on French law. Generally, procès-verbal is a report of findings of violations drawn up by certain public officials and is submitted to relevant authorities (See, for example, Article 90 of the Code of Criminal Procedure, which requires the police to take minutes "procès-verbal" of their research and findings. The prosecutor receives this procès-verbal and takes action on it (Article 74)). In labor law, the official who is empowered to draw up the procès-verbal is the labor inspector, who transmits it to the court for legal action. The procès-verbal has probative value until proven to the contrary.

c. Duty to keep worker-employees safe

References

LL Art. 83.6, 229, 230; CC. Art. 666, 743; PK No. 139 (MoLVT) 22 Apr 2003 CL. 1, 2, 3; AC Award No. 227/14, 012/16, 012/17.

The employer has a duty to prevent worker-employees from suffering bodily harm, health deterioration, occupational accident, loss of life, etc. The employer must ensure that the working place and equipment, system of work are safe for the worker-employees. It must provide training or instructions about the proper handling of the equipment and safety measures. The employer must comply with health and safety requirements imposed by the laws and regulations. The non-compliance with these requirements may be considered as serious misconduct and, as a consequence, opens the grounds for the worker-employees to rescind the contract and seek damages. For example, the employer is supposed to control the chemical contamination, but if it does not fulfill the duty to control it and the leakage causes harm the worker-employees' health, the employer may be liable to the worker-employees for such harm and the workers may cease to work in this enterprise.

The employer is supposed to maintain the building to prevent the collapse. If the building collapse, the employer must be liable to the damages to the worker-employees caused by that collapse.

Another example, if the employer employs workers in a confined place and if the workers become suffocated for lack of oxygen, the employer may be liable for this harm caused to them. The suffocation must be caused by the non-compliance with the safety requirements of such place.

d. Obligation to pay damages caused by the worker-employees

Reference

CC. Art. 747

The employer has an obligation to pay damages that its worker-employee has caused to a third party in violation of law in performance of work for the employer, even if the wrong committed by the worker-employee is done intentionally or negligently. This is called imputed or vicarious liability. The rationale behind imputed liability is that because the employer receives the benefits of the worker-employee's performance, therefore it must bear the cost of damages suffered by the third party.

The worker-employee performs the work for the employer when he is assigned by the employer to perform such work. For example, a driver is assigned to deliver mails to the employer's

customers in Phnom Penh. If during the driving, the driver intentionally or negligently runs into a motorcyclist and causes injury to the cyclist and damages her motorcycle, the employer must be liable to the cyclist for her injury and the motorcycle damages.

Based on the concept of imputed liability, the employer should be liable to the third party for the loss or damage caused by its worker-employee during the course of his or her employment. But the employer may recover an amount of loss from the worker-employee according to the degree of his or her wrongdoing.

e. Duty to protect worker-employees against sexual violations

References

LL. Art. 3, 172; CrimC Art. 250; CC Art. 744, 747

Article 172 of the Labor Law prohibits all forms of sexual violations in workplace. Sexual violations may include all criminal sexual violations such as sexual molester, rape and attempted rape; and sexual harassment[17].

The International Labor Organization defines sexual harassment as a sex-based behavior that is unwelcome and offensive to its recipient[18]. The unwelcome sexual behavior is determined from the recipient's perception that it is undesirable or offensive and that the recipient has not solicited or incited such behavior[19].

Sexual harassment involves, for example, unwelcome touching, hugging or kissing; unwanted invitations for sex or persistent requests to go on dates; intrusive questions about another person's private life or body; unnecessary familiarity, such as deliberately brushing up against someone; showing sexually explicit pictures, posters, screen savers, emails, messages; providing sexually explicit internet sites; behavior which would also be an offense under the criminal law, such as exposure of obscene materials or communications[20].

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[17] Article 172, Labor Law: "…all forms of sexual violations shall be strictly prohibited."
[18] See https://www.ilo.org/declaration/info/factsheets/WCMS_DECL_FS_96_EN/lang--en/index.htm
[19] See ILO Decent Work, Frequently Asked Questions about Sexual Harassment at the Workplace. See at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_149651.pdf
[20] Ibid.

Sexual harassment occurs, for example, when the harasser requests sexual favors in exchange of pay rise, promotion, renewal of employment contract, etc. This is called ***quid pro quo*** sexual harassment (Latin word for exchange something for something). In quid pro quo sexual harassment, the harasser will decide on the employment terms or conditions of the victim if his or her sexual demand is satisfied.

Another form of sexual harassment does not involve the exchange of sexual favors with the employment decision, but it is an unwanted environment that is created and subject the worker-employees to unwelcome sexual advances, verbal or physical sexual conduct that is severe or seen or heard everywhere in the workplace, which has the effect of unreasonably interfering with the worker-employees' work performance[21]. This is called **hostile environment** sexual harassment. For example, the distribution or circulation of pornography among co-workers/employees. This behavior creates an environment of embarrassment or humiliation on others in the workplace.

Article 250 of the Criminal Code defines sexual harassment as an act of a person who abuses his or her position of authority to repeatedly pressure another person in order to obtain sexual favors. The punishment is six day to three months imprisonment and a fine of 100,000 to 500,000 riels. From this criminal provision, it appears that Article 250 of the Criminal Code deals with the quid pro quo sexual harassment. Sexual harassment is therefore an unlawful act. If the sexual harassment is committed by a worker-employee, the Criminal Code attributes the responsibility to that worker-employee and not the employer. The responsibility of the employer to protect the worker-employees against sexual harassment may derive from the employer's duty of care to keep worker-employees in the workplace from body or health harm.

Sexual harassment may cause mental sufferings, dishonor, or disreputation in the society. The Cambodian Civil Code recognizes the unlawful act that causes mental suffering as a tortious act (See Notes to Article 744 of the Civil Code). The employer is liable to damages caused by its worker-employee's unlawful, intentional or negligent act during the execution of work for the

[21] Ibid.

employer. The liability to damages caused by a worker-employee's act of sexual harassment may be imputed to the employer. Because the employer manages and controls the worker-employees, it has the power to prevent them from committing unlawful acts in the workplace.

f. Duty to implement the laws and regulations

References

LL. Art. 359-381; CrimC Art. 28, 29; 42, 265, 269, and 273, 605.

As a matter of course, the employer must faithfully implement the Labor Law, other laws or regulations. The violations of Labor Law will result in punishments imposed under Chapter 16 (Articles 359-381). The employer cannot instruct a worker-employee to violate the laws or regulations. For example, the employer cannot provide instructions or facilitation to the employee to avoid tax or file a wrong tax return, to commit bribery of a public official, or to hide or falsify information (for example financial information) that is required by law. The employer cannot remain complacent to the violations committed by workers-employees in the workplace.

g. Duty to keep confidential the worker-employees' private data

Reference

LL. Art. 239

The employer must not disclose information about its worker-employees to a third party. That information includes medical files, salaries. The employer cannot require a worker-employee to submit the results of his or her laboratory tests along with the medical claims so to prove, for example, that the worker-employee has actually visited the laboratory.

B. Worker-Employee's responsibilities

a. Duty to provide accurate information about qualifications

References

LL. Art. 83.b.2.; AC Award No. 016/17.

The fraudulent act committed to obtain a job is considered a serious misconduct. The fraudulent act may include falsification of such documents as identity card, education background, or resume. The employer may terminate the employment when it finds out later that the applicant has cheated it.

b. Duty to implement faithfully the employment contract

References

LL. Art. 69, 83.b.2.; AC Award No. 028/14.

The refusal to implement the obligations of the employment contract without legitimate justifications may be considered as a serious misconduct. This conduct may be ground for termination of the employment contract.

Worker-employees must have duty of care in performing their work. They must perform their work to the best of their knowledge and skills. Gross negligence may be considered as a breach of duty.

c. Duty of non-competition

Reference

LL. Art. 69

Worker-employees bear a duty to not compete with the business of the employer. They are free to carry out their professional activities outside working hours as long as those activities do not compete or harm the interest of the enterprise they are working for. The duty of non-competition can be waived by the mutual agreement between the employer and worker-employee.

d. Duty of obedience

References

LL. Art. 83.b.2, 26; AC Award No. 016/17.

The worker-employees must honestly implement the terms and conditions of the employment contract, internal regulations, policies, supervisor's instructions or directions. However, obedience does not mean that the worker-employee can be caused to act wrongfully or illegally, for example, causing the guards to attack non-violent demonstrators. The duty of obedience does not mean that the worker-employee is deprived of freedom of expression. The worker-employee can still disagree with the work approach imposed by the supervisor or employer, but the disagreement is voiced for the purpose of improving the productivity of the work or for protecting his or her rights. The violation of duty of obedience may lead to serious misconduct or disciplinary actions.

e. Duty of confidentiality

References

LL. Art. 83.b.2; AC Award No. 028/14.

The worker-employees must not disclose the information about the enterprise, for example trade secrets, information that compromise the competitiveness of the enterprise. This duty must be complied with during the employment and post-employment.

f. Duty of care for the employer's property

References

LL. Art. 83.b.1, 83.b.2; AC Award No. 281/15.

The worker-employees must take care of the employer's property the same way as their own property, for example, providing constant maintenance of the vehicles, no stealing or embezzling the employer's property or use of that property for their personal purpose. The worker-employees must not carry out sabotage activities against the interest of the employer, for example, conducting clandestine activities aimed at destructing or deteriorating the employer's property or work. These activities constitute serious misconduct.

g. Duty of uphold the disciplinary, safety, and hygienic measures

References

LL. Art. 83; AC Award No. 080/19.

The worker-employees have the duty to observe the disciplinary measures. Conduct that is against the disciplinary measures include the non-respect of the internal regulations, disobedience to the supervisor's legitimate instructions or directions, unjustified late attendance, non-cooperation with fellow worker-employees, non-compliance with safety instructions, incitement to other worker-employees to commit faults, etc.

The worker-employees must not breach the safety and hygienic measures because this may cause danger to follow worker-employees or harm to the employer's property.

SECTION TEN

CHILD AND WOMEN AT WORK

Cambodia ratified the ILO Worst Forms of Child Labor Convention C182 on 14 March 2006. One of the worst forms of child labor under this Convention is the work that, by its nature or circumstances, is likely to harm the health, safety, or morals of the children. Convention leaves the national laws or regulations to determine, after consultation with workers and employers' organizations concerned, what kinds of work and circumstances that may harm the health, safety, or morals of the children.

The Ministry of Labor and Vocational Training has issued various Prakas to restrict the employment of children in certain labor conditions that may harm their health, safety, and morals. For example, nighttime work, hazardous workplace environment, and other work are specially regulated.

Cambodian ratified the ILO Minimum Age Convention C138 on 23 August 1999. As with the latter Convention, Cambodia sets the minimum age for admission to employment at 15. In Cambodia, the minimum age can be raised to 18 for certain works that endanger their health, safety, or morals. Although children over 15 can be accepted in the workplace, certain employments or labors that cause danger or overwork are strictly prohibited for a child less than 18. Nighttime work, for example, is allowed for children, but certain conditions must be strictly met.

In the workplace, women are treated equally with men. However, women who are on maternity will receive a special treatment. For example, women, who just resume the work after the maternity leave, cannot be assigned to heavy load work and are allowed breaks to breastfeed the babies.

A. Child labor

a. Worst form of child labor

References

LL Art. 173; ILO C182, R190

Worst forms of child labor, as defined by the ILO C182, comprises slavery, child prostitution or pornography, use of child in illicit activities, and work that is likely to harm the health, safety, or morals of children. The worst forms of child labor must be prohibited and eliminated. In this Guidebook, we cover only the

last form of child labor. The Convention leaves to the national laws or regulations to determine which types of work that harm the health, safety, or morals of the children. But this discretion must take into consideration the recommendations by General Conference of the International Labor Organization.

In determining and identifying whether a type of work constitutes a worst form of child labor, the laws and regulations must consider the following:

- Work underground, under water, at dangerous heights or in confined spaces
- Work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads
- Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperature, noise levels, or vibrations damaging to their health
- Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

The types of employment or work as listed above should be re-examined periodically and revised as necessary when new scientific and technological knowledge emerge.

Children are allowed to work in the above working environment on the conditions that (1) they are 16 or older, (2) their health, safety and morals are fully protected, (3) they must receive adequate specific instruction or vocational training in the relevant branch of activity.

B. National laws and regulations on child labor

a. Minimum age to work

Reference

LL. Art. 177.1

The employer can employ a child of a minimum age of 15.

b. Nighttime work

References

LL Art. 175.a; PK No. 144 (MoLVT) 10 Jun 2002

Night work is prohibited for a child less than 18 years old. However, child labor at nighttime is allowed only when the following conditions are met:

1. **Age:** the child must be from 16 to 18 years old
2. **Operation hours:** the factory operates on the 24 hours basis

3. **Type of enterprises:** only a limited number of industries can employ child labor for replacement such as steel, glass, sugar, paper pulp, and gold processing factories
4. **Disruption of the enterprise work:** the enterprise cannot avoid using children because adult work force is not readily available
5. **Purpose of employment:** the employment of child labor is for the sole purpose of providing vocational training
6. **Physical aptitude:** the child must be certified by labor medic as physically apt
7. **Authorization of labor inspector:** the employer must secure the authorization in advance from the labor inspector, who is satisfied with purpose of employment, duration of work, his break time, and physical aptitude.

Although children can be employed at nighttime, the total working hours for them cannot exceed eight hours per day and there must be breaktime at least 13 consecutive hours between the working sessions. For example, if a child starts his work at 6 pm, he will stop at 2 am of the next day and must take a break at least from 2 am 3 pm before resuming his next work.

c. Hazardous workplace environment

References

PK No. 106 (MoLVT) 28 Apr 2004

Hazardous work: Hazardous work is defined as work that harms the health, safety, or morals of the children. The following work are hazardous for children under 18 and must be prohibited:

1. **Under water:** work to collect mollusks, sand, gravels, and pearls
2. **Underground:** cave, tunnel, mine ores, underground stone exploitation
3. **Forestry and fishery:** deep water fishery, timber cutting, charcoal production, operating wood processing machines
4. **Driving or assistant driver:** this refers to the starting, operating, maintenance of machines, or any activities that bring the children into physical contact with the machines, for example, bulldozers, truck trailers, road rollers, forklift tractor, excavators, loader machines, collector machine, trucks, buses, and taxis.

5. **Operating lifting and other machines:** lifting machines, pulling machines, pulley lifting machines; weaving machines.
6. **Heavy loads:** children from 15 to 18 cannot lift or push or pull heavy loads as follows:

Means to move loads	Male	Female
Direct lifting	12 kg	6 kg
One-wheel wheelbarrow	32 kg	Prohibited
3 or 4-wheel wheelbarrow	48 kg	24 kg

7. **Construction:** construction site (except special sites that are safe and authorized by labor inspector), working on scaffold or ladder higher than 2.5 meters to paint or repair the building.
8. **Inflammable or explosible machines:** work in places having steaming machines, air pumping machines, gas filling machines, gas production machines (such as machine producing acetylene).
9. **Inflammable or explosible substance:** worksite that has explosives, fireworks, or other inflammable substance (except in gas stations), acid.
10. **Quarry:** Work in quarries to drill, ignite, or explode stones or conduct transportation in these places.
11. **Chemical substance and radiation:** benzene, cadmium, mercury, lead, zinc, radioactive substance, ultraviolet, laser, radio-frequency emission, pesticides, herbicides, garment materials that are treated with chemical substance
12. **Infectious places:** laboratories, sewage, or waste dumping sites
13. **Places that affect the morals:** alcohol, wine, and beer distilleries; entertainment clubs; gambling and casinos; narcotic production; leather processing; slaughterhouses and meat supplies; mortuary or funeral services.
14. **Electricity:** Work involving deploying electrical wires.

15. **Polluted places:** Workplace polluted by smoke, dust, gaseous or other substances that affect the health.
16. **Hot places:** furnaces used in the production of glass, brick kilns, ceramic, oil or fat extraction, ironsmiths.
17. **Security and safety guards:** employment as beach rescue guards and security guards.

Children over 16 can be employed in hazardous environment only after having permission from the Ministry of Labor and Vocational Training. The permission is granted only when the children have received proper training that is relevant to the safety of the requested places, do not work from 22:00 to 5:00; and the proposed work has been consulted with the Labor Advisory Commission. However, work in mining is strictly prohibited for children less than 18.

Reference

PK No. 145 (MoLVT) 10 Jun 2002

Work underground: Work underground is the work carried out under the surface of the earth, for example work in mine extraction, caves, tunnels. Children can be employed in work underground only when the following conditions are met:

1. **Age:** the child must be from 16 to 18 years old
2. **Purpose of employment:** the employment of child labor is for the sole purpose of familiarizing them with the job they will undertake in the future
3. **Physical aptitude:** the child must be certified by labor medic as physically apt, including clear chest X-ray. The medical examination must be repeated very six months at the employer's expenses.
4. **Work underground skill training:** the employer must provide training skills on the types and safety of underground accident, first aid rescue, and measures to prevent accident, use of safety equipment and safety manual. When assigned to work underground the children must be under the supervision of their instructor.

The employer must maintain a logbook that records the age of the children, date of initial assignment to work underground, weekend break, annual leave. The children in work underground cannot work more than 40 hours a week or eight hours a day. The weekend break must be at least 48 hours, including Sunday. They are entitled to 24 days anneal leave (although they work intermittently).

The employer must not leave the children work unattended. They must be under surveillance of someone.

d. Light work applicable to children between 12 and 15

Reference

PK No. 002 (MoLVT) 10 Jan 2008

Children between 12 and 15 can be employed in light work as part of their vocational orientation and training. The employer must receive the consent of the children's parents or guardians, comply with the working hours, and breaktime.

Light work is defined as the type of work that does not harm their health or mental and physical development and that does not affect their regular schooling.

Examples of light work: Children can be employed in below jobs:

1. **Agricultural works:** These include animal raising, livestock caring, tree planting, crop harvesting, fruit picking or harvesting, farm cleaning, weed clearing, soil leveling. However, children cannot be employed to slaughter animal and to pick fruits from tall trees.
2. **Sales activities:** These include employments as sales assistant in vending stands, vegetable and fruit vending staff; as newspaper vendor; goods controller, packager, selector, and sorter of goods; assembler of light parts; lifting or carrying light goods.
3. **Eatery:** The jobs include cleaning and making dining tables.
4. **Clothing:** The jobs include packaging, glass and ceramic cleaning, cloth assembly, cleaning stained clothes, labeling, price tagging, sorting clothes for laundering, cloth trimmer or thread cutter.
5. **Document mail circulation:** This include distribution of documents or mails to various departments of an institution.
6. **Paint:** Use of paint with protective gears.

Guardian or parents' consent: The employer must receive informed consent from the parents or guardians on the employment conditions, which include duration of work of the children, work hazard, sanitation, work safety measures, work-related disease, number of working hours. Since the employment of the children is for the purpose of vocational orientation and training, the employer must make time available for the children to attend the regular schooling. Since the schools in Cambodia divide the daily classes into morning and afternoon sessions, employed children must be able to attend one of these sessions.

Working hours: In the week class, the children (between 12 and 15) can be employed not more than four hours per day, while on weekend not more than seven hours per day. The employer is prohibited from employing children at nighttime between 20:00 and 06:00. The maximum weekly working hours cannot exceed 12 hours. For example, if a child is employed at four hours a day, his or her working time cannot exceed three days per week. If he is employed at two hours per day, the maximum working days will be six per week. Example of workday allowed:

Working Hours	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
4	X	X	X			
3	X	X	X	X		
2	X	X	X	X	X	X

During **vacation period**, the working time is capped at 35 hours per week, not per day. So, the children can be employed not more than 35 hours per week or an average of 5.83 hours per day. If the children work more than four and half hours, they are entitled to have a 30-minute break per day.

If the children work for more than one employer, their working time is calculated by combining all the working time he or she spent for each employer. For example, if child A works 2 hours per day for employer E1 and 2 hours per day for employer E2, the total daily working hours is 4. In this case, during the schooling days, he reaches the maximum worked hours per day.

Breaktime: The children need to rest 14 hours per day. If they are employed at a maximum four hours and attend the school for another four hours, they must have a breaktime of two hours between working and schooling hours. For example, if they attend the morning class between 7 and 11 am, they can only start working at 1 pm and stop at 5 pm.

Weekend: Working children are entitled to two days weekend, which should include Sunday. During schooling period, they must be entitled to Saturday and Sunday. But during vacation time, they should have Sunday and another working day (for example, Saturday or Monday).

C. Women

In earlier Section we have dealt with the benefits that are received by female worker-employees. In this Section we are dealing with the conditions of work for women on and after maternity.

a. Light work

References

LL. Art. 182; AC Award No. 235/12, 012/14.

Women are entitled to 90 days maternity leave. In the first two months after maternity leave, female worker-employees can only be assigned to light work. There is no definition of light work, but it apparently means work that does not involve lifting, pushing, or pulling heavy loads if it is done manually or any work that affects the postnatal health.

b. Breastfeeding

References

LL. Art. 184, 185; AC Award No. 12/11, 182/16, 030/18, 017/19.

In the period of one year after the maternity leave, the employer must allow female worker-employees one of the working hours to breastfeed the baby. This one-hour break for breastfeeding can be split into 30 minutes in the morning and another 30 minutes in the afternoon. Female worker-employee and the employer can agree on which time the worker-employee can take the break, for example, during the first hour of the morning and afternoon work. If they disagree on the break time, the female worker-employee can take the break in the middle of morning and afternoon.

References

LL. Art. 186; AC Award No. 062/10, 028/13.

But the above arrangement may be not practical if the workplace is relatively far from home unless the employer sets up a day care and facilities within the premises of the enterprises or the baby is placed in the day care facilities nearby. To address this issue, a female worker-employee may agree with the employer, for example, to arrange flexible working hours to enable her to breastfeed the baby.

The break for breastfeeding is a separate from any leave. It cannot be deducted from the annual or other leave.

c. Breastfeeding room and day care center

References

LL. Art. 185, 186; AC Award No. 45/07, 44/08, 312/15, 039/18.

An enterprise which employs more than 100 worker-employees must set up a breastfeeding room and day care center within the enterprise premises or at a place nearby. The day care center of the enterprise receives young babies up to three years old (award of the Arbitration Council), the age at which the child can be placed in the kindergarten. If the day care of the enterprise cannot accommodate many babies, the worker-employee can relocate the babies older than 18 months to an outside center at the employer's expenses.

d. Prohibition of employment termination during maternity leave

References

LL. Art. 182; AC Award No. 011/15.

The employer cannot terminate a female worker-employer during the period of delivery and maternity leave, not even with the notice of termination. For example, Setha was on maternity leave. Because the company business is slow, the director of the company feels that the company should lay off some staff. So, he targets Setha because Setha does not work. Although the director can lay off some staff, he cannot terminate a person who is on maternity leave like Setha. Even the director provides proper notice to Setha, the termination of an employee in this circumstance is illegal.

SECTION ELEVEN

COLLECTIVE BARGAINING

The working conditions and benefits in the first place are determined by the laws and regulations. Those conditions and benefits are set as a floor for worker-employees. To raise them above the floor, the worker-employees must bargain with the employer, but in order to effectively bargain they may choose to have a common, stronger voice to be seriously heard by the employer.

The worker-employees need a representative to bargain on their behalf with the employer. This is called the collective bargaining. The representative must have a legal capacity to collectively bargain behalf of the worker-employees.

The law entrusts the capacity to negotiate or bargain with the personnel delegate or the most representative union. Absent the most representative union, the bargaining council can conduct collective bargaining as well.

A. Definition of collective bargaining

a. Definition

References

LL Art. 96.1, TU Art. 69; AC Award No.24/03, 29/03, 041/13, 277/14, 116/19.

Collective bargaining is a process of negotiations between the representative of the worker-employees and the employer with a view to reach an agreement on the working conditions and terms of employment. For example, they negotiate on the wage, working hours, overtime, maternity leave and annual leave.

The product of the collective bargaining is the collective bargaining agreement or CBA. Although the representative represents a segment of worker-employees in an enterprise, the CBA is applicable to all worker-employees in that enterprise.

b. Validity of the collective bargaining agreement

A collective bargaining agreement or CBA is simply a contract between the employer and worker-employees in an enterprise, so the formation of CBA is governed by the rules of contract law. Therefore, the object and the terms and conditions of the CBA must be legal, and the bargaining parties must have the capacity to represent the worker-employees and to enter into the agreement.

B. Party eligible to bargain: Right to represent

a. General

References

CC Art. 365, 366; LTU Art. 54; PK No. 303 (MoLVT) 2 Jul 2018; AC Award No. 116/19.

The right to represent can be created by the contractual agreement between the principal and the representative or by the legal provisions. The scope of representation is determined by the contract or by law (if the right to represent is granted by law).

Legal right to represent: In an enterprise where the labor is unionized, the right to represent belongs to the union. In order to have the right to represent, the union must be elected by the worker-employees in the enterprise or establishment. This right to represent is a right granted by law rather than by contractual agreement between the worker-employees and the union concerned.

b. Most representative union

References

LTU Art. 54; AC Award No. 004/17, 012/17, 060/19, 063/19.

Most representative status as legal right to represent: In an enterprise or establishment there may be more than one labor union that represents their members. Some unions may have more members, while others may have less. They have the right to represent their own members, but not the whole body of worker-employees in the enterprise or establishment. The law determines that for a single union in an enterprise to have the right to represent all worker-employees, it must have members of at least 30% of the total workers in the enterprise or establishment. This union enjoys the status of most representative. A union which has members of only 25% of all worker-employees is a representative but not most representative union.

For an enterprise that has more than one union, the most representative status goes to the union that seeks support from other unions and receives more than 30% votes of support of all worker-employees in the enterprise or establishment. For example, in an enterprise A, there are two unions. The first union receives 45% votes of support of all workers in the enterprise, while the second union receives 30% of votes of support of all workers in the enterprise. The first union receives the most representative status in that enterprise.

The most representative union must also meet certain legal requirements, such as being duly registered, voting members

must have membership contribution slips, capability to deliver professional, cultural and educational services to members. This right to represent is called "**legal right to represent.**"

Scope of representation of the most representative union: The scope of representation of the most representative union is also determined by law, that is, the right to represent workers in collective bargaining and in collective dispute resolution.

Reference

LTU Art. 72

In an enterprise where there is no most representative union, another body, called a bargaining council, has the right to represent the worker-employees in that enterprise, which is conferred by law. The scope of representation is representing the worker-employees to collectively bargain with the employer.

References

LTU Art.59; PK No. 303 (MoLVT) 2 Jul 2018 Cl. 14, AC Award No. 002/17, 050/19, 014/20.

Scope of representation of the minority union: While the most representative union has the legal right to represent **all worker-employees** in the collective disputes arising out of the collective bargaining agreement, the minority union has the legal right to represent **its members** in those collective disputes that do not arise from the collective bargaining agreement and in **individual disputes**. For example, a collective agreement stipulates that both the employer and the most representative union agree that Saturday is weekend. However, the employer asks the workers to work Saturday morning without compensating overtime. In this case, only the most representative union can represent worker-employees to resolve this dispute in a forum of dispute resolution. If there is a dispute over the establishment of day care facilities, which are not covered by the collective bargaining agreement, the minority union can represent the worker-employees to resolve this dispute.

c. Bargaining council

References

LTU Art. 72; PK No. 362 (MoLVT) 29 Aug 2016

Right to represent in the bargaining council: A bargaining council is formed in case there is a need for a negotiation between the employer and the worker-employees to conclude a collective bargaining agreement. This council can represent the worker-employees or the employer to conduct collective bargaining at all levels of negotiation between one employer and several unions that do not possess the most representative status or between more than one employer and several unions with no most representative status. The council is composed of

representatives selected by the worker-employees and those selected by the employers. The right to represent in the negotiation is granted by the Law on Trade Union.

The bargaining council possesses another right to represent the worker-employees in the collective dispute resolution, but it must receive a letter of recognition from the Director of the Department of Labor Disputes of the Ministry of Labor and Vocational Training (if the enterprises are located in Phnom Penh) or by the Head of the Provincial Office of Labor and Vocational Training if the enterprises are located in the provinces.

References

LTU Art. 72; PK No. 362 (MoLVT) 29 Aug 2016; AC Award No. 033/13, 116/15.

Scope of representation of the bargaining council: The bargaining council possesses the right to represent the worker-employees in the collective bargaining and in the collective dispute resolution.

d. Bargaining parties

Reference

LTU Art. 71

Right to represent of bargaining parties: This right to represent emanates from the written proxy granted to a person or persons by his or her members. The right to represent of the bargaining parties is also determined by law. It is unclear how the bargaining parties are nominated or selected and how different they are from the bargaining council.

References

CC Art. 364, 365; PK No. 303 (MoLVT) 2 Jul 2018 Cl. 16

Scope of representation of the representative of the worker-employees: In an enterprise where there is no union, a representative of the worker-employees can represent the worker-employees in resolving the collective dispute. It appears that the representative receives the proxy or right to represent the worker-employees from the worker-employees, but a question that is not answered is how the proxy is created; how many worker-employees are needed to endorse the proxy. At any rate, the right to represent in the case where there is no union is the contractual right.

e. Personnel delegate

References

LTU Art. 41; PK No. 302 (MoLVT) 2 Jul 2018 Cl. 4

Right to represent of the personnel delegate: In an enterprise or establishment of more than eight worker-employees, the representative or representatives of the worker-employees is/are the personnel delegate(s). These delegates possess the legal right to represent the worker-employees in conveying grievances from the worker-employees to the employer in matters related to wages, implementation of labor law and regulations and collective bargaining agreement, consultation with the employer for the development of the internal rules, and conclusion of the collective bargaining agreement (for an enterprise where there is no union).

C. Legality of the collective bargaining agreement

References

LL Art. 13, 98; CC Art. 354; AC Award No. 091/10, 057/16.

The benefits granted by the CBA to the worker-employees must not be less favorable than those provided by law. For example, if the law sets the minimum wage of $190 per month, the wage in the CBA cannot be lower than this amount otherwise it becomes null.

The CBA must not contravene the provisions of the laws, including Labor Law, legal implementing instruments of the Labor Law, public order, good customs.

D. Formalities of the collective bargaining agreement

References

LL Art. 96.4; LTU Art. 69, 73, 74; PK No. 287 (MoLVT) 5 Nov 2001.

First, to be effective the CBA must be registered with the Ministry of Labor and Vocational Training.

Second, the CBA must contain a provision on the mechanism of dispute resolution otherwise it cannot be registered. Parties are encouraged to include in the dispute resolution provision the procedure of conciliation, procedure of filing an arbitration, and method of interpretation of the collective bargaining agreement.

Third, the CBA must mention about its coverage. Concerning the geographical coverage, the CBA must state, as the cases may be, that it is intended to cover the workshop or working site, enterprise or establishment, enterprises or establishments at provincial or capital levels, or national level.

Concerning the professional coverage, the CBA must state whether it covers a specific profession, combined professions or similar professions, an economic activity or part of a specific economic activity, or multiple economic activities or parts of the multiple economic activities.

If it is intended to cover any sectoral activities it must state so.

E. Duration of the collective bargaining agreement

References

LTU Art. 70; AC Award No. 021/18.

The duration of the collective bargaining agreement can be of fixed duration or unlimited duration. The minimum duration of the fixed duration collective bargaining agreement is three years[22]. When the date of expiration of the collective bargaining is approaching, a party (the union or the employer) must notify another party about its intention to terminate the agreement or to revise the terms and conditions of the agreement. The notification must be provided at least three months prior to the end of the agreement. If no party notifies about the end or the revision of the agreement, the current agreement will continue its effectiveness for the same duration as the initial agreement.

If the collective bargaining agreement has an unlimited duration, a party can petition to end the agreement, but the agreement will continue its effectiveness for one year after the date of receipt of the petition.

F. Registration of the collective bargaining agreement

Reference

LTU Art. 73

The collective bargaining agreement must be registered with the Ministry in charge of Labor. The agreement becomes effective one day after the date of registration. In order for the agreement to be immediately enforceable, a clause on immediate enforceability must be stipulated in the agreement. This stipulation can help the parties implement the agreement pending the final registration of the Ministry in charge of Labor.

[22] The Labor Law sets a maximum of three years for the fixed duration collective bargaining agreement (Article 96.3).

SECTION TWELVE

SPECIAL EMPLOYMENTS

In the previous Section, we deal with work conditions and benefits under the general employment contract. This Section will deal with those afforded to the worker-employees under certain special employment contracts. The special contracts include contract of apprenticeship, followed by employment in agricultural plantation, employment in construction enterprise, brick factory, sea fishery, and salt farming.

A. Task contract

References

LL Art. 45, 47, 48; AC Award No. 04/09, 142/12, 039/17.

Task contract is a contract between a person called "contractor" and another person called "tasker," under which the tasker recruits laborers to execute the tasks commissioned by the contractor for a remuneration. The tasker pays laborers out of the remuneration received from the contractor. In this regard, the tasker assumes responsibility as the employer of the laborers. The tasker is obligated to comply with provisions of the Labor Law.

The tasker is prohibited from exploiting laborers, for example, paying unreasonably cheap wage to laborers or lower than the minimum wage.

Insolvency of the tasker: If the tasker becomes insolvent, the contractor or the owner of work must be responsible to pay the laborers. The contractor or owner of work must also be responsible for other obligations that the tasker owes to the laborers.

Standing to sue the contractor: Laborers have the right to bring lawsuit directly to the contractor if they suffer any harm as a result of executing the work of the tasker.

B. Apprenticeship

a. What is apprenticeship?

An apprenticeship is a program designed for individuals called apprentices to learn and practice certain jobs so to build up their vocational qualifications to prepare them for certain occupations.

b. Apprenticeship contract

References

LL. Art. 51, 52; PK No. 004 (MoLVT) 5 Jan 2000.

An apprenticeship contract is a contract between an industrial or commercial enterprise, or a craftsman and a person, in which the former undertakes to provide the latter with vocational training to suit with technical requirements and the nature of an occupation, while the latter promises to work as an apprentice under the agreed-upon conditions and duration. This contract involves the enterprise and an apprentice or a self-employed person (craftsman) and an apprentice.

The duration of apprenticeship contract cannot exceed two years.

The contract must be in writing, either in private instrument or in notarized deeds. It must be put into execution within 15 days of the date of signature, under the pain of nullity.

c. Contents of the apprenticeship contract

References

LL. Art. 53; AC Award No. 83/04.

The Labor Inspection Department and the representative of the profession that provides the training can establish rules governing the apprenticeship contract. Without such rules the contract must be governed by the customs and usages of such professions.

Apprenticeship contract must be in writing and contains the minimum required information as follows:

1. Surname and given name, age, profession, and domicile of the trainer
2. Surname and given name and domicile of the apprentice
3. Surname and given name, profession, and domicile of the apprentice's parents or guardian or a person authorized by the parents
4. Date and duration of the contract and profession of the apprentice
5. Remuneration and other allowances, if any, such as food, accommodation, and other benefits mutually agreed between the two parties
6. Courses or subjects that the head of the enterprise contracts to train the apprentice
7. Indemnities that are to be paid at the termination of the contract
8. Principal obligations of the trainer and the apprentice.

The apprenticeship contract must be signed between the employer (or a craftsman if he/she is self-employed) and the apprentice or, if he or she is minor, his or her legal representative.

The contract must be witnessed and countersigned by the labor inspector and registered with the Ministry of Labor and Vocational Training.

d. Qualifications of the trainer

Reference

LL. Art. 54

The trainer of an apprentice must be at least 20 years old and certified that he or she has practiced the profession that he or she trains as a technician, instructor, craftsman, or specialized employee for at least two years.

e. Trainer disqualifications

The trainer is disqualified when he or she is convicted of a felony offense, convicted of the offenses against local customs, of theft, embezzlement, or corruption.

f. Obligations of the employer to provide apprenticeship

References

LL. Art. 57; PK No. 004 (MoLVT) 5 Jan 2000

The enterprise is required by law to provide training to apprentices. The number of apprentices to be accepted in an enterprise varies with the number of worker-employees employed by the enterprise.

Number of worker-employees		Number of apprentices to be accepted
1	61-200	10% of worker-employees
2	201-500	8% of worker-employees
3	More than 501	4% for every addi-tional 500 worker-employees

If an enterprise employs 150 workers, there must be 15 apprentices; if there are 300 worker-employees, there must be 24 apprentices. If the enterprise employs 2,000 worker-employees, there must be 100 apprentices (40 + 500 x 4% + 500 x 4% + 500 x 4%). However, the maximum number of apprentices in an enterprise cannot exceed 110 in a year.

g. Payment of apprenticeship duties in lieu of training

References

LL. Art. 57; PK No. 004 (MoLVT) 5 Jan 2000 Cl. 8

If an employer wants to be exempted from the obligations to train of apprentices because it lacks the resources to do so, it must secure the consent of the labor inspector and pay annual apprenticeship duties which is equal to 1% of the total salaries paid to the worker-employees. The duties must be paid to the finance of Ministry of Labor and Vocational Training.

The payment of apprenticeship duties must be made every quarter or annually. For example, if an enterprise has paid a total salary to the worker-employees US$546,000 for the quarter January-March, it must pay the quarterly apprenticeship duties of US$5,460.

h. Certification of apprenticeship training

References

LL. Art. 57; PK No. 004 (MoLVT) 5 Jan 2000 Cl. 4

At the end of the training the apprentice must take an exam administered by an independent exam committee and, if passed, will receive a certificate of training completion and competence. The exam committee is composed of the trainer and representative of the enterprise, representative of the workers having the same expertise and occupation, and representative of the Ministry of Labor and Vocational Training.

i. Dissolution of the apprenticeship contract

The apprenticeship contract is automatically dissolved when the apprentice or trainer dies, serves in the military, is convicted of misdemeanor or felony offense, or when the enterprise is closed; or at the request of either party when the following events occur:

- A party has not abided by the terms and conditions of the contract
- A party has committed a serious offense
- The apprentice has disobeyed the internal regulations of the enterprise
- The trainer has moved to the outside commune. The right to dissolve the contract accrues after three months of displacement.

C. Employment in agricultural professions

References

LL. Art. 191, 192

Employments in agricultural professions include work in the plantation, farming businesses of cultivations and livestock, logging, and fisheries. Worker-employees who work in these businesses are subject to the provisions related to agricultural professions and the provisions applicable to the worker-employees in general. Although the Labor Law grants many benefits to the worker-employees working in the agricultural plantation, most of them are not readily available now. The Labor Law delegates the authority to the Minister of Labor and Vocational Training to issue the Prakas to give effect to the Law. Those benefits include clothing, family allowance, housing or housing indemnity in lieu of housing, water supplies, funeral support, daycare facilities, school access, and school supplies to the children of works-employees.

a. What is a plantation?

Reference

LL. Art. 193

A plantation is an agricultural business that employs the workers receiving regular wage and that cultivates or produces the following for commercial purposes: coffee, tea, sugar cane, rubber, banana, coco trees, peanuts, tobacco, orange, palm oil trees, cinchona, pineapples, pepper, cotton, jute, and other commercial crops.

b. Scope of application for plantation employment

References

LL. Art. 193; PK No. 306 (MoLVT) 14 Dec 2007

The general provisions of the Labor Law are applicable to the plantation employment. The special work conditions in the plantation businesses are not applicable to the family enterprise or small plantation that produces products for local market and employs regular workers.

c. Working hours

The normal working hours for the worker-employees in a plantation are limited to eight hours per day or 48 hours a week.

References

LL. Art. 194, 195

For resident worker-employees whose accommodation is provided by the enterprise, their traveling time in excess of one hour from the residence to the work site must be counted as working time. For example, the worker-employees who stay in

Phnom Penh but have their working place (plantation) in Kampong Speu province; they spend one and half hours to travel back and forth to the working place. In addition to the working time at the working place, they will count another half hour as working time as well. If the working time of the worker-employee is 8 hours a day, the employer may adjust the working time to include the travel, that is, 6.5 working hours. If the enterprise wishes the workers to work 8 hours a day, the extra 0.5 hour is considered as overtime.

If certain work needs extra working time, the worker-employees may be required to work up to nine hours a day, but the total weekly working hours must not exceed 48 hours. For example, a worker works nine hours on Monday, Tuesday, and Wednesday; because he works three extra hours, he can compensate the excess of three hours against his working time on Thursday, Friday, and Saturday so the total of working hours remains 48 hours in a week. This means he would work seven hours on Thursday, Friday, and Saturday.

For those whose accommodations are not provided by the enterprise or those who work casually, the duration of travel back and forth from their residence to the work site is not counted; only actual working hours at the work place are counted. For example, the enterprise is located in Phnom Penh and the workers reside in Kampong Speu province, the working site. The travel from their homes to and from the working site is not counted.

d. Overtime

Reference

LL. Art. 197

Overtime can be claimed if a worker-employee is required by the employer to work more than eight hours a day. Despite overtime, the employer cannot require worker-employees more than 10 hours per day, except for the work that is needed to prevent or repair damages resulting from a disaster.

e. Wage

References

LL. Art. 198, 199

Wage is paid in cash, but if the worker-employees consent to it, a partial payment in kind is allowed. If the enterprise has a practice to pay the worker-employees in cash and in kind, a regular worker is entitled to receive 900 grams of rice per day in

addition to the cash payment. However, if the employer and the worker-employee agree to convert the rice into cash, the worker-employee can receive his or her wage purely in cash. The conversion into cash must be accurately calculated and recorded on the journal of payment.

f. Clothing and tools

References

PK No. 306 (MoLVT) 14 Dec 2007 Cl. 2

The employer must provide at its expenses the clothes and working shoes twice a year, protective gears, and tools for working.

g. Family allowance

References

LL. Art. 200, 201, 202, 203

Regular worker-employees working in the plantation shall receive a family allowance in rice to support the unemployed housewives living with husbands (inside or outside the plantation) and their dependent children of up to 16 years old. The daily rice allowance is 800 grams for each housewife, 200 grams for a child less than 2 years old, 400 grams for a child between 2 and 6, 600 grams for a child between 6 and 10, 750 grams for a child between 10 and 16, and 750 grams for a child between 16 and 21 and who is attending public or private secondary or superior school (university) or under apprenticeship.

To be eligible for children's allowance, they must live with the family residing in or outside the plantation. The children who do not live with the family because they attend schools far from the plantation can still be eligible for the children's allowance.

The family allowance is paid upon the submission of documents of proof of:

1. extract of marriage certificate,
2. extract of birth certificate of the child,
3. a declaration by the husband that his wife is unemployed,
4. a letter of certification that the child is attending secondary or superior schooling.

h. Housing and sanitation

References

LL. Art. 204, 205, 206, 214

The full-time worker-employees are entitled to free housing with a minimum size of 24 square meters (roughly 4 meters by 6 meters). This housing must be able to accommodate the family including wife/husband and children. The housing must be built in compliance with sanitary and hygienic requirements.

The employer must submit the housing blueprint to the labor inspector for his or her opinion, who then will transmit it to the relevant provincial authorities for approval. The employer can build the housing if the authorities have been silent after 30 days of the date of submission.

The employer must build several toilets at least equal to one fourth of the number of the housings if the worker-employees are living on groupings.

i. Housing indemnity

Reference

LL. Art. 209

If the employer cannot afford to provide housing to the worker-employees, it must provide the monetary indemnity to them. The amount of indemnity is to be determined by the Prakas of the Ministry of Labor and Vocational Training after consulting with the Labor Advisory Commission.

j. Water supplies

References

LL. Art. 210; PK No. 306 (MoLVT) 14 Dec 2007 Cl. 9

The employer must set up water distribution station and provide adequate water supply to the worker-employees in all seasons. The water must be clean and safe. If there are potholes in the public space, the employer must make sure that there are no water therein that can cause the fertilization of mosquitoes or worms.

k. Childcare

References

LL. Art. 219, 220, 221; PK No. 306 (MoLVT) 14 Dec 2007 Cl. 9

While in the general enterprise or establishment where the employer who employs more than 100 female worker-employees is obligated to set up a breastfeeding room and a daycare facility, the employer of the agricultural plantation who employs more than 100 female worker-employees may be required by the labor inspector, at the advice of the provincial medical agency and provincial governor, to build a daycare center. This center is

put under the supervision of a female babysitter and one or more assistants. The employer must provide milk and rice to the children. Only children younger than six years old are accepted into this center. The employer may operate the center and provide nutritional support to the children only when there are at least 10 children.

The childcare center must have clean and safe water, cooking utensils, furniture, beds, cleaning devices, and toys.

l. Schooling

References

LL. Art. 222, 223, 224, 225

In a plantation where there are at least 20 children of the regular worker-employees, who are living in the plantation, and those children have reached six years old, the employer must set up and maintain a primary school to be located near the worker-employees' housing.

The employer must furnish and equip the school at its own expenses and provide schooling materials to the children. The employer must pay teachers and the transportation, if the school is farther than one and half kilometers from the plantation.

m. Funeral support

Reference

LL. Art. 218

In case of death of the regular worker-employee, the employer must provide coffin, body shroud, transportation to the crematory, and funeral service cost, which must not be less than one-month salary.

n. Medical service

The plantation must make available a permanent dispensary under the supervision of the Department of Medical Service of the Ministry of Labor and Vocational Training. The establishment, staffing, medical equipment, medicine, and operation of the dispensary must be complied with the Prakas No. 330 dated 6 December 2000.
(See also **Section Thirteen: Occupational Health and Safety in Workplace; B. Health, a. Organization of the enterprise dispensary**)

o. Safety

Reference

PK No. 306 (MoLVT) 14 Dec 2007

The employer must take measures to maintain the safety of the workplace, for example, fire prevention, prevention against chemical leakage, spillover, flow into water sources, and other safety measures prescribed in the **Section Thirteen: Occupational Health and Safety in Workplace.**

D. Employment in construction enterprise

a. Employment contract

References

LL Art 45, 46, 47, 48, 49, 50.

Construction workers are often hired on daily or weekly wages and on oral contracts and supplied by the taskers. A tasker is a person who is contracted directly by a construction owner or through a main contractor to undertake certain tasks or to supply certain service for a lump sum compensation. The tasker recruits and manages manual workers. For example, A signs a contract from the owner of construction to construct a building; B is contracted by A to recruit 50 workers to undertake the bricklaying of the construction. B often receives a lump sum compensation from A. B is a tasker.

The tasker signs a written contract with the workers. The exploitation of the workers' labor by unusually low wage is prohibited by law. Although a tasker is a contractor of the owner of the construction or a sub-contractor of a main contractor, it is bound to abide by the provisions of the Labor Law in his capacity as an employer of the workers.

Although the payments are made to the taskers, when the latter are insolvent, the contractor or the head of the enterprise is responsible to assume the obligations of the taskers by paying the workers. If the contractor fails to perform these obligations, the workers can bring a complaint directly against it.

b. Working conditions in construction

References

PK No. 076 (MoLVT) 30 Mar 2011 Cl. 3, 4, 5

Break: The employer must allow worker-employees who work in an open air to take a noon break from 11:30 to 13:00. A break from work must also be allowed during the storm or thunderstorm when worker-employees work in excavation, lifting, or bulldozing the lands, work on the rooftop, scaffolders, or high level to avoid the falling.

The employer may delay the breaktime for not more than one hour if it is urgent to complete the work after the breaktime, for example, the completion of concrete pouring. For example, the worker-employees are supposed to take a break at 11:30, but because the cement truck arrives late, they are not allowed to take a break at this time. The employer asks them to delay the break until 12:30. The employer must record the duration and the reason of delay for labor inspection.

References

PK No. 075 (MoLVT) 30 Mar 2011 Cl. 3, 4, 5

Shelter, clean water, toilet, and bathroom: At the construction site the employer must provide adequate shelters that keep the worker-employees from rain and heat of the sun. Also, it must provide clean water and erect toilets and bathrooms at the construction sites.

Allocation of responsibilities among several employers in the same construction site: In some instances, a construction site may involve more than one employer. The employer must work together to have a common agreement to make available the adequate shelters, clean water, toilets, and bathrooms to the worker-employees. If they cannot reach an agreement, each employer must be responsible to erect shelters, toilets, and bathrooms and provide adequate clean water to its own worker-employees.

c. Safety of construction workers

References

LoC Art. 77; PK No. 078 (MoLVT) 30 Mar 2011 Cl. 3, 4

The employer must keep the construction worker-employees safe from being slipping on oily wastes, being cut by sharp materials, being exposed to inflammable substance, accident caused by falling, rolling, spilling objects or substance. Construction materials and equipment must be properly kept or stored in compliance with safety requirements in order to avoid dropping or sliding onto the worker-employees.

Construction worker-employees must be protected against the danger of building collapse. In this regard, on 10 January 2020, the Ministry of Land Management, Urban Planning, and Construction issued Directive to Strengthen the Quality and Safety of the Building (Directive No. 002) to prohibit people, including worker-employees, from staying in the building under construction.

If construction or demolition activities cause damages to other people, including workers, due to defective management of the construction site, the owner and the builder are jointly liable to such damages. Defective management means a management of a construction site that does comply with the requirements for site opening, technical requirements regarding site management, and site safety requirements.

E. Brick kiln workers

a. Child employment

References

PK No. 309 (MoLVT) 14 Dec 2007 Cl. 6

The employer of the brick kiln cannot employ a child of less than 15 years in age even if they are living with the parents in the factory. However, the employer can employ a child between 15 and 18 but only for certain jobs that are not hazardous. Hazardous jobs such as splitting firewood, preparing soil and mixing brick mud, molding soil, and handling brick making machines are prohibited.

b. Clothing

The employer must provide free of charge two sets of clothes per year. The first set is provided 15 days of the employment starting date. The internal regulations may include this provision.

c. Safety

The employer must provide protective gears to the workers, for example, long rubber boots, rubber gloves, and wide brim hats. (See also **Section Thirteen: Occupational Health and Safety in Workplace**)

d. Health

The employer must comply with sanitation and hygiene requirements
(see also **Section Thirteen: Occupational Health and Safety in Workplace**)

F. Sea fishery

a. Child employment

References

PK No. 305 (MoLVT) 14 Dec 2007 Cl. 6

The employment of children under 15 in sea fishery is strictly prohibited. However, children between 15 and 18 are allowed to go to the sea, but cannot work in the sea water, for example swimming or diving.

b. Clothing

The employer must provide free of charge two sets of clothes per year. The first set is provided 15 days of the employment starting date. The internal regulations may include this provision.

c. Safety

The employer must provide protective gears to the workers in sea, for example, live jackets and whistles, raincoats, and wide brim hats. The fishing boat must be equipped with fluorescent lifesaver tubes and communication radios.

d. Health

The fishing boats must be supplied with adequate drinking water. The employer must establish a dispensary to provide medical service to the workers (See **Section Thirteen: Occupational Health and Safety in Workplace)**.

G. Salt farming

a. Child employment

References

PK No. 308 (MoLVT) 14 Dec 2007 Cl. 7

The employment of children under 15 in salt farming is strictly prohibited even if they work to support their parents. However, children older than 15 are allowed to work if the work does not affect their health, safety, and morality.

b. Clothing

The employer must provide free of charge two sets of clothes per year. The first set is provided 15 days of the employment starting date. The internal regulations may include this provision.

c. Safety

The employer must provide protective gears to the workers, for example, long rubber boots, rubber glovers, and wide brim hats.

Women and children below 18 years old cannot be employed to lift or move heavy objects (See **Section Thirteen: Occupational Health and Safety in Workplace: d. Lifting or moving heavy objects**).

d. Health

The fishing boats must be supplied with adequate drinking water. The employer must establish a dispensary to provide medical service to the workers (See **Section Thirteen: Occupational Health and Safety in Workplace**).

SECTION THIRTEEN

OCCUPATIONAL HEALTH AND SAFETY IN WORKPLACE

References

LL Art. 23, 228, 229

All enterprises or establishments must comply with the hygienic and safety requirements imposed by the Labor Law. However, these requirements do not apply to family businesses that do not operate hazardous steam boiler, mechanical or electrical machinery.

The measures to ensure the good health and safety of the workplace must primarily concern the quality of the facilities, cleanliness, availability of medical aid for use by the worker-employees, safe drinks and foods, staff accommodation (if any), proper workstations and seats, ventilation and clean air flow, individual protective equipment and work gears, lighting and acoustic atmosphere. Article 23 of the Labor Law requires that the internal regulations to adapt the general provisions of the Law concerning health and safety measures for use in the different types of enterprise or establishment.

A. Sanitation

a. Toilets

References

PK No. 052 (MoLVT) 10 Feb 2000; No. 075/11 (MoLVT) 30 Mar 2011; AC Award No. 31/12, 34/12, 250/15, 175/16.

Enterprises or establishments are required to build separate toilets for male and female worker-employees. The construction of the toilets must comply with cleanliness and privacy requirements with waterproof floors, closed doors, clear painting walls, adequate lighting, clean drainage, clean and enough water for use. There must be soap for each toilet compartment. The toilets must be cleaned at least once a day.

The number of toilet compartments varies with the number of worker-employees.

Number of worker-employees (Male and Female)	Number of compartments
1-15	1
16-35	2
36-55	3
56-80	4
81-110	5
111-150	6
151-1,000	Add 1 for every 50 people
More than 1,000	Add 1 for every 70 people

For an enterprise that employs more than 100 female worker-employees one raised comfort toilet must be erected for every 50-female worker-employees.
For example, an enterprise with 150 worker-employees, of which 50 are female, 5 toilets can be squat, but one must be seated toilet.

Seated toilet

Squat toilet

Specifically, in the construction site, the employer or contractor must ensure that all worker-employees are accessible to toilets erected nearby the site. When the construction site involves many enterprises or contractors, they must reach a written agreement to erect common toilets, bathing rooms, and provide adequate toilet supplies and cleaning. If they cannot reach agreement, the enterprises or contractors must build their respective toilets and bathing rooms.

b. Drinking water

References

PK No. 054 (MoLVT) 10 Feb 2000; AC Award No. 45/12, 155/14, 107/15.

The enterprise or establishment must make available water dispensers. The bottle or container of water must be covered against sunlight to prevent the formation of algae. Also, the bottle must have valve faucet to avoid contaminated touches. This safe water requirement is also applicable to the construction site, whether fixed or mobile.

B. Health

a. Organization of the enterprise infirmary

References

LL Art. 240, 242, 243, 244; PK No. 330 (MoLVT) 6 Dec 2000 Cl. 3; AC Award No. 46/12, 113/14, 226/15, 019/17.

An enterprise with at least 50 worker-employees must have a permanent infirmary at its own expense. The infirmary must be staffed with medics and nurses, the number of which varies with the number of worker-employees. The medics and nurses will work part or full time and be paid by the employer. If they work part time they must take shifts.

Number of worker-employees	Number of nurses	Number of medics	Minimum presence of medics in 8 hours shift
50 - 300	1 full-time	1	2 hour shift
301 - 600	2 full-time	1	2 hour shift
601 - 900	2 full-time	1	3 hour shift
901 - 1,400	2 full-time	1	4 hour shift
1,401 - 2,000	2 full-time	1	6 hour shift
More than 2,000	3 full-time	1	8 hour shift

The nurse and medic must be on standby duty when worker-employees work overtime.

The infirmary must be at least 20 square meters and must be soundproof, far from waste disposal place, and free from smoke, smell, and dust.

b. Materials, equipment and medication in the infirmary

At the minimum, the infirmary must be furnished by a desk, three armchairs, a filing cabinet, a medicine shelf, two first-aid beds, and one sterilizer.

If the enterprise employs more than 200 worker-employees, the infirmary must be equipped with bandage beds and rest beds 2% proportional with the number of worker-employees but not more than 20. For example, if there are 300 worker-employees, there must be six rest beds.

For an enterprise or establishment of less than 20 worker-employees there must be a first-aid box and first-aid assistant; of 20-50 there must be one dressing room and a nurse.

The infirmary must be supplied with certain medical equipment for dressing, temperature measurement, for otorhinolaryngology and anti-bacteria, analgesic, anti-coughing, local anesthesia, diuretic, anti-diarrhea, rehydration solution, chest pain medicines.

c. Qualifications and duties of the medics of the enterprise

Reference

PK No. 139 (MoLVT) 28 Jun 2001

The enterprise medics must be Khmer nationals, hold a medical diploma recognized by the Ministry of Health, undergo an additional training in labor hygiene and techniques in labor safety maintenance provided by the Department of Labor Health of the Ministry of Labor and Vocational Training, have been registered with the Board of Medics and licensed every two years by the Department of Labor Health, and have no criminal record.

The labor medics can advise on hygiene and labor safety. Their duties are to prevent labor accident and labor diseases, maintain filings and confidential medical documents of the worker-employees.

d. Lifting or moving heavy objects

References

PK No. 124 (MoLVT) 15 Jun 2001 Cl. 1, 3

Lifting or moving heavy objects can affect the bones and pregnancy. The employer must provide training on proper lifting or moving technique. All objects to be lifted or moved cannot exceed 50 kilograms. The employer cannot force worker-employees to perform heavy lifting. Pregnant women, women who are just recovered from maternity, women who has miscarriage for the first two months are not allowed to lift any object more than 5 kilograms.

The allowable weights vary with their age and sex.

Means of moving	Male		Female	
	From 15 years old	From 18 years old	From 15 years old	From 18 years old
Direct lifting	12 kg	50 kg	6 kg	25 kg
One-wheel wheel-barrow used in work site	32 kg	80 kg	Not allowed	40 kg
Two or four wheel wheelbarrow	48 kg	120 kg	24 kg	60 kg

C. Working environment

a. Heat

References

PK No. 147 (MoLVT) 11 Jun 2002; AC Award No. 089/14, 229/15.

The building or workshop must provide at least 10 cubic meters of airspace for a worker. The working stations must be insulated from the heat of sunlight. The machine or equipment that generates heat must be installed with heat shields or absorbers. Another method to control heat is to use fans, air absorbers, or air conditioners.

b. Ventilation

References

PK No. 125 (MoLVT) 15 Jun 2001; AC Award No. 020/16.

The enterprise must ensure that the air is not polluted by hazardous dust, smell, or vapor. The working places must be adequately ventilated by opening the door, windows, or holes, which altogether occupies one fourth of the size of the wall. If natural ventilation is not possible, the working places must be installed with ventilating machines. If the ventilation method cannot eliminate those hazardous elements in the air, the enterprise must supply protective gears to the worker-employees.

c. Noises

References

PK No. 138 (MoLVT) 22 Apr 2003

The enterprise must reduce the intensity of the noises to a level that does not harm the hearing sense of the worker-employees. In this regard, the enterprise must prioritize the use of production processes that generate low noises, lower the noises generated by devices or machineries, arrange the enterprise settings that reduce the sound reverberation, place worker-employees far from the sources of noises. The intensity of noises that each worker-employee can receive is at the rate of 85 decibels per working day. If the imposed rate is not practical, the worker-employees must be supplied with protective gears to shield the worker-employees from noises.

d. Lighting

Reference

PK No. 484 (MoLVT) 23 Dec 2003

The lighting must ensure that the worker-employees can see the objects of their work clearly without straining their eyes. The intensity of light varies with the types of industry. The Prakas regulates the lighting in the food, tobacco, wood, glass, porcelain, and crystal, chemical, electric appliances, printing, textile, and garment and industries, jewelry, hotel and restaurant, office, warehouse and retail stores.

e. Workstation seats

References

PK No. 053 (MoLVT) 10 Feb 2000; AC Award No. 94/04, 91/10, 30/19.

Although the nature of work of the worker-employees requires them to be in standing positions, the employer must arrange adequate seats nearby the workstations so the worker-employees can have seating when necessary.

f. Places with limited ventilation

References

PK No. 139 (MoLVT) 22 Apr 2003; AC Award No. 189/16.

Places with limited ventilation are those spaces that do not provide air flow sufficiently for breathing. These spaces may be under-oxygenated, contaminated by poisonous substance, or easily inflammable.

For workers working in this environment the employer must take preventive measures to avoid fire or explosion, breathing difficulty, poisonous gas, vapor, or dust, excessive heat, and fall.

The employer must provide adequate, natural or artificial ventilation. There must be guards to monitor the safety of the workers working in those places, who can contact the workers by eyes or voices. The guards must be trained in work discipline in those placesa, reaction in emergency cases, and first-aid skills.

The workers who work in places with limited ventilation must undergo training on safety measures. The employer must issue an assignment paper to the workers providing information on the tasks to be performed, names and positions of workers assigned, names and positions of the guards, safety instructions to be followed.

g. Underground work for underaged persons

Reference

PK No. 145 (MoLVT) 10 Jun 2002

While the purpose of employing persons between 16 and 18 is to familiarize them with the mining skills and to prepare them for future employment, underground work for these persons must be under strict safety measures. Before assigning them to work under this environment, the employer must provide physical examination and repeat it every six months. They must be trained on skills to deal with work accident and underground safety measures, and first-aid skills.

Underaged persons cannot work more than 40 hours a week or eight hours a day. They must have 48 hours break each week and are entitled to 24-day annual leave, even when they do not work full time.

The employer must keep separate employment files of underaged persons by including the information about their age, date of first assignment to underground work, weekly break, and annual leave.

SECTION FOURTEEN

INTRODUCTION TO THE SOCIAL SECURITY FUND

In the Cambodian context, the social security program is designed to provide civil servants and workers, employees in the private sectors with certain level of financial support when they are sick, unemployed, and retire. The social security is not provided to the public in general, but only those register to be its members. Financial support is provided out of the social security fund.

The social security schemes were first established in Cambodia by the Law on Social Security Schemes for Persons Governed by the Labor Law promulgated on 25 September 2002 (old Law). This old Law was applicable to only the persons governed by the Labor Law, that is worker-employees in the private sector. It covers only pension and occupational risk schemes. However, sub-decree No. 1 dated 6 January 2016 adds a new scheme to those existing ones in the old Law: the health care scheme. There were various Prakas to implement to the old Law and the sub-decree on social security schemes.

On 2 November 2019, Cambodia promulgated a new Law on Social Security Schemes (new Law). While the social security schemes under the old Law cover persons working in private sectors under the Labor Law, the new Law covers both persons in private and public sectors.

Although the new Law lays down the legal framework for all schemes (pension, health care, occupational risk, and unemployment), the enforcement and application of these schemes are yet to be determined by the sub-decrees. During this transition period, the new Law allows the continuation of the schemes that are currently being implemented.

For simplicity, this Section will cover only the schemes that are applicable to the persons governed by the Labor Law. Since the new Law allows the continuation of the existing schemes, which are determined by various Prakas, it is useful for this Section to present those schemes.

A. What is social security fund?

References

LSSS Art. 12, 13; CC Art. 46

The social security fund is a corporate fund created by mandatory contributions from the government, employers, and workers and employees. The social security fund is managed by a public establishment (public agency) called the National Social Security Fund (NSSF). The NSSF is public interest legal entity. The NSSF is responsible to collect and manage the social security fund, register membership of the fund, provide prestation (benefits to be received by eligible members) to members of the social security fund when they are aged, disabled, deceased, unemployed, on maternity, accident, or sick.

B. Coverage of the social security fund

References

LSSS Art. 3, 17, 38, 57

The social security fund covers only the persons who are eligible under the Law on Social Security Schemes and benefits for the **pension fund, health care fund, work-related accident, and unemployment fund**.

The persons to be covered are those employed in the public sector, those who are employed under the Labor Law and those working in air and maritime transportation, domestic workers, and the self-employed.

The persons in the public sector include the civil servants of the public services working in the ministries and state institutions, national and sub-national agencies and who are governed by the Law on the Status of Civil Servants; officials who are governed by the Law on the Status of Civil Servant of the Legislative Body (but not covered by the retirement fund); officials working in the judiciary; national police (but not covered by medical care); officials working in the National Election Commission; officials working in the Audit Authority; former civil servant and veterans; officials contracted to work in the ministries, institutions, national and sub-national agencies and who are recognized by the Ministry of Public Functions.

The persons who are covered by the Labor Law are the employers and employees in the industrial, mining, commercial, artisanal, service, land or water transportation enterprises or establishments. The enterprises or establishments can be public, semi-public, or private; professional organizations; associations

or any groupings; religious or non-religious; charitable or vocational training organizations.

In addition to those who are covered by the Labor Law, the social security regime also covers staff working in air and maritime transportation and domestic workers as well.

In this Section of the Guidebook we cover the Social Security Regime for those persons governed by the Labor Law only.

C. Contributions and benefits under the social security schemes

Reference

LSSS Art. 9

The contributions to the social security fund are mandatory but can be voluntary as well. The mandatory contribution applies to the pension scheme, medical care scheme, and unemployment scheme. The mandatorily contributable wages or salaries under the current law are to be determined by the sub-decree. The rate of contribution under the existing regime will continue until the new sub-decree is adopted. Nevertheless, the contribution made by employer or employees cannot exceed 50% of the total contribution. This means the employer and employees are expected to have an equal share of contribution.

The contributable range of wages is the range of wages that are subject to contribution in a certain rate. For example, those who have wage in a range of 200,001 and 250,000 riels (fictitious figure) must contribute to the pension fund. The wage below 200,000 riels is not subject to contribution. In this hypothetical range of salaries, only a portion of it is contributable. For example, the average of the wage range is a salary that is contributable salary. In the above case the contributable salary is 225,000 riels. **The contributable salary or wage** is called "**average wage or salary.**" The contribution is made on the percentage of this average wage or salary.

References

LSSS Art. 35, 56

In addition to the mandatory contribution, workers and employees can contribute to the pension scheme and medical care scheme on a voluntary basis.

A person who has lost his or her salaried job before 60 years old and is able to continue his or her contribution is not required but may voluntarily make such contributions to the pension

fund. In this case, they will receive benefits of old age pension higher than the those offered under the mandatory, old age pension scheme.

A person can also make voluntary contribution to the medical care fund in addition to the mandatory contribution. The conditions and procedures that govern the voluntary contribution are yet to be determined by a sub-decree.

D. Pension scheme

References

LSSS Art. 31, 32, 33, 34

The pension funds cover old age, disability, survivorship fund, and funeral allowance. The pension funds are obtained from the contributions by the state, employers, employees who are members of the Social Security Fund and from the investment of such fund in businesses, for example. The rate of contribution is yet to be determined by the sub-decree.

Old age pension: The persons who are eligible for this pension must be at least 60 years old, must have made contributions to the pension fund for at least 12 months, and have registered in the pension fund.

Disability pension: To be eligible for the disability pension the persons must be registered in the pension fund and have made contributions into the pension fund for at least 60 months before becoming disabled.

Survivorship pension: Survivorship pension fund are paid to the surviving dependent(s) of the persons who are eligible for the pension fund. For the dependent to be eligible for the survivorship pension, the pensioner (currently aged or disabled or still active member of the social security fund) must have been deceased and have made contributions to the pension funds for at least 60 months. The benefits from the survivorship pension are allocated 50% to the spouse and 50% to the children or 100% if the only survivor is a spouse or a child.

Funeral allowance: This allowance is provided to the person who manages the funeral of the pensioner (aged, disabled, or active member of the social security fund). If the survivor manages the funeral, the allowance will be paid to that survivor.

E. Health care scheme

References

LSSS Art. 38, 39, 40, 41, 53, 54, 55

Health care social security scheme provides the benefits to its members in terms of costs of medical care and treatment, daily indemnity (compensation) for the period of leave for medical treatment, maternity indemnity, and funeral support allowance. The health care fund is obtained from the mandatory contributions of employers and workers/employees. The rate of contribution is yet to be determined by the sub-decree.

Members of the health care social security scheme will receive the costs of medical treatment in medical facilities, outpatient consultation, child delivery service, prenatal and postnatal treatment and care, intensive care unit service, preventive health service, patient transportation service in emergency rescue by ambulance of the medical facilities, and medical rehabilitation service, corpse transportation service.

Medical treatment in the medical facilities includes treatment and care according to the techniques of the medical profession, diagnostic service, laboratory testing and other examination, surgery and other equipment necessary for the treatment, and medicines.

Outpatient consultation includes costs of treatment and care according to the techniques of medical profession, diagnostic service, laboratory testing and other examination, surgery and other equipment necessary for the treatment, and prescribed medicines.

Child delivery service, prenatal and postnatal service includes medical care and treatment related to the maternity before, during, and after the delivery.

Physiotherapy (including heat treatment), prosthetics, kinesiotherapy, other physical rehabilitation treatment are also covered by the health care social security scheme.

Preventive health, such as vaccination, is also covered.

References

LSSS Art. 54; AC Award No. 042/19

Daily indemnity during hospitalization: The daily indemnity during hospitalization in the medical facilities is 70% of daily average wage that is contributed to the social security fund. For example, A has a salary of 550,000 riels. His average salary contributable to the social security fund is 525,000 riels. His daily average wage is 17,500 riels (525,000 riels divide by 30). So, he will receive a daily indemnity for the hospitalization of 12,250 riels (70% of 17,500 riels). To be eligible for this daily indemnity a worker-employee must be registered with health care scheme have contributed to the scheme for two consecutive months or six months during the last 12 months, and be hospitalized at least eight days. The calculation of daily indemnity is counted from the date of the work suspension until the date of discharge from the hospital or local medical facilities.

References

LSSS Art. 55; LL Art. 183

Maternity indemnity: To be eligible for this indemnity, a worker or employee must be registered with the health care scheme and has contributed to the scheme for at least nine months during the last 12 months until the date of delivery. The worker or employee is entitled to a maternity indemnity of 70% of daily average wage for 90 days. This indemnity should not be confused with the wage paid by the employer during maternity leave, which is half of base wage and accessory wage.

F. Occupational risk scheme

References

LSSS Art. 57; LL Art. 248

Occupational risk is an event that occurs without anticipation and that is caused by work accident, accident during travel, and occupational disease. The benefits to be received under this scheme are the payment of indemnity due to the temporary loss of work capacity, support for permanent loss of work capacity, allowance for the permanent loss of work capacity, support for survivor, funeral allowance, and cost of rehabilitation services. Self-inflicted accident is not covered by the occupational risk scheme.

Medical treatment and care: A worker or employee who gets work-related accident is entitled to the treatment to cure the wound or other work-related accident, either as outpatient or hospitalized, emergency treatment service, cost of medicines, transportation of corpse or emergency transportation, allowance to the attendant of the patient during the treatment where

the patient cannot serve himself.

Loss of work capacity: Loss of work capacity is the inability of perform the work entirely or partially due to the loss of body organ or organs or a limb that is caused by work-related accident.

There are two kinds of losses of work capacity: temporary and permanent losses of work capacity.

The temporary loss of work capacity is the interruption of work during the treatment leave or injury that is caused by work-related accident, including post-treatment leave granted by official physician recognized by the social security fund.

References

LSSS Art. 71, 77

The permanent loss of work capacity is the inability to perform work entirely or partially due to the loss of an organ or limb. If the loss of work capacity is 20% or higher, the loss will be considered permanent. There two types of permanent losses of work capacity: the permanent loss of the entire work capacity or permanent loss of partial work capacity.

Reference

LSSS Art. 76

Daily indemnity for temporary loss of work capacity: The daily indemnity of the worker or employee who suffers temporary loss of work capacity must be retained for the period of hospitalization and convalescence after being discharged from the hospital or medical facilities, but this must be certified by a recognized physician.

The daily indemnity is paid from the second day (treated as the first day of admission in the hospital) from the date of accident until the wound/disease is healed or until the patient is dead. This period includes the time allowed by the physician to rest after the discharge from the hospital or medical facility. The wage of the first day of accident (treated as the day the worker or employee still working) is borne by the employer. The daily indemnity for the temporary work incapacity is 70% of the average wage or salary (See above) of the last six months of employment.

References

LSSS Art. 71, 77, 86; LL Art. 253

Annuity for permanent loss of work capacity: Members of the social security fund who suffers permanent loss of work capacity is entitled to an annuity. An annuity is a financial aid that is intended to compensate a person who has lost his or her capacity to work due to work-related accident. An annuity is paid monthly. The loss of work capacity is considered permanent if the capacity to work is decreased by at least 20%. The method of calculation of the annuity is yet to be determined by the sub-decree.

Allowance for permanent loss of work capacity: A member of the social security fund is entitled to a one-time-only allowance for permanent loss of work capacity of less than 20% of work capacity.

Allowance of the caretaker of the members who suffer permanent loss of work capacity and disability pension: If the incapacity necessitates the service of a caretaker, the members of the social security fund will receive a financial support for the caretaker of 50% of the annuity (for permanent work incapacity) or of the pension (disability pension).

G. Unemployment scheme

The contributions and benefits under the unemployment are yet to be determined by the sub-decree.

H. Statutes of limitations for the benefits under the social security schemes

References

LSSS Art. 87, 33, 54, 55, 76

The claim of benefits under the social security schemes is subject to the statute of limitations. The statute of limitations for the daily indemnity in the occupational risk (daily indemnity for temporary loss of work capacity), in health care (daily indemnity during hospitalization), and maternity indemnity, is one year from the date the beneficiary is entitled to receive that indemnity.

The statute of limitations for funeral allowance is also **one year,** the same for medical treatment and care.

The statute of limitations for the annuity for permanent loss of work capacity and that for survivorship pension is **five years**.

	Claim of benefits	Statutes of limitations	Starting from
1.	Daily indemnity during hospitalization	One year	Date of work suspension (Art. 54)
2.	Daily indemnity for temporary loss of work capacity	One year	The day after accident occurs (Art. 76)
3.	Maternity indemnity	One year	To be determined by Prakas of Ministry in charge of Social Security Scheme (Art. 55)
4.	Funeral allowance	One year	Date of death (Art. 34)
5.	Annuity for permanent loss of work capacity	Five years	Unspecified
6.	Annuity for survivorship	Five years	Date of death (Art. 33)

I. Existing social security schemes

The existing social security schemes continue their effect until all new regulations implementing the Law on Social Security Scheme of 2019 are put in place. The existing social security schemes cover occupational risk, health care, and pension fund (only for public civil servants). The regulations that govern the existing social security schemes are Sub-Decree No. 1 dated 6 January 2016 (Sub-Decree of 2016), Sub-Decree No. 140 dated 26 August 2017 amending Article 7 of the Sub-Decree of 2016, Prakas No. 109 dated 17 March 2016, Prakas No. 184 dated 25 April 2018 amending Articles 2, 4, 5, 6, 7, 8, and 10 of Prakas No. 109 dated 17 March 2016, Prakas No. 220 dated 13 June 2016.

J. Eligibility to receive the benefits under the Social Security Health Care Scheme

References

PK No. 109 (MoLVT) 17 Mar 2016 Cl. 6

A worker-employee is entitled to receive the benefits of the Social Security Health Care Scheme only when he or she satisfies the following conditions:

- The worker-employee is working in the enterprise or establishment
- That enterprise or establishment must have been registered in the Social Security Health Care Scheme
- The worker-employee has registered with the Social Security Health Care Scheme

- The worker-employee has contributed to the Social Security Health Care Scheme for at least 6 months during the last 12 months before he or she has health problems or maternity. For example, worker A started his work in 1 January 2019, and he had contributed to the Social Security Health Care Scheme until 30 June 2019. He was sick in December 2019. A is entitled to the benefits of Social Security Health Care Scheme.

If a worker started his work with an enterprise and had contributed to the Social Security Health Care Scheme for two consecutive months and then his work was terminated. The worker is still entitled to the benefits of this Scheme for another two months after the termination of his employment contract.

K. Contribution to the Social Security Health Care Scheme

References

SD No. 140, 26 Aug 2017; PK No. 184 (MoLVT) 25 Apr 2018; PK No. 449 (MoLVT) 10 Nov 2017

According to Prakas No. 220 dated 13 June 2016, the contribution to the Social Security Health Care Scheme was shared equally between the employer and worker-employee at a rate of 1.3% of the average monthly salary. After 1 January 2018, the obligations to make contributions to the social security health care scheme rest with the employer. Before, the employer and the worker-employees make equal, matching contributions. The contributions must be made monthly.

The rates of contribution vary with the monthly contributable wages/salaries, which are given in below table (Extract from Table attached to Prakas No. 449, 10 November 2017):

No.	Range of before-tax wages / salaries (Riels)	Contributable wages / salaries (Riels)	Contribution (2.6%)
1	Below 200,000	200,000	5,200
2	200,001-250,000	225,000	5,850
3	250,001-300,000	275,000	7,150
4	300,001-350,000	325,000	8,450
5	350,001-400,000	375,000	9,750
6	400,001-450,000	425,000	11,050
7	450,001-500,000	475,000	12,350
8	500,001-550,000	525,000	13,650
9	550,001-600,000	575,000	14,950
10	600,001-650,000	625,000	16,250
11	650,001-700,000	675,000	17,550
12	700,001-750,000	725,000	18,850
13	750,001-800,000	775,000	20,150
14	800,001-850,000	825,000	21,450
15	850,001-900,000	875,000	22,750
16	900,001-950,000	925,000	24,050
17	950,001-1,000,000	975,000	25,350
18	1,000,001-1,050,000	1,025,000	26,650
19	1,050,000-1,100,000	1,075,000	27,950
20	1,100,001-1,150,000	1,125,000	29,250
21	1,150,001-1,200,000	1,175,000	30,550
22	Above 1,200,001	1,200,000	31,200

The rate of contribution is contributable wages/salaries times 2.6%. This contribution is made only by the employer. For example, a worker has a salary of 850,000 riels; his contributable salary is 825,000 riels and the contribution to be made by the employer is 21,450 riels (825,000 x 2.6%)

L. Benefits under the Social Security Health Care Scheme

References

PK No. 109 (MoLVT) 17 Mar 2016 Cl. 3

The members of the Social Security Health Care Scheme will receive a package of medical treatment care, referral service, corpse transportation, and daily indemnity, and preventive health service.

The medical treatment and care services include **(1) treatment in hospital** (including medical treatment, diagnosis, laboratory tests, surgery equipment and medical supplies, prescribed

medicine, and normal room charge and food; **(2) outpatient consultation** (including medical treatment, diagnosis, laboratory test, echography, surgery equipment, prescribed medicines); **(3) emergency service** unanticipated (interventions to save life or to prevent the loss of limb of the victim or patient); **(4) heat treatment and kinesiotherapy; (5) child delivery service and antenatal and postnatal care and treatment;** and **(6) rehabilitation service** (provided by social security fund, national programs or other organizations providing rehabilitation services).

Besides the medical treatment services, members of the scheme will **receive referral service and corpse transportation.**

The **daily indemnity** is provided to the members of the Social Security Health Care Scheme when they are sick or under free treatment under the public health policies or during the maternity leave. The daily indemnity is provided to the patient who take consecutive sick leave to treat the disease or injury as prescribed by the physician for more than seven days. It can be provided up to 180 days of the last 12 months, excluding the 90-day maternity leave. The daily indemnity is 70% of the **average contributable wage.** For the purpose of the Social Security Schemes, the average contributable wage is the average of wages or salaries of six months prior to the occurrence of health problems or maternity divided by 30.

For example, a worker was sick in July 2019, and the doctor prescribed 15 consecutive days treatment in the medical facility/hospital. Within six months prior to his sickness, his salary in January 2019 was 810,000 riels, then in March 2019 the salary was raised to 910,000 riels. His average contributable salary and average daily indemnity is calculated according to the following table:

Calculation of average contributable salary		
Month	Salary range (riels)	Contributable salary (riels)
January 2019	800,001 - 850,000	825,000
February 2019	Same	825,000
March 2019	900,001 - 950,000	925,000
April 2019	Same	925,000
May 2019	Same	925,000
June 2019	Same	925,000
Average contributable salary (sum of six months salaries prior to sickness divided by 6*)		875,000
July 2019	Worker is sick.	
Calculation of the average daily indemnity		
Average daily contributable wage (average contributable salary divided by 30)		**29,166.67**
Daily indemnity (70% of average daily contributable wage)		**20,416.67**
Total daily indemnity (15 days counting from the first day in hospital)		**306,250**

*The denominator 6 is the maximum period of months used for the calculation of the average contributable salary. If a worker is sick 4 months after starting work, the denominator is 4.

To be eligible to receive the daily indemnity a worker-employee must satisfy all the following conditions:

- The daily indemnity is given only to the worker-employee who cannot work because his sickness, accident, or is on maternity leave
- The worker-employee is working in the enterprise or establishment
- That enterprise or establishment must have been registered in the Social Security Health Care Scheme The worker-employee has registered with the Social Security Health Care Scheme
- The worker-employee has contributed to the Social Security Health Care Scheme for at least 6 months during the last 12 months before he or she has health problems
- The worker-employee must request for leave from the employer in a form prescribed by the Social Security Fund
- For daily indemnity for maternity leave, the worker-employee must have contributed to the Scheme for at least 9 consecutive months.

M. Contribution to the Social Security Occupational Risk Scheme

Reference

PK No. 449 (MoLVT) 10 Nov 2017

The employer is charged with the contributions to the Social Security Occupational Risk Scheme for its worker-employees at a rate of 0.8% of the average monthly contributable salary before tax. The contribution to this Scheme is shown in the below table (Extract from Table attached to Prakas No. 449, 10 November 2017):

No.	Range of before-tax wages / salaries (Riels)	Contributable wages / salaries (Riels)	Contribution (0.8%)
1	Below 200,000	200,000	1,600
2	200,001-250,000	225,000	1,800
3	250,001-300,000	275,000	2,200
4	300,001-350,000	325,000	2,600
5	350,001-400,000	375,000	3,000
6	400,001-450,000	425,000	3,400
7	450,001-500,000	475,000	3,800
8	500,001-550,000	525,000	4,200
9	550,001-600,000	575,000	4,600
10	600,001-650,000	625,000	5,000
11	650,001-700,000	675,000	5,400
12	700,001-750,000	725,000	5,800
13	750,001-800,000	775,000	6,200
14	800,001-850,000	825,000	6,600
15	850,001-900,000	875,000	7,000
16	900,001-950,000	925,000	7,400
17	950,001-1,000,000	975,000	7,800
18	1,000,001-1,050,000	1,025,000	8,200
19	1,050,000-1,100,000	1,075,000	8,600
20	1,100,001-1,150,000	1,125,000	9,000
21	1,150,001-1,200,000	1,175,000	9,400
22	Above 1,200,001	1,200,000	9,600

N. Benefits under the Social Security Occupational Risk Scheme

References

LSSS Glossary; PK No. 109 (MoLVT) 16 Jun 2008 Cl. 3

A worker-employee who has registered with the Social Security Occupational Risk Scheme is entitled to receive the benefits of the Scheme when he or she gets in an accident during work, the direct commute to or from the workplace and occupational disease. An occupational disease is disease that occurs as a result of the exposition to the location or sources of the disease or the contracting of a disease that involves the performance of a specific occupation. In other words, it is a disease that has a direct relationship with various conditions of work, such as disease that occurs during the work, in the place of work, due to the work method, substance or materials used in the production (like chemical or biological substance), or environment of workplace that is susceptible to cause the disease during the course of employment or after the termination of employment.

Benefits for the temporary loss of work capacity: The temporary loss of work capacity is a period of leave for the treatment of wounds or occupational disease in a hospital or polyclinic and the period of leave after the healing of wounds and that leave is prescribed by the physician or medic. During these periods the worker-employee is entitled to receive:

- **Daily indemnity.** The daily indemnity for the worker-employee is subject to certain conditions. He or she must stay at least four days in the hospital or a medical facility; and the indemnity is provided for a period of treatment in the hospital or medical facility and healing period outside the hospital as prescribed by the physician until the date of work resumption, but not exceeding 180 days. This period is counting from the second day after the accident. The amount of daily indemnity is 70% of the average daily wage.

- **Allowance for the patient's attendant.** The person who attends the worker-employee in the hospital will receive 50% of the daily indemnity.

- **Definition of the permanent loss of work capacity:** The permanent loss of work capacity is divided into two categories: **permanent loss of *entire* work capacity** (100% loss) and **permanent loss of *partial* work capacity**. The list of the permanent loss of work capacity is attached to the Prakas No. 109 on the Benefits of Occupational Risk dated 16 June 2008. For example, the list of **permanent loss of *entire* work capacity** is given in the below table:

No.	Description of accident	Percentage of the loss of work capacity
1	Loss of both palms or amputation of upper part of the arm	100
2	Loss of one palm and one foot	100
3	Amputation of one leg or thigh or amputation of one thigh and one foot of another side	100
4	Loss of sight so that the person cannot perform his or her work using his visual organ (blind)	100
5	Serious disfigurement	100
6	Complete deaf	100

The permanent loss of partial work capacity includes the imputation of the upper part of an arm, amputation of the lower part of the arm. The table below shows some examples of the **permanent loss of *partial* work capacity** (for complete list of loss, please see the list attached to the Prakas No. 109):

No.	Description of accident	Percentage of the loss of work capacity
1.	Amputation of shoulder joint	90
2.	Amputation of a bone section below the shoulder, but the remaining section of 8 inches from acromion is still left.	80
3.	Loss of four fingers of an arm	50
4.	Loss of two fingers of an arm	30
5.	Complete deaf on one side the ears	20
6.	Amputation of the whole index	14

Benefits for the permanent loss of work capacity below 20 percent: The worker-employee who has lost his or her permanent work capacity of less than 20% will receive the **one-time-only allowance for the permanent loss of work capacity**. The allowance is calculated as:

Allowance = (ADW) x 70% x LWC x 20% x AC, where:

References

PK No. 480 (MoLVT) 18 Oct 2018 Clause 6 (new); PK No. 109 (MoLVT) 16 Jun 2008 Cl. 8.1

- ADW is Average Daily (contributable) Wage of the victim of occupational risk. The average monthly wage is the average of the monthly contributable wage during the last maximum period of six months before the accident occurs. The average daily wage is the average monthly contributable wage divided by 30.
- LWC is the level of Loss of Work Capacity
- AC is the Age Coefficient (assigned to the age of the victim in the attachment of Prakas No. 109).

For example, a 25 years old worker has his index amputated. His monthly contributable salary is 570,000 riels. Then, he will receive an allowance for the permanent loss of partial work capacity of:

Allowance = 575,000/30 x 70% x 14% x 20% x 10,470 = 28,094,500 riels

Benefits for the permanent loss of work capacity of over 20%: The worker-employee who has lost the permanent work capacity of over 20% will receive an annuity for permanent loss of work capacity to be paid monthly according to the following formula:

Annuity = (ADW) x 70% x (LWC – LWC/5) x AC

Where:

- LWC is the level of loss of work capacity
- AC is the age coefficient (assigned to the age of the victim in the attachment of Prakas No. 109).

In the above example, if the person suffers a loss of three fingers, his percentage of loss of work capacity is 30, so he will receive an annuity of:
Annuity = 575,000/30 x 70% x (30% -6%) x 10,470 = 33,713,400 riels.

References

SD No. 16, 2 Mar 2007 Art. 34; PK No. 109 (MoLVT) 16 Jun 2008; PK No. 480 (MoLVT) 18 Oct 2018

Other benefits under the Social Security Occupational Risk Scheme: Members of this scheme will receive funeral allowance, rehabilitation service, and survivor's annuity.

- **Funeral allowance:** If the accident causes death to the worker-employee, the relative of the worker-employee will receive an allowance of one million (1,000,000) riels to arrange the funeral.
- **Prosthetic rehabilitation service:** The worker-employee who has suffered a permanent loss of work capacity is entitled to a prosthetic device or devices as prescribed by the physician recognized by the Social Security Fund. In addition, his or her occupational function and vocational training will be adjusted and provided accordingly. For example, a worker-employee who lost a leg can be adjusted to a sitting job rather than previously standing job. He can receive a vocational training to adapt a skill needed by a new job.
- **Survivor's annuity:** The survivor of the worker-employee who has been deceased due to work-related accident will receive an annuity for the spouse, children, and aged parent. The survivor's annuity is proportional with the average wage. For purpose of annuity, the average wage is the average of the contributable wages paid during a period of not more than six months before the occurrence of the accident. For example, a worker-employee has contributable wages in the following table:

Jan	Feb	Mar	Apr	May	June
475,000	475,000	475,000	525,000	525,000	525,000

The average contributable wage is [(475,000 x 3) + (525,000 x 3)]/3 = 500,000.

If the survivors are **spouse, children, and dependent parent(s)**, the annuity for the spouse is 37.8% (that is 3/5 x 63%) of the **average contributable wage**; annuity for all dependent children is 25.2% (that is 2/5 x 63%) of the **average contributable wage,** and annuity for **dependent parents** is 7% of the **average contributable wage.**

If the survivors are the **spouse and dependent children**, the annuity for the **spouse** is **42%** (that is 3/5 x 70%) of the average contributable wage and the annuity for the **dependent children** is **28%** (2/5 x 70%) of the average contributable wage.

If the survivor is the **spouse or dependent children**, the annuity is 56% of the **average contributable wage**.

If the survivors are **dependent children and parents or aged persons**, the annuity for the parents or aged persons is **28%** of the average contributable wage and that of children is **28%** of the **average contributable wage**.

If the survivors are **spouse and dependent parents or aged persons**, the annuity for the spouse is 28% of the average contributable wage and that of the dependent parents or aged persons is 28% of the average contributable wage.

If the survivors are **only dependent parents or aged persons,** the annuity is **35%** of the average contributable wage.

O. Claims of benefits under the Social Security Occupational Risk Scheme

The claim for the cost of treatment in the case occupational accident can be made to the Social Security Fund by the treating facilities if the service and treatment are not charged directly to the patient/worker-employee (members of the SSF) or by the worker-employee if the treating facilities have charged him or her, or by the employer if the employer has paid for the expenses on behalf of the patient. The form of claim is provided in the Prakas No. 480, 18 October 2018.

The claim for the daily indemnity must be made to the SSF by the patient or his or her representative.

The claim for the permanent loss of work capacity must be made by the worker-employee or by his or her spouse, child, or the caretaker if the worker-employee is unable to do it due to physical disability. The claim for the survivor's annuity and the funeral allowance must be made by the survivor.

The claim form must be attached with medical documents, invoice of expenditures, letter of admission and discharge from the hospital or physician's prescriptions, leave request, certificate of birth, certificate of marriage, copy of the death certificate, identity card or passport of the patient/victim.

The statute of limitations of the daily indemnity of occupational accident and funeral allowance is one year and that of the annuity is five years from the date the beneficiary is entitled to indemnity or allowance claim.

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