

Guide to the Cambodian Labour Law for the Garment Industry

2005 (Revised 2013)
International Labour Organization
Better Factories Cambodia, Cambodia



International
Labour
Organization

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PREFACE

His Excellency NhepBunchin

Minister for Labour and Vocational Training

The Royal Government of Cambodia is committed to ensuring sustainable and equitable development. Decent work is the key to reducing poverty. This means jobs with working conditions that allow employees to lift themselves, and their families, out of poverty.

A key plank of the Royal Government's 2004 Rectangular Strategy is the creation of jobs and ensuring improved working conditions. Specifically the Royal Government has committed itself to seriously enforce the Labour Law and other international conventions to ensure the rights and responsibilities of employees and employers are respected. In the Garment industry this will be key to Cambodia's success in a world without quotas. We want to attract and retain buyers who share our commitment to decent work.

Cambodia has modern labour laws and regulations developed over the past decade of progress. But there is still a need for these laws to be better understood by those who are subject to them. In recent years the Arbitration Council has assisted in the understanding of these laws by its awards. Its awards only apply to the parties to the dispute and are not binding if the parties object to the award. But the Council's reasons for decisions are an important tool for interpreting the law.

For the first time in Cambodia we now have a guide that brings together all the parts of national labour law into one publication. The Guide is designed to be easy to read and easy to access the important elements of the law.

This publication is intended to be a guide to Cambodian labour law for the garment industry only. It should not be seen as legal advice. In addressing problems relating to working conditions or workplace relations, it may be necessary to consult an expert such as a labour inspector, a lawyer or a representative of your employers' association or union federation, and it may be necessary to refer to the Labour Law or labour regulations.

This publication is an initiative of the International Labour Organization Garment Sector Working Conditions Improvement Project and the Government of the Kingdom of Cambodia. The Ministry of Labour and Vocational Training is pleased to support the Guide as part of promoting broad understanding of rights and responsibilities in the workplace and increasing compliance with the labour law.

Phnom Penh
January 2005

NhepBunchin

Minister for Labour and Vocational Training

FOREWORD

Christine Evans-Klock, Director

ILO Sub-Regional Office for East Asia

For the last four years the ILO has been monitoring working conditions in Cambodia's export garment industry. We have done this in partnership with the Royal Government of Cambodia, the Garment Manufacturers Association of Cambodia and Cambodian unions. All too often violations of the law are due to lack of knowledge of the labour law itself. This can result in unnecessary disputes and loss of orders from concerned buyers.

This Guide aims to help employers, unions and employees understand the labour law. It integrates every major source of Cambodian labour law into one easy-to-use booklet.

For each subject area the key elements of the law are explained - not in the technical language of lawyers and legislators, but in plain language that ordinary people can understand.

The sources of the law that are relevant to each explanation are listed so that actual legal texts can be referred to if fine detail on any point is necessary.

The International Labour Organization is pleased to be involved with the Cambodian government in bringing this publication about. We see it is an important contribution to the objectives within the Royal Government's Rectangular Strategy to maintain labour standards and increase good employment opportunities. We hope this Guide will benefit Cambodia and contribute to sound labour relations within a growing economy.

Over time the laws will inevitably change and improvements can be identified to make this Guide even better. If you have suggestions for improvement, please contact the ILO at the ILO Garment Sector Working Conditions Improvement Project at gsp@ilogsp.org.kh so they can be part of the next edition.

**Bangkok
January
2005**

Christine Evans-Klock

Director, ILO Sub-Regional Office for East Asia

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PART 1 INTRODUCTION

References

1.1 ABOUT THIS GUIDE

This Guide brings together all sources of Cambodian labour law into a single, comprehensive guide for the manufacturing sector. The Guide covers all major areas of Cambodian labour law, derived from the Labour Law itself, regulations of the Royal Government, international labour standards that have been ratified by Cambodia, and the Cambodian Constitution.

A wide range of users will find this Guide helpful. Business owners, managers, and human resource personnel can use the Guide as a quick reference to identify their obligations under Cambodian labour law.

Employees will be able to gain a broad understanding of their rights and obligations under the law.

Non-governmental organizations, community-based organizations, unions and employer associations also will find the Guide useful in their work.

The Guide is organised into twelve major topic areas:

- Regulating Employment
- Hiring Employees
- Categories of Employees
- Wages
- Working Hours and Overtime
- Public Holidays, Leave and Other Benefits
- Occupational Health and Safety
- Work-Related Accidents and Illnesses
- Disciplining and Dismissing Employees
- Dispute Resolution
- Unions and Shop Stewards
- Documentation, Record Keeping, Posting

For each issue covered under these subject areas, the Guide includes references to the sources of the information in Cambodian labour law, or Arbitration Council Foundation (AC) decisions.

Example on how to use the guide

Information on collective bargaining agreements is found under the heading:

12.8 COLLECTIVE BARGAINING AGREEMENTS

Users who require more detailed information than that included in this section can look at the sections of the Labour Law and the Prakas or AC decisions that are indicated in the references.

LABOUR LAW ARTS 96-101
PRAKAS 287/01
PRAKAS 305/01
AC AWARD 148/12 (5)

The Guide contains a detailed Table of Contents to make it easy to locate topics of interest. In addition, a list of abbreviations used throughout the Guide follows this Introduction.

This book is intended to be a guide to Cambodian labour law, and should not be construed as legal advice. In particular this Guide has been written for the garment industry. Although it is also applicable in other industries, there may be industry-specific law and regulations which also apply (e.g. in the agriculture, plantation and services industries).

In addressing problems relating to working conditions or workplace relations, it may be necessary to consult an expert such as a labour inspector, a lawyer or a representative of your employers' association or union federation.

1.2 ABBREVIATIONS & TERMS

AC	-	ARBITRATION COUNCIL
ANUKRET	-	SUB-DECREE
ART	-	ARTICLE
CBA	-	COLLECTIVE BARGAINING AGREEMENT
FDC	-	FIXED DURATION CONTRACT
ILO	-	INTERNATIONAL LABOUR ORGANIZATION
LL	-	LABOUR LAW 1997
NOT	-	NOTICE
PRAKAS	-	MINISTERIAL DECLARATION
UDC	-	UNDETERMINED DURATION CONTRACT

THE TERM "REGULATION" AS USED IN THIS PUBLICATION INCLUDES ALL EXECUTIVE INSTRUMENTS INCLUDING SUB-DECREES, PRAKAS, CIRCULARS, INSTRUCTIONS AND NOTICES.

PART 2 REGULATING EMPLOYMENT

References

2.1 OVERVIEW

This Guide is about Cambodian labour law. Cambodian labour law comes from a number of sources. These include:

- the Constitution
- the Labour Law
- Regulations of the Royal Government (Sub-decrees) and the Ministry in charge of Labour (Prakas, Circulars and Notices)
- International Labour Standards of the ILO
- Collective Bargaining Agreements
- Employment Contracts, and
- Employers' Internal Regulations.

Awards of the Arbitration Council only apply to the parties named in the award. However, they are referred to in this Guide because they can help to understand what the Labour Law means. The Labour Law and awards of the Arbitration Council can be found on the website www.arbitrationcouncil.org.

The Cambodian government has also signed International Labour Organization conventions. When this happens, the government must take action to implement these conventions.

2.2 EMPLOYMENT CONTRACTS

An employment contract is an agreement in which one person (the employee) agrees to work for wages for another person or company (the employer). Employment contracts can be in writing or oral.

LABOUR LAW ARTS 1, 65
AC AWARDS 170/11(4),
101/12(2)

The Labour Law applies to most people who have employment contracts to carry out work in Cambodia. The Labour Law does not generally apply to household employees (unless otherwise expressly stated in the Law) and people permanently employed by the state (such as civil servants, judges, and members of the police, army and military police).

2.3 COLLECTIVE BARGAINING AGREEMENT

A CBA is an agreement between a group of employees and one or more employers about wages and working conditions. For more information about CBAs see section 12.8 below.

LABOUR LAW ARTS 96-101
PRAKAS 287/01, 305/01

2.4 INTERNAL REGULATIONS

Employers who have 8 or more employees must have Internal Regulations.

Internal regulations are rules made by the employer in order to implement the Labour Law in a particular workplace. International regulations must not contradict the Labour Law, Recalculations or CI3As which in force.

LABOUR LAW ARTS 22-25,
29,30, 284
PRAKAS 313/00
NOTICE 14/02

2.4.1 INTERNAL REGULATIONS

According to the Model Internal Regulation issued by the Ministry in charge of Labour, internal regulations should include provisions related to:

- job applications, apprenticeship and probation
- job descriptions
- medical examinations
- working hours, weekly time off and leave (including sick- leave)
- wages, bonuses and other benefits
- employee absence
- use of materials and tools of the enterprise during work performance
- using the building or base of the enterprise
- entry and exit of the premises
- disciplinary actions if an employee violates the internal regulations or commits serious misconduct
- right of employees to defend themselves before receiving disciplinary sanctions
- occupational health and safety

LABOUR LAW ART 23
NOTICE 14/02 ANNEX

2.4.2 Making and changing internal regulations

The employer must consult with shop stewards and union representatives before making the internal regulations.

The employer must make the internal regulations within 3 months of starting business. The regulations must be stamped and approved by a Labour inspector.

LABOUR LAW ARTS 24, 284
PRAKAS 313/00

2.4.3 Internal regulations must be displayed

The employer must post the internal regulations in a public location in the workplace and on the door of the hiring office.

LABOUR LAW ART 29

2.5 THE LABOUR LAW AS PUBLIC POLICY

The Labour Law is designed to protect employees and all employees are entitled to at least the minimum benefits set out in the Labour Law and its implementing Regulations. For this reason any provision of an employment contract, CBA or internal regulations which is less beneficial to employees than the law is not enforceable.

On the other hand employees can bargain with their employers to receive better benefits than those provided for by the law.

LABOUR LAW ARTS 13, 25
AC AWARDS 170/11 (1), 45/11 (4)

PART 3 HIRING EMPLOYEES

References

3.1 PREFERENCE FOR CAMBODIAN CITIZENS

Employers must give preference to Cambodians when hiring.

LABOUR LAWART 263

3.2 HIRING FOREIGNERS

Foreigners working in Cambodia must:

- have a work permit;
- have an employment card;
- have a valid passport and residence permit;
- not have any contagious diseases; and
- Be physically fit for the particular job.

LABOUR LAW ARTS 261-265
PAKAS 106/01

3.3 PAYMENT BY APPLICANTS PROHIBITED

The employer may not accept or demand any payment from an applicant during the hiring process. The employer may not deduct any amount from wages for job placement services provided to the employer, his/her representative or any intermediary (job recruiter)

LABOUR LAW ARTS 44, 126, 260

3.4 PAYMENT BY APPLICANTS PROHIBITED

Forced labour is against the law, as is the hiring of people for work to pay off debts.

LABOUR LA
W ARTS 15, 16

3.5 YOUNG EMPLOYEES AND CHILD LABOUR

Poverty is a big problem for many families in Cambodia. This puts pressure on parents to have their children work. Cambodia has laws regulating child labour. One challenge faced by the garment and footwear industries is that workers under the permitted working age of 15 years old may submit or borrowed fake documents during recruitment. In addition, factories may not carry out sufficiently thorough recruitment processes. In order to avoid hiring underage workers, recruiters should give preference to job seekers with a mature appearance and should cross check documents to ensure that they are not falsified or borrowed.

3.5.1 Minimum ages for employees

The minimum allowable age for regular employment is 15

LABOUR LAW ART 177

3.5.2 Protection for young employees

Minors (people less than 18 years old) may not sign an employment contract without the consent of their parents or guardian.

A minor may not be employed to perform night work. See paragraphs 6.5 and 6.6 below for an explanation of night work.

Minors aged from 12 to 15 years can be hired to do light work provided that:

- the work is not hazardous to their health or mental and physical development, and
- the work will not affect their attendance at school or training programs.

LABOUR LAW ARTS 172-181

3.5.3 Work must be appropriate for young employees

At any time, a Labour Inspector can request that employed minors be examined by a doctor. If the doctor decides that the job is too hard for the minor, the employer must change the job or terminate the minor's employment.

An employer may not employ minors to do dangerous work of the types listed in Prakas 106/04. However, an employer may request permission from the Ministry in charge of Labour to have employees who are at least 16 years old do dangerous work so long as the employee has:

- appropriate training; and
- is not working between 22.00 and 05.00.

LABOUR LAW ART 178
PRAKAS 106/04

3.5.4 Registration of age

Employers must keep a register of all minors who work for them. The Labour Inspector must control this register.

The employer should keep proof of age for all employees. This proof should be in the form of an identification card, birth certificate, wedding certificate, family book, employment card, diploma, election card or equivalent documents.

LABOUR LAW ART 179
NOTICE 11/03

3.6 MEDICAL CHECKS

All employees are required to pass a medical check by the Department of Labour Medical Unit. The employer is required to pay for this medical check.

LABOUR LAW ART 247
PRAKAS 09/94
AC AWARDS 02/03, 21/03, 19/04,
53/04, 60/04, 63/04, 64/04, 78/04,
19/12 (12), 34/12 (13)

PART 4 CATEGORIES OF EMPLOYEES

References

4.1 FIXED DURATION AND UNDETERMINED DURATION CONTRACTS

The Labour Law talks about 2 types of employment contracts for regular employees: fixed duration contracts (FDCs) and undetermined duration contracts (UDCs).

A contract is an FDC if it:

- is written,
- is not longer than 2 years, and
- has a precise starting and end date.

If a contract does not meet these standards, it is a UDC.

The Arbitration Council has found that an FDC may be renewed one or more times only if the total length of the employment relationship does not exceed 2 years. If an FDC is extended or renewed so the total period of the contract is more than 2 years, then the contract will automatically become a UDC.

LABOUR LAW ARTS 67, 73
AC AWARDS 1003, 02/04,
155/09(9), 70/11(1), 105/11(3)

4.2 CASUAL EMPLOYEES

The Labour Law defines casual employees as those who:

- perform specific work that has to be completed within a short period; or
- perform work temporarily, intermittently or seasonally.

Casual employees are sometimes also referred to as floating or temporary employees.

LABOUR LAW ARTS 9, 10
AC AWARDS 03/03, 26/04,
30/04, 116/11(6)

4.2.1 Time limit on casual work

It is not proper to use casual (or floating) employees on a regular basis for long periods of time. The Arbitration Council has found that if casual (or floating) workers work more than 21 days per month for more than 2 months in a row then they should be considered to be probationary or regular employees.

LABOUR LAW ART 9
AC AWARD 26/04, 1008(1),
116/11(6)

4.2.2 Rights of casual employees

Casual employees have the same rights as regular employees. Therefore, casual employees must be paid the same and treated the same as regular employees. However, casual employees' benefits may be reduced if they work less than full time.

If an employer does not provide casual employees with annual leave, sick leave, public holidays, bonuses and other benefits then the employer should provide them with an increased hourly rate to compensate for this.

LABOUR LAW ARTS 10, 161
NOTICE 041/11
AC AWARD 30/04, 97/08(10)

Example: Casual Employees

Kim Leng is employed as a floating/casual employee at factory X. Some months she works almost full time and other months she may only work for 4 or 5 days depending on how busy the factory is.

If she worked half time in April 2011, then in order to comply with the Labour Law her employer should:

- pay her for 50% of her daily wage on public holidays in April,
- credit her 0.75 days per month of annual leave, and
- pay her 50% of the \$7 attendance bonus.

4.3 PART-TIME EMPLOYEES

Part-time employees are employees who work less than 48 hours per week. Part-time employees have the same rights as full-time employees except that their wages and benefits may be reduced in proportion to the number of hours they work.

4.4 PROBATIONARY EMPLOYEES

At the beginning of an employment contract the employer can set a probationary period of up to 3 months in order to evaluate the skills and attitude of an employee.

**LABOUR LAW ARTS 68, 82
NOTICES 06/97, 17/00
AC AWARDS 27/03, 55/04 (2),
37/11(1)**

4.4.1 Length of probation

The maximum length of the probationary period is:

- 1 month for non-specialized workers;
- 2 months for specialized workers; or
- 3 months for regular employees.

Notice 06/97 provides that employees, after successfully completing their apprenticeship "shall be under the probation period for 3 months before becoming a sewer." However, applying the law, the Arbitration Council has found that sewers and cloth cutters are "specialized workers" so their maximum probationary period should last no more than 2 months.

**LABOUR LAW ART 68
NOTICES 06/97, 17/00
AC AWARD S 13/04, 92/08(5),
15/11(2);**

References

4.5 APPRENTICES

Under an apprenticeship, an employer gives professional training to apprentices who are newly recruited and unskilled. Through the apprenticeship an unskilled employee gets their initial training and after successful completion of this training they can expect to become a probationary employee and then become a regular employee.

LABOUR LAW ARTS 51-64
PRAKAS 004/00

4.5.1 Length of apprenticeship

In general an apprenticeship may not be longer than 2 years. However, Notice 06/97 states that in the garment industry in Phnom Penh, the period of apprenticeship should not be longer than 2 months.

The employer should only use apprenticeships for employees who do not have experience in the industry.

LABOUR LAW ART
51PRAKAS 004/00
NOTICE 06/97
AC AWARD 62/04

PART 5 WAGES

LABOUR LAW ARTS 102-119

References

LABOUR LAW ARTS 104, 105, 108
NOTICE 049/10, NOTICE 103/13
AC AWARDS 04/03, 25/03, 26/04,
98/12 (3), 146/12 (9), 158/12 (1)

5.1 MINIMUM WAGE

Employers must pay all employees who work full time (including piece-rate employees and casuals) at least the minimum wage.

Employers must post the minimum wage in the workplace and in payment and hiring offices.

The Ministry in charge of Labour has set the minimum wage only for the garment, textile and footwear industries.

The Arbitration Council has also found that similar minimum wages should be paid in other manufacturing industries.

The minimum wage and bonuses for the garment and footwear industries are set out below.

Type of employee	Minimum Monthly Wage
Apprentices (Notice 06/97)	\$30*
During probation (Notice 103/13)	\$75
Regular employees (Notice 103/13)	\$80

*This table refers to Notice 06/97 which states that for apprentices in the garment industry in Phnom Penh, the minimum wage is \$30. There is no minimum wage set specifically for apprentices in the garment industry outside Phnom Penh.

5.2 MINIMUM WAGES FOR PIECE-RATE EMPLOYEES

The minimum wage for piece-rate employees in the garment, textile and footwear industries, working regular hours (48 hours per week), is \$80 per month. If their pay based on piece rates is less than this the employer must still pay \$80 per month. If their pay based on piece rates is more than \$80, the employer must pay the higher amount.

LABOUR LAW ART 108
NOTICE 049/10, NOTICE
103/13
AC AWARDS 14/03, 159/08
(1), 162/09 (2), 38/10 (2)

5.3 SENIORITY BONUS

Employers in the garment, textile and footwear industries must pay employees with at least one year's seniority a seniority bonus. The seniority bonus started on 1 August 2000. Employment before this date is not counted when calculating the seniority bonus.

NOTICES 017/00, 041/11
AC AWARDS (4), 89/12 (6),
176/12

The table below shows how to calculate the seniority bonus.

Length of Employment	Seniority Bonus Per month
+* 1 year	\$2
+ 2 years	\$3
+ 3 years	\$4
+ 4 years	\$5
+ 5 years	\$6
+ 6 years	\$7
+ 7 years	\$8
+ 8 years	\$9
+ 9 years	\$10
more than 10 years (max)	\$11

* Note : Seniority bonus is given to workers by the 13th month.

5.4 ATTENDANCE BONUS

Employees in the garment textile and footwear industries who "work regularly on each day which must be worked in a month" must be paid a bonus of at least \$10 per month. This includes casual, probationary and piece-rate employees.

Employers must pay the attendance bonus if employees take authorized leave (e.g., for annual leave or public holidays).

The Arbitration Council has found that when employees take sick leave approved by an authorized and legally recognized medical practitioner, the attendance bonus must be paid in proportion to the days worked.

LABOUR LAW ART 10
NOTICES 017/00, 745/06, 230/12
AC AWARDS 04/03, 26/03, 03/04
62/04, 63/04, 10/12(20),
132/12 (8)

Example: Sick leave and attendance bonus

Maly works full-time at Factory Z. During the month of June she attends work regularly except for one day of authorized sick leave.

Her employer can deduct \$0.38 (= \$10/26 days) from her \$10 attendance bonus for June.

5.5. HEALTH CARE ALLOWANCE:

**NOTICE:
206/11**

Employers must pay workers a health care allowance as follows:

- 1) All workers in the textile, garment, and footwear production sectors must be paid a health care allowance of \$5 per month. This allowance shall be paid in addition to workers' actual wages (base wage);
- 2) Newly recruited-workers who commenced work less than 26 working days prior to their first pay day shall receive a health care allowance as provided below:
 - a. Employees who worked 13 days or less shall receive at least \$2.50 as a health care allowance in their first paycheck.
 - b. Employees who worked 14 days or more shall receive the full health care allowance of \$5 in their first paycheck.

5.6. HOUSING/TRANSPORTATION ALLOWANCE:

**NOTICE:
230/12**

If employers do not provide workers with transportation or housing, they must pay workers at least \$7 per month as a transportation and housing allowance.

All factories that do not provide transportation or housing shall pay newly recruited workers who commenced work less than 26 working days prior to their first pay day as follows:

- a. Employees who have worked 13 days or less shall receive a transportation and housing allowance of \$3.50 in their first paycheck;
- b. Employees who have worked 14 days or more shall receive a transportation and housing allowance of \$7 in their first paycheck;
- c. For workers who are paid by day or by week, the transportation and housing allowance shall be calculated at a rate of \$0.27 per day.

5.7 HOW WAGES ARE PAID

The employer must pay wages:

- directly to the employee, unless the employee agrees to another method,
- in cash,
- at or near the workplace on workdays, not on days off. If the regular payment day falls on a day off, then the employer must make payment in advance, and
- during working hours.

LABOUR LAW ARTS 113-119,126, 127
PRAKAS 80/99
NOTICE 06/97

LABOUR LAW ARTS 113-115
AC AWARD 02/04

LABOUR LAW ARTS 113-115
AC AWARD 37/04

LABOUR LAW ARTS 113-115
AC AWARD 37/04, 72/10 (7), 34/12 (7),
172/12 (6)

5.8 DEDUCTIONS AND FINES

Generally employers are not allowed to make deductions from employees' wages. Specifically employers may not make the following charges or deductions from wages:

- impose fines or deduct wages from employees in order to punish them for
- misconduct or refusing to work overtime;
- require that an employee issue a guarantee or bond in order to get or keep a job;
- deduct wages in exchange for job placement;
- deduct wages from employees who choose not to eat at a company canteen;
- charge employees more than the real cost of replacing lost ID cards; or
- charge employees any amount for the mandatory medical check.

LABOUR LAW ARTS 28, 44, 126, 127
AC AWARDS 02/03, 21/03,30/03,60/04,
19/12 (3), 101/12 (3), 158/12 (6)

Employers may make deductions from an employee's wages to pay for the actual cost of:

- tools and equipment that the employee does not return;
- items and materials under the control and usage of the employee; and
- amounts owed to the company store.

For these deductions, the amount deducted from an employee's wages must not cause the employee to take home less than the minimum wage.

The employer can also make deductions for union dues (see paragraph 12.5 below).

Example: Deductions

Employees of factory X are all issued with a plastic ID card. To replace one of these cards costs the employer 2000 riel.

The employer may make a rule that if an employee loses their ID card, they will deduct 2000 riel from the employee's salary to pay for a replacement card.

References

LABOUR LAW ART 112
AC AWARD 24/03, 62/10 (6),
56/11 (5), 40/12 (2), 58/12 (1)

5.9 INFORMING EMPLOYEES ABOUT WAGES

Employers must explain clearly to employees how their wages will be calculated:

- before employing an employee; and
- before changing their wages (e.g. before changing a style or piece rate).

An employer should provide pay slips to all employees each pay day. These pay slips should be in Khmer and show how the wages were calculated.

PART 6 WORKING HOURS & OVERTIME

References

6.1 NORMAL WORKING HOURS

Normal working hours should not be more than 8 hours a day, or 48 hours a week.

LABOUR LAW ART 137

6.2 WEEKLY DAY OFF

Employees must get at least one full day (24 hours) off per week. This should normally be a Sunday.

LABOUR LAW ART 146-148

6.3 FLEXIBLE HOURS – SATURDAY AFTERNOON OFF

Employers may set the normal working hours so that employees get Saturday afternoon, as well as Sunday, off. However, the employer must not extend the normal working day beyond 9 hours in order to do this.

LABOUR LAW ART 141
PRAKAS 143/02

6.4 WORKING HOURS FOR YOUNG EMPLOYEES

Minors may not work more than 8 hours per day and they must be given at least 13 consecutive hours off between shifts

PRAKAS 144/02

6.5 NIGHT WORK

The Labour Law regarding night work was amended in 2007.

Article 144 (as amended) says that night work is work performed between 22.00 and 05.00.

Under Article 144 (as amended), night work performed during normal working hours (non-overtime hours) is paid at 130% of the rate for normal working hours that are not worked at night.

Under Article 139 (as amended), night work performed as overtime is paid at 200% of the rate for normal working hours that are not worked at night (a 100% increase in addition to the basic wage).

The amendments to Article 144 did not change the meaning of the term "night," which still means a period of at least 11 consecutive hours that includes the interval between 22.00 and 05.00a.m. According to the Arbitration Council, an enterprise must set aside a period of at least 11 hours to be night (e.g., 20.00 - 07.00 or 19.00 - 06.00) and if employees finish work during this time, the employer must provide them with a place to sleep or transport home, as required under Prakas 80/99.

LABOUR LAW ARTICLE 139, 144
AS AMENDED

PRAKAS 80/99

CIRCULAR 24/99

NOTICE 014/99

AC AWARD 47/0 4

AA 119/09(1)
AA 25/11(1)

References

6.6 NIGHT WORK FOR YOUNG EMPLOYEES

Minors are not allowed to work at night in a garment factory. The one exception to this rule is 16-18 year olds, who are allowed to work at night to prevent an accident or to fix equipment following an accident. If this happens, the employer must notify the Ministry in charge of Labour in advance.

Minors are allowed to work at night in certain other sorts of factories listed in Prakas 144/02 but only for the purpose of training.

PRAKAS 144/02

6.7 OVERTIME

Overtime work is work done in excess of normal working hours.

LABOUR LAW ART 137-140
PRAKAS 80/99
NOTICE 014/99

6.7.1 Overtime must be exceptional and urgent

Overtime is only allowed for exceptional and urgent work.

LABOUR LAW ART 139

6.7.2 Overtime must be voluntary

Employees must be allowed to choose to work overtime or not. Employers must not impose any penalty on an employee who chooses not to work overtime.

PRAKAS 80/99
AC AWARDS 07/08 (1), 86/11 (8)

6.7.3 Permission for overtime required from the Ministry in charge of Labour

Employers must obtain the permission of the Ministry in charge of Labour before giving employees overtime work.

PRAKAS 80/99

6.7.4 Maximum overtime of 2 hours a day

According to overtime authorization letters issued by the Ministry in charge of Labour, overtime is usually limited to 2 hours per day.

AC AWARD 10/04

6.7.5 Payment for overtime

Employees must be paid extra for working overtime. The table below sets out the rates.

Time of work	Rate
Overtime on Monday to Saturday (not worked at night)	150%
Overtime on Monday to Saturday (worked at night, 22.00 - 05.00)	200%*
Sundays	200%
Public Holidays	200% (normal pay+ extra 100%)*

* See paragraph 6.5 on night work

**See example in paragraph 7.1 on paid public holidays

In order to calculate overtime pay first work out the hourly rate of pay.

The current industry practice is to use the monthly basic wage as set out in the formula below:

(Monthly basic wage)

$$\text{Hourly rate} = \frac{\text{Monthly basic wage}}{26 \text{ (days)} \times 8 \text{ (hours)}}$$

The hourly rate multiplied by the number of hours overtime and relevant overtime rate equals the overtime pay.

$$\text{Hourly rate} \times \text{hours of overtime} \times \text{overtime rate} = \text{overtime pay}$$

Example: Overtime for regular employees

Malika earns regular wages. She is paid \$80 per month. One day the employer asks Malika to work 2 hours overtime.

The wage calculation for Malika's 2 hours of overtime is set out below:

$$\begin{aligned} \text{Hourly rate} &= \frac{80 \text{ (monthly basic wage)}}{26 \text{ (days)} \times 8 \text{ (hours)}} \\ &= \$0.38 \text{ per hour} \end{aligned}$$

$$\text{Overtime pay for two hours} = 0.38 \times 2 \text{ hours} \times 150\% = \$1.14$$

The law is unclear as to how the hourly rate should be calculated. For example, some argue that the seniority bonus should be included in the calculation of the basic wage.

LABOUR LAW ART 139
AS AMENDED

PRAKAS 10/99, 80/99
AC AWARDS 14/10 (4), 36/11 (2)

6.7.6 Overtime rate for piece rate employees

The same higher rates must be applied to the piece rate of piece-rate employees who work overtime. This means that piece-rate employees should receive an additional 50% payment for work they perform during normal overtime hours and an additional 100% for overtime hours at night, Sunday or a public holiday.

The Arbitration Council has found that the law does not state a clear formula for calculating overtime rates for piece-rate employees but that employers should pay overtime in accordance with the example set out below.

Example: Overtime calculation for piece-rate employees

Sophorn works on the sewing line and gets paid piece rates of \$0.60 per ticket. One month the employer is very busy and asks Sophorn to work 20 hours of overtime that month.

Sophorn completes 150 tickets that month, which entitles him to \$90 (based on a piece rate of \$0.60 per ticket). However, Sophorn is entitled to be paid at a higher rate (150%) for his 20 hours of overtime.

The *extra pay* for Sophorn's overtime should be calculated as follows:

$$\begin{aligned} \text{Hourly rate} &= \frac{\$90 \text{ (total money from piece rate in 1 month)}}{228 \text{ (total hours worked in month)}} \\ &= \$0.39 \end{aligned}$$

Extra pay for overtime = hourly rate (\$0.39) x 1.5 x 20 hours = \$11.70

If the overtime was done at night or on a Sunday the rate used in the calculation would be 100% instead of 50%.

LABOUR LAW ARTS 108, 139
PRAKAS 80/99
NOTICE 017/00
AC AWARD 78/04

6.7.7 Overtime meal allowance

Employees who work overtime must receive 2,000 riels per day for a meal or receive one free meal every day on which they work overtime. This meal can be provided in the middle of the shift or before overtime starts.

NOTICES 041/11
AC AWARDS 73/04, 82/12(2),
163/12(2)

PART 7 PUBLIC HOLIDAYS, LEAVE & OTHER BENEFITS

References

7.1 PAID PUBLIC HOLIDAYS

The Ministry in charge of Labour issues a Prakas each year setting out paid public holidays Cambodia.

If a public holiday falls on a Sunday, employees can take the following Monday off. Time off for public holidays does not interrupt the length of service (seniority) or reduce paid annual leave.

Employers must pay employees their normal wages for public holidays.

Employers who run businesses that cannot stop operating on public holidays may ask employees to work on these days. This work must be voluntary. An employer must pay employees their regular wage plus 100% for working on a public holiday. This means that they get one extra day's pay on top of their normal pay.

Example: Work on a public holiday

Narith works at a garment factory earning \$2.34 per day. It is peak season and his employer has asked him to work on a public holiday. If Narith does not work he would be paid his regular wage for the public holiday (\$2.34 for the day). Therefore if he does work he gets another day's pay (\$2.34).

LABOUR LAW ARTS 161, 162, 164
PRAKAS 10/99
AC AWARDS: 14/10 (2), 57/12 (5)

7.2 PAID ANNUAL LEAVE

All employees have the right to take paid annual leave.

Full time employees get 1.5 days of annual leave a month. This equals 18 days per year.

Employees working less than 48 hours per week get leave on a pro-rata basis. For example, if an employee works half of regular working hours they get 0.75 days of annual leave a month.

LABOUR LAW ARTS 166-170
NOTICE 017/00
AC AWARDS 182/11 (4), 203/12 (7)

Regular working hours	Leave/month (regular working days)
48	1.5
40	1.25
24	0.75

References

7.2.1 Extra leave for long service

Employers must give employees one extra day of leave in every 3 years of continuous service as shown in the table below:

LABOUR LAW ARTS 166
AC AWARDS 62/04, 155/09 (1), 112/10
(4), 46/12 (5)

Years of service	Days of leave per year
1-3	18
4-6	19
7-9	20

7.2.2 Right to use leave

Employers must allow employees to take their annual leave when requested, unless there are particularly urgent reasons why an employee cannot take leave at that time. Employees have the right to use their annual leave after one year of service.

LABOUR LAW ARTS 167
AC AWARD 27/04, 72/10 (3), 116/11
(7), 181/12 (7)

Employers may set reasonable rules about how much notice an employee must give before taking annual leave.

7.2.3 Payment in advance

Before taking annual leave, the employer must pay the employees the wages they would have received had they worked.

This payment for annual leave must be based on:

- the employee's average actual earnings during the year prior to taking leave; or
- the daily wages the employee would have been paid if they went to work.

The employer must pay whichever is higher.

LABOUR LAW ARTS 168
AC AWARD 27/04, 23/08 (7), 40/09 (4),
17/12 (2)

Example: Payment for annual leave

Sok worked at a garment factory for 1 year and never took any annual leave. He was earning a wage of \$80 per month but he always came to work regularly. Including bonuses, he earned a total of \$1164 over the past 12 months. After exactly 12 months, Sok gets permission to take 6 days annual leave to visit his homeland.

The employer must pay Sok for his leave in advance. In order to calculate Sok's pay the employer must figure out how much Sok earned on average per day during the past year.

The amount should be calculated as follows:

$$= \frac{\$1164(\text{the total wages and bonuses over the past 12 months})}{12 (\text{months per year}) \times 26 (\text{working days per month})}$$

$$= \$3.76 (\text{the average daily pay}).$$

Sok's employer must pay Sok \$22.38 (\$3.76 for each working day he is on leave) before he goes on leave.

7.2.4 Payment instead of leave

Upon termination of employment, the employer must pay out an employee's remaining leave in full. This payment is calculated the same way as in the example above.

LABOUR LAW ART 167
AC AWARDS 27/04, 112/10 (4),
203/12 (7)

7.2.5 Agreements to give up leave

Any agreement that says employees have given up the right to annual leave is not valid.

Although employees in Cambodian factories often agree to take payment instead of leave, such agreements are not allowed under a strict interpretation of the law.

LABOUR LAW ART 167
AC AWARDS 27/04, 40/09 (4),
89/12 (8)

7.2.6 Putting off leave

Employees may agree to delay taking annual leave until the end of their contracts. However, an employer must not allow employees to take less than 12 days leave per year and the excess leave days cannot be put off for more than 3 consecutive years.

The Arbitration Council has found that, when it is not the employee's fault that he/she did not get to take leave, the 3-year limit does not apply. This means that at the end of the contract the employee should be paid out all of their unused annual leave.

LABOUR LAW ART 167
AC AWARDS 27/04, 40/09 (4),
89/12 (8)

7.3 SPECIAL LEAVE

Employees may ask for up to seven days special leave for personal reasons that affect their immediate family. However, the employer should not unreasonably refuse special leave if:

- the employee is getting married;
- the employee's wife gives birth;
- the employee's child is getting married; or
- the employee's husband, wife, children or parents have died or are ill.

If employees have not already used their annual leave, their employer may deduct special leave from the remaining annual leave for that year. If the employees have no annual leave, the employer may require them to work to make up for their special leave. But there are some restrictions on this - for example the total working hours must not exceed 10 hours per day or 54 hours per week.

LABOUR LAW ART 171
PRAKAS 76/98, 267/01
AC AWARD: 144/12 (6)

7.4 SICK LEAVE

Each employee has a right to sick leave. The employer should include paid sick leave in the internal regulations.

LABOUR LAW ARTS 71, 72
NOTICE 14/02
AC AWARDS 26/03, 68/04,
15/12 (3)

7.4.1 Sick leave with a medical certificate

An employer must give an employee sick leave for up to 6 months if an employee:

- is absent from work because of illness; and
- has a certificate from a qualified doctor.

An employer may dismiss an employee if the employee is on sick leave for more than 6 months.

LABOUR LAW ARTS 71,
AC AWARDS 26/03, 15/12 (3)

7.4.2 Payment during sick leave

The law does not require paid sick leave, however, following the policy of the Ministry in charge of Labour, employers should consider providing paid sick leave as follows:

- 100% of wages during the first month of sick leave
- 60% of wages during the second and third months, and
- unpaid leave from the fourth until the sixth month.

The Arbitration Council has found that where employees are certified sick by an authorized and legally recognized doctor then the employer must pay the \$10 attendance bonus in proportion to the number of days worked that month.

ANNEX TO
NOTICE 14/02
AC AWARDS 26/03, 13/04
30/04, 62/04, 63/04, 42/12 (1)

7.5 MATERNITY LEAVE

Employers must give employees who give birth 90 days (3 months) of maternity leave.

An employer may not terminate an employee:

- because she is pregnant;
- while she is on maternity leave; or
- immediately before taking maternity leave.

Employers must pay employees who have at least one year of seniority half their wages and benefits during maternity leave. Employers should calculate the payment on the basis of the employee's average pay during the 12 months prior to departing on maternity leave, not on the minimum wage or basic wage.

During the first 2 months after returning from maternity leave employees may only be required to perform light work.

CONSTITUTION ART 46
LABOUR LAW ARTS 182-183
AC AWARDS 24/03, 49/04, 80/10,
115/08 (1), 172/11 (7),
112/11 (1), 148/12 (2),
27/12 (12),

Example: Maternity leave

Sokha worked at a garment factory for 2 years before becoming pregnant. Her basic wage was \$80 and her seniority bonus was \$3. She also came to work regularly, so she often received the attendance bonus of \$10. Her wages and benefits were a total of \$1200 over the past 12 months.

Because she has worked for over 1 year, Sokha is entitled to 90 days maternity leave at half pay. This amount should be calculated as follows

$$= \frac{\$1200 \text{ (wages and benefits over the past 12 months)}}{12 \text{ (months)}}$$

$$= \$100$$

The employer must then multiply the monthly amount by 50% = \$50 and pay Sokha this amount for each month she is on maternity leave.

References

7.6 BREAST-FEEDING BREAKS

For the first year of a child's life, mothers have the right to one hour per day of paid time-off for breast-feeding breaks during work hours. Mothers may take this hour as 2 periods of 30 minutes each (e.g. 30 minutes during both the morning and afternoon shifts). The exact time of breast-feeding should be agreed between the mother and her employer. If there is no agreement, the breaks should take place half way through each shift. Giving milk formula or payment instead of breast-feeding breaks is not allowed under the law.

Breaks for breast-feeding are in addition to the normal breaks that an employee receives.

LABOUR LAW ARTS 184-185
AC AWARD 05/03, 94/04 (11),
08/07 (7), 75/09 (4), 17/10
(12)

7.7 NURSING ROOM

An employer who employs 100 women or more must set up an operational nursing room.

The Arbitration Council has found that giving milk formula or payment instead of providing a nursing room is not allowed under the law.

LABOUR LAW ART 186
AC AWARDS 63/04, 68/04,
56/11 (1), 74/11 (4)

7.8 DAY CARE CENTER

An employer who employs 100 women or more must set up an operational day care center.

If an employer is not able to set up a day care center for children over 18 months of age then they must pay women employees the cost of providing day care for their children.

LABOUR LAW ART 186
AC AWARDS 63/04, 56/11
(1), 04/12 (6), 98/12 (5)

PART 8 OCCUPATION HEALTH & SAFETY

8.1 GENERAL

An employer must make sure that the workplace is safe, healthy and hygienic.

LABOUR LAW ARTS 23, 228-230

8.2 INFIRMARY AND FIRST AID

An employer who employs more than 50 employees at one workplace must set up an infirmary.

LABOUR LAW ARTS 242-244
PRAKAS 330/00

8.2.1 Location and size of infirmary

The infirmary must be near the workplace and be:

- easily accessible;
- clean;
- away from noise, dust and rubbish;
- well lit;
- well ventilated;
- at least 20 square meters in size; and
- provide privacy for women employees.

PRAKAS 330/00 ART 2
AC AWARD 03/03

8.2.2 Number and qualification of health employees

The required staffing of the infirmary depends on the number of employees, as set out in the table below.

PRAKAS 330/00 ART 3
AC AWARDS 35/11(9),
224/12(6)

Number of employees	Number of nurses on duty	Number of physicians	Working hours required per 8-hour shift
50-300	1(standby)	doctor or 1 assistant	2 hours
301-600	1(standby)	1 doctor	2 hours
601-900	2(standby)	1 doctor	3 hours
901-1400	2(standby)	1 doctor	4 hours
1401-2000	2(standby)	1 doctor	6 hours
More than 2000	3(standby)	1 doctor	8 hours

Infirmary staff must be present during regular time and overtime.

8.2.3 Labour physicians

The Labour Law gives labour physicians a clear role in the workplace. They must:

- advise on hygiene and labour security in the enterprise;
- keep professional confidence and technologies secret;
- prevent harm to employees' health from work-related accidents, occupational illnesses and other infectious diseases;
- check the health of employees who are sick at work before sending them to hospital.

LABOUR LAW ARTS 239, 240
PRAKAS 139/01

| 8.2.4 Medical equipment and medical

The infirmary must have:

- a desk,
- 3 chairs,
- a filing cabinet,
- a medicine cabinet,
- at least 2 beds with mattresses and covers,
- a sterilizer, and
- necessary medicines and instruments.

PRAKAS 330/00 ART 4
AC AWARDS 224/12(6)

8.2.5 Number of beds for patients

An employer who employs more than 50 employees at a workplace must have sick beds in or near the infirmary. The number of beds must equal 2% of the number of employees up to a maximum of 20 beds.

PRAKAS 330/00 ART 1, 4, 5

Employees	Beds
50-200	2
500	10
> 1000	20

8.3 TOILETS

PRAKAS 052/00
AC AWARDS 31/12(6), 34/12(4)

The employer must provide clean toilets for employees.

8.3.1 Number of toilets

The employer must provide separate toilets for men and women employees according to the following number:

Number of employees (Men or Women)	Number of toilets
1-15	1
16-35	2
36-55	3
56-80	4
81-110	5
111-150	6
151-1000	Add one for every 50 persons
More than 1000 persons	Add one for every 70 persons

8.3.2 Requirement for toilets

Each toilet must:

- have a floor and be built with waterproof material,
- have a door which closes with an inside bolt,
- have walls painted in light color,
- have enough light,
- be in the work place or connected to the workplace by a covered walkway,
- have enough soap and water,
- be cleaned at least once a day, and
- have a proper drainage system.

References

8.3.3 Toilets for women employees

Any enterprise with more than 100 women employees must have a western-style toilet for every 50 women.

8.4 DRINKING WATER

Employers must provide enough safe drinking water for the employees working in their enterprise.

PRAKAS 054/00
AC AWARDS 143/09(2); 72/10(4);
86/11(3)

8.4.1 Requirements for safe drinking water

The drinking water must be put in a clean container with a closed lid and a tap. The employer must provide hygienic cups for drinking water.

8.4.2 Location of water containers

Water containers must be close to where employees work.

8.4.3 Alcoholic drinks

No one may bring alcoholic drinks into the workplace or give alcoholic drinks to the employees during work hours.

8.5 SEATING

Employers must provide suitable chairs in each workstation for use by employees.

PRAKAS 053/00

8.5.1 Chairs near workplace

If work cannot be carried out in a sitting position the employer must have chairs near the workstation for employees to use when they need to.

8.5.2 Internal regulations

Rules about the use of seats may be included in the internal rules.

References

8.6 NOISE

Maximum noise levels in the workplace as set out in Anukret 42/00 are as follows:

ANUKRET 42/00
PRAKAS 138/03

Level of noise (dB(A))	Maximum duration (hour)
75	32
80	16
85	8
90	4
95	2
100	1
105	0.5
110	0.25
115	0.125

According to Anukret 42/00 the employer must provide hearing protection to employees working where the level of noise is above 80 dB(A). According to Prakas 138/03 the level is 85d B(A).

8.7 AIR, HEAT AND VENTILATION

ANUKRET 42/00
PRAKAS 125/01, 147/02

8.7.1 Air

Anukret 42/00 provides for maximum chemical levels in the air.

8.7.2 Heat and Ventilation

Employers must ensure that the temperature in the workplace is reasonable for employees.

PRAKAS 125/01, 147/02
AC AWARD 86/11(10)

There must be at least 10m³ of airspace in a factory or workshop for every employee.

Employers must have thermometers in the workplace to monitor the temperature.

References

8.7.3 Work in areas with limited ventilation

If employees have to work in places with limited ventilation (such as caves, basements, or large cylinders), the employer must ensure that the employees have access to at least 30m³ of fresh air per person per hour.

PRAKAS 139/03

8.8 LIGHTING

Employers must ensure that there is enough natural and artificial light in the workplace so that employees can see clearly without straining their eyes. Prakas 484/03 sets lighting levels (in LUX) for different sorts of workplaces.

PRAKAS 484/03

8.9 USING PHYSICAL FORCE

The employer must avoid requiring workers to use excessive physical force which is harmful to their health, especially if it may hurt their backs.

LABOUR LAW, ART 230
PRAKAS 124/01
AC AWARD 86/11(4)

8.9.1 Pregnant women

Pregnant women or women who have given birth or had a miscarriage within the last two months shall not move objects over 5 kilograms.

8.9.2 Maximum weights

Employees can only lift the maximum weights as set out in the table below.

	Male		Female	
	15 years and over	18 years and over	15 years and over	18 years and over
Direct lifting	12 kg	50kg	6 kg	25 kg
Cart with one wheel	32 kg	80 kg	banned	40 kg
Cart with three or four wheels	48 kg	120 kg	24 kg	60 kg

8.10 EXAMPLES OF CONCRETE MEASURES REGARDING HEALTH & SAFETY

To promote health, safety and to prevent work-related accidents, employers should take concrete measures, such as:

Air

- install and maintain ventilation and cooling systems
- measure temperature continuously
- take steps to reduce dust

Canteen

- keep eating area, including floor, tables, kitchen, serving areas and surroundings clean and hygienic
- ensure that food is prepared and cooked off the ground
- ensure that food is of reasonable quality and price

Chemicals

- store chemicals in an enclosed area separate from the workplace
- label chemical containers with clear marks in Khmer (and other relevant language/s)
- install exhaust ventilation in areas of the factory where chemicals are used
- separate areas of the factory where chemicals are used from other work areas
- train employees on how to work with chemicals
- provide employees with protective clothing (e.g. gloves) and equipment (e.g. glasses or masks)

Drills

- hold emergency drills regularly

Emergency doors

- install and mark exit doors
- keep doors accessible and unlocked

Fire extinguishers

- install enough fire extinguishers and make sure they are easy to reach
- test fire extinguishers regularly

First aid

- provide enough first aid boxes and make sure employees have easy access to them
- check contents of first aid boxes regularly

References

Machine:

- **install machines safely and maintain hem well**
- **provide needle guards for sewing machines**
- **install and maintain electricity system and wiring safely**
- **post safety signs on electrical switch boxes**

Noise

- **measure noise levels**
- **provide ear protection for employees working in loud work areas**

Sanitation

- **repair broken toilets and toilet doors**
- **mark toilet doors for use by men and women**
- **provide a washing facility near toilets**

Walkways

- **mark walkways clearly and keep them free from obstacles and rubbish.**

PART 9 WORK-RELATED ACCIDENTS AND ILLNESSES

References

9.1 WHAT IS A WORK-RELATED ACCIDENT?

An accident or illness is work-related if it happens to an employee:

- due to work;
- during working hours; or
- while they are traveling directly to or from home and work.

An accident may be work-related regardless of who is at fault in relation to the accident.

Occupational illnesses are also considered to be work-related accidents.

LABOUR LAW, ART 248, 257
PRAKAS 243/02
AC AWARDS 101/08 (1&2), 100/09

9.2 RESPONSIBILITY OF EMPLOYER TO PREVENT WORK-RELATED ACCIDENTS

An employer is responsible for, or must make someone responsible for preventing work-related accidents.

LABOUR LAW, ART 229-230, 250
AC AWARD 96/10 (9)

9.3 EMPLOYER'S DUTIES FOLLOWING A WORK-RELATED ACCIDENTS

If an employee has a work-related accident, their employer must:

- provide first aid;
- maintain the scene of the accident;
- provide the investigating committee with relevant papers;
- allow any witnesses to report to the authorities;
- pay for the technical investigative work for the accident; and
- take action to prevent similar accidents from happening in the future.

PRAKAS 243/02

9.4 NOTICE OF WORK-RELATION ACCIDENT

An employer must notify the Ministry in charge of Labour in writing of any work-related accident no later than 48 hours after the accident occurs.

PRAKAS 243/02

9.5 COMPENSATION FOR WORK-RELATED ACCIDENTS

The employer must pay the medication and health care costs of any employee who has a work-related accident

The employer must compensate any employee who is temporarily or permanently disabled or dies as a result of a work-related accident.

Compensation is not required for employees who intentionally cause an accident.

LABOUR LAW ARTS 252-255
PRAKAS 243/02
AC AWARDS 96/10 (10), 31/12
(13)

9.5.1 Medical expenses

The employer must pay an employee who has suffered a work-related accident the cost of all necessary medical assistance, including medical treatment, medicine, hospitalization, prostheses and assistance in vocational retraining.

LABOUR LAW ART 254
PRAKAS 243/02
AC AWARD 23/07 (2)

9.5.2 Temporary disability

An employee who is temporarily disabled as a result of a work-related accident is entitled to:

- their regular salary for the days not worked (if the disability lasts 4 days or less); and
- compensation (equal to daily wages) from the fifth day until the employee is certified as fit for work by an official doctor recognized by the Ministry in charge of Labour (if the disability lasts 5 or more working days).

Daily wages are calculated on the basis of the average daily pay of the employee in the month before injury (including overtime and bonuses).

The above rules also apply to employees who suffer a permanent disability but whose incapacity is less than 20%.

LABOUR LAW ART 252
PRAKAS 243/02 ART8
AC AWARD 31/12 (13)

9.5.3 Permanent disability

If a work-related accident causes a permanent disability the employee must have a doctor assess their percentage incapacity. If the incapacity is measured at 20% or more, the employee is entitled to a yearly payment (annuity) as compensation. This compensation is calculated as follows:

Disability up to 50% incapacity:

- $1/2 \times [(\text{annual actual earnings}) \times (\% \text{ incapacity})]$

Disability over 50% incapacity:

- $(\text{annual actual earnings}) \times [(25\%) + (1.5 \times (\% \text{ incapacity} - 50\%))]$

If the accident results in a disability which requires constant care from another person, this compensation must be increased by 40%.

LABOUR LAW ART 253
PRAKAS 243/02 ART 9

Example: Compensation for work-related injury

Sok is injured by a cutting machine at the garment factory where he works. As a result he lost the sight of one eye. A doctor certifies that he has a permanent disability of 30%.

He was earning the minimum wage of \$80 per month, but he worked a lot of overtime and always came to work regularly so, including bonuses and overtime, he earned a total of US\$1353.60 the 12 months before he was injured.

Sok is entitled to annual compensation as follows:

$$\frac{1}{2} \times [\text{annual actual earnings } \$1353.60 \times 30\% \text{ disability}]$$

$$= \$203.04/\text{year}$$

9.5.4 Work-related accident resulting in death

If an employee dies from a work-related accident, the employer must pay the funeral costs and an annual allowance (annuity) to the family of the employee who died. The amount paid for funeral costs must be at least 90 times of the average daily wage or 3 months of the employee's salary. The annuity is based on a percentage of the employee's annual basic wage.

LABOUR LAW ART 253
PRAKAS 243/02 ART11

The dependent family members must be compensated as set out in the table below.

Dependent	%Benefit	Total
Husband/Wife	30%	30%
First child	15%	45%
Second child	15%	60%
Third child and further children	10%	70% - 85%**

**The total annuity cannot be more than 85% of the employee's annual basic wage.

For children, the annuity generally only applies while they are sixteen years or younger and have not yet been married.¹

¹There are exceptions for children pursuing on-the-job training (up to 18 years old) and further education (up to 22 years old).

9.5.5 Payout of the annuity for death or permanent disability

In case of death or permanent disability the parties may agree to a lump sum payment instead of the annuity.

PRAKAS 243/02 ART11

Example: Annuity for death

Imagine Sok (from the example above) died as a result of his injury. He has a dependent wife and one young child.

In addition to funeral expenses, Sok's wife would be entitled to a yearly payment as follows:

(Sok's annual basic wage 1353.60) x (30% + 15%)

= \$609.12/year

PART 10 DISCIPLINING & DISMISSING EMPLOYEES

References

10.1 DISCIPLINARY MEASURES & MISCONDUCT

Employers have the right to discipline employees. However, when taking disciplinary measures, the employer must follow the Labour Law and Regulations, and the CBA and internal regulations of the enterprise.

LABOUR LAW ARTS 26, 27, 28

10.1.1 Requirement to prove misconduct

An employer who wants to discipline or dismiss an employee because of misconduct must be able to show evidence of the employee's misconduct.

AC AWAR 27/03, 193/12

10.1.2 Time limit for disciplinary dismissal

An employer may only dismiss an employee for serious misconduct if they do so within 7 days of the date on which they learn of the employee's serious misconduct.

LABOUR LAW ART 26
AC AWAR 36/04, 169/09 (1),
145/12, 184/12(1)

10.1.3 Time limit for disciplinary measures

An employer may only take disciplinary action if they do so within 15 days of the date on which they learn of an employee's misconduct.

LABOUR LAW ART 26

10.1.4 Disciplinary action must be reasonable

Any disciplinary action that an employer takes against an employee must be proportional to the seriousness of the employee's misconduct.

LABOUR LAW ART 27
AC AWARDS: 144/10, 19/12,
229/12

Employers can dismiss employees immediately for acts of serious misconduct (see section 10.1.5 below) but for less serious offenses they should give employees formal written warnings before dismissing them.

10.1.5 Examples of serious misconduct

The Labour Law provides the following examples of serious misconduct:

- cheating the employer;
- committing fraud against the employer, sabotage, refusal to comply with the terms of the employment contract, or breaching professional confidentiality;
- serious breaches of disciplinary, safety and health rules;
- threats, abusive language or assault against the employer or other employees;
- encouraging other employees to commit serious offenses;
- political propaganda, activities or demonstrations at the workplace;
- committing violent acts during a strike;
- failing to return to work, without valid reason, within 48 hours of the court making an order to return to work.

Depending on the circumstances, a court may decide that other acts of an employee are serious misconduct. However, going on strike without following the legal procedures is not, by itself, serious misconduct.

LABOUR LAW ARTS 838, 330, 337
AC AWARDS 18/04, 22/04, 144/12,
200/12

10.1.6 Claims for dismissal of employees or managers

The fact that a manager has committed an act of misconduct does not mean that the employer must dismiss the manager. Employees may ask their employer to dismiss a manager or another employee who has committed acts of misconduct, but the right to decide whether to dismiss belongs to the employer. The Arbitration Council has refused to make orders requiring the employer to dismiss managers or other employees.

Employees may, however, make claims for damages if the employer commits an act of misconduct against them.

AC AWARDS: 06/12, 123/12(1),
197/12 (6)

10.2 SUSPENSION

The employment contract can be suspended for a range of reasons. While the employment contract is suspended the employer is not required to pay wages and the employee is not required to work.

At the end of the suspension period, the employment relationship usually returns to normal.

References

10.2.1 Reasons for suspension

An employment contract may only be suspended for the reasons set out in Art. 71 of the Labour Law. Most importantly these include:

- disciplinary suspension according to the company's internal regulations; and
- serious economic problems of the enterprise, but the suspension must be under the supervision of the Labour Inspector.

The Arbitration Council has stated that if the employer does not suspend the employment contract in accordance with Article 71 then the employer must pay wages in full to the employee in accordance with their contract.

LABOUR LAW ART 71
AC AWARDS 21/03, 46/04, 60/04

10.2.2 Disciplinary suspension

An employer may suspend an employee while investigating alleged misconduct.

An employer may suspend an employee without pay for disciplinary reasons so long as:

- the length of the suspension is proportional to the alleged misconduct; and
- the employer's internal rules allow such suspensions.

LABOUR LAW ARTS 27, 71(7)
AC AWARDS 28/04, 146/11 (1&2&3),
189/11(8)

10.2.3 Suspension because of economic problems

An employer may suspend employees when facing serious economic problems.

In such cases, employees can be suspended for up to 2 months so long as the suspensions are approved by the Ministry in charge of Labour. If the Ministry in charge of Labour is not notified, the suspensions are not valid and the employer may be required to pay the employees in full.

It is common practice in the garment, textile and footwear industries for employers to pay their employees 50% of their wages when there is no work to do. The Arbitration Council has not allowed this practice unless the suspension is conducted under the supervision of the Ministry in charge of Labour.

LABOUR LAW ART 71(11)
AC AWARDS 01/04, 10/04, 46/04,
26/12(4), 45/12 (11), 52/12(1)

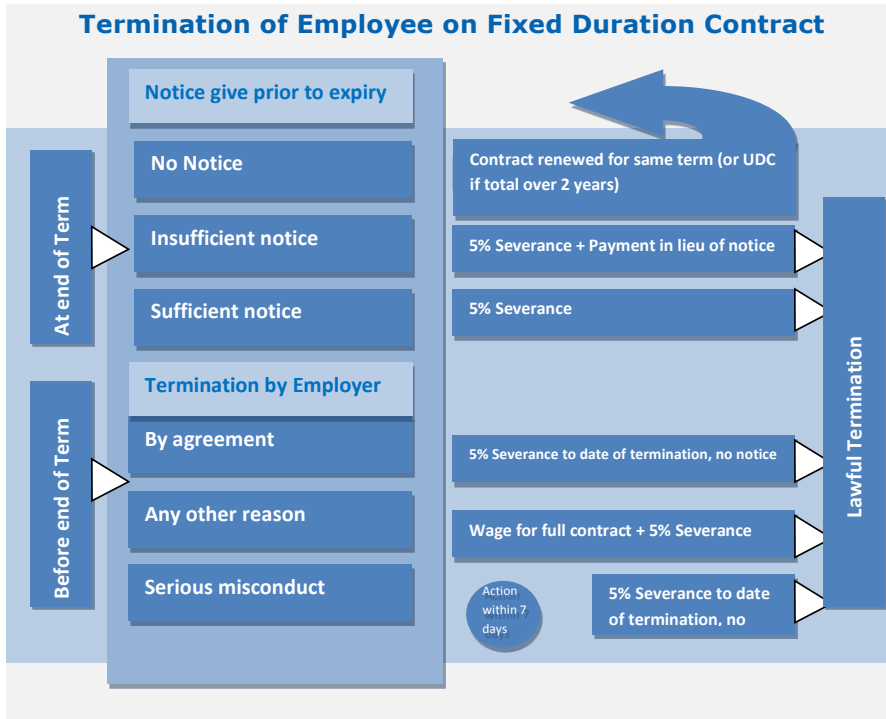
10.3 TERMINATION OF FIXED DURATION CONTRACT

An FDC can come to an end by expiration or by cancellation.

An FDC normally expires on the end date named in the contract.

There are two main legal reasons for the cancellation of an FDC before the end date: agreement and serious misconduct.

LABOUR LAW ART 73



10.3.1 Cancellation by agreement

An FDC may be cancelled by agreement. This agreement must be in writing and witnessed by a Labour Inspector.

LABOUR LAW ART 73 (1)
AC AWARD 200/12 (1&2)

10.3.2 Cancellation for serious misconduct

The employer can cancel an FDC before the end date if the employee commits an act of serious misconduct.

LABOUR LAW ART 73 (2), 83

For an explanation of serious misconduct see paragraph 10.1.5 above.

10.3.3 Cancellation due to acts of God

An FDC can also be cancelled, without the agreement of both parties, in the event of acts of God.

LABOUR LAW ART 73 (2)

10.3.4 Cancellation of an FDC without legal reason

Either the employer or the employee may cancel an FDC for other reasons.

However, if an employer cancels an FDC without legal reasons, the employer must pay the employee the full amount that the employee would have received if they had been allowed to work until the end of the contract. Similarly, if an employee cancels his/her FDC without legal reasons, the employee must pay the employer for any damages suffered by the employer as a result.

LABOUR LAW ART 73 (3) & 4
AC AWARDS 84/11(2), 150/11(11),
106/12(5), 212/12(2)

10.3.5 Severance pay on termination of an FDC

When an FDC is terminated or expires, the employee has a right to receive severance pay.

Severance pay must be at least 5% of the total wages paid to the employee during the length of the FDC.

LABOUR LAW ART 73 (6)
AC AWARDS 84/11(2), 115/11(1),
150/11 (11)

Example: Severance pay

Sokha signed a one year FDC at a garment factory. Her basic wage was \$80 but she also worked overtime and received some bonuses. In total she earned \$1353.60 during the year.

Calculated at 5% of total wages her severance pay should be:

$$5\% \times \$1353.60 = \$67.68$$

10.3.6 Notice before the expiry of an FDC

If an employer wants an employee to stop working at the end of an FDC, the employer must tell the employee in advance according to the table below:

LABOUR LAW ARTS 73, 82, 86
NOTICE 06/97
AC AWARD 10/03, 102/12(2),
119/12(1)

Length of Contract	Notice Period
6 months or less	No notice required
More than 6 months	10 days
More than 1 year	15 days

If no prior notice is given, the FDC is automatically renewed for the same amount of time as the original contract. The contract will become a UDC if the total length of employment exceeds 2 years.

10.4 TERMINATION OF UNDERTERMINED DURATION CONTRACTS

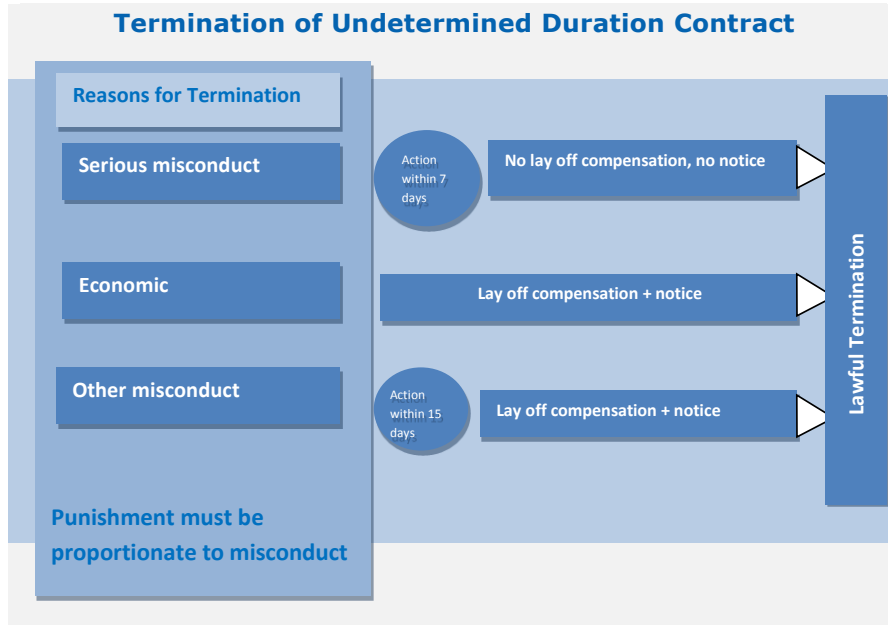
A UDC may be terminated by either the employer or the employee.

An employee can cancel a UDC for any reason.

An employer can cancel the UDC only for a valid reason related to the employee's skill, behavior or the requirements of the enterprise.

LABOUR LAW ARTS 74
AC AWARD 101/12(2)

Termination of Undetermined Duration Contract



10.4.1 Notice of termination

An employer or an employee who wishes to terminate a UDC must give written notice. The notice period is based on the length of employment as set out in the table below:

LABOUR LAW ARTS 75

References

Length of employment	Notice Period
Less than 6 months	7 days
6 months to 2 years	15 days
More than 2 years and up to 5 years	1 month
More than 5 years and up to 10 years	2 months
More than 10 years	3 months

Obligations during the notice period

Generally the employer and the employee must work together as usual during the notice period.

However, employees may take up to 2 days of paid leave per week to look for a new job and may stop work early if they find another job.

Failure to give notice

An employer who fails to give notice to an employee must pay the employee the wages and benefits that the employee would have earned during the notice period. The basis for this calculation is average daily earnings over the past 12 months, not the minimum wage (see paragraph 10.4.3 below).

Special Rules regarding notice requirement

In case of:	Notice Required
Serious misconduct	No
Probationary employees	No (except in the garment industry in Phnom Penh where 7 days required)
Insanity or permanent disability	Yes
Apprentices	No (except in the garment industry in Phnom Penh where 1 day is required)

There is generally no notice requirement in case of serious misconduct or if an employee is on probation. However, the employer must give prior notice when terminating a UDC when an employee becomes chronically sick, insane or has a permanent disability.

In the garment, textile and footwear industries in Phnom Penh, probationary employees are entitled to 7 days notice and apprentices to 1 day of notice.

LABOUR LAW ARTS 78, 79, 81

LABOUR LAW ART 77
AC AWARD 51/04, 103/12 (1&2),
184/12(1), 193/12(2), 199/12(1)

LABOUR LAW ARTS 82, 86
NOTICE 06/97, 116/12(2),
200/12(1&2)

10.4.2 Layoff compensation on termination of UDCs

The employer must pay lay off compensation when dismissing an employee on a UDC for reasons other than serious misconduct.

The amount of lay off compensation depends on how long the employee has been working for the employer, as set out in the table below. The basis for this calculation is average earnings over the past 12 months, not minimum wage. The Arbitration Council has found that overtime and bonuses received by the worker in the 12 months prior to dismissal should be included in the calculation. (see paragraph 10.4.3 below).

Length of employment	Layoff Compensation
6 months — one year	7 days wages and benefits
Over one year	15 days for each year of employment, up to 6 month's wages and benefits (fractions of a half year or more count as an entire year).

The employer does not have to pay lay off compensation if an employee resigns voluntarily, but the employer must pay lay off compensation if the employer pushed an employee to resign.

Example: Forced resignation

A factory has been operating in Phnom Penh for 3 years. For business reasons the owner decides to move the factory to Kompong Cham. The employer offers all of their old employees the opportunity to continue their employment in the new factory. Some accept and some decide that they want to stay in Phnom Penh.

The employees who do not accept the transfer to Kompong Cham have been pushed to resign so they are entitled to layoff compensation.

LABOUR LAW ARTS 89-90, 110
AC AWARDS 27/03, 27/04, 29/04,
36/12(5), 103/12 (1&2), 184/12(5)

LABOUR LAW ARTS 89-90, 110
AC AWARDS 27/03, 27/04, 29/04,
21/10

10.4.3 Damages for termination without valid reason

An employer must pay damages (in addition to lay off compensation) if they terminate an employee on a UDC without valid reason (see 10.4). An employee is entitled to damages of at least the same amount which they received as lay off compensation on termination.

LABOUR LAW ART 91
AC AWARDS 36/12(5), 103/12(1&2),
199/12(1)

References

Example: Damages

Sambath has been working for a garment factory for 26 months when he is dismissed without reason. In addition to lay off compensation (of 30 days), he may also claim the same amount again in damages.

In the last 12 months, Sambath's basic wage was \$80 per month but he worked a lot of overtime and always came to work regularly. Including bonuses and overtime, he earned a total of \$1353.60 over the past 12 months.

Both lay off compensation and damages are calculated on the basis of his average daily pay as set out below.

$$\begin{aligned} & \frac{\$1353.60 \text{ (total amount earned over past 12 months)}}{12 \text{ (months)} \times 26 \text{ (working days per month)}} \\ & = \$4.34 \text{ average daily pay.} \end{aligned}$$

Sambath's lay off compensation is 30 days x \$4.34 = \$130.2. And he can also claim \$130.2 damages.

10.5 SPECIAL RULES FOR COLLECTIVE TERMINATION

A collective termination occurs when an employer terminates employees to reduce production, to recognise the enterprise, or to increase productivity.

LABOUR LAW ART 95
AC AWARDS 02/04, 31/04, 21/10,
96/10(1), 111/10(2 & 3)

10.5.1 Procedure for collective termination

Before conducting a collective termination an employer must follow the procedure below:

LABOUR LAW ARTS 95, 284
PRAKAS 313/00
AC AWARD 26/12(1)

- inform the shop stewards and union representatives in writing about the planned terminations;
- terminate the employees with the lowest professional qualifications first;
- of the employees who have equal qualifications, the employer should terminate those with least seniority first. (Seniority must be increased by one year for a married employee and by an additional year for each dependent child.)

10.5.2 Right of first rehire

Employees terminated collectively have priority to be rehired for 2 years.

LABOUR LAW ART 95

References

10.6 SPECIAL RULES FOR TERMINATION OF UNION ACTIVISTS & SHOP STEWARDS

Employers are forbidden from considering union membership or participation in union activities when making decisions about recruitment, management and assignment of work, promotion, payment and granting of benefits, disciplinary measures and dismissals.

LABOUR LAW ARTS 12, 279
AC AWARD 119/10(1), 212/12(1),
215/12(1&2)

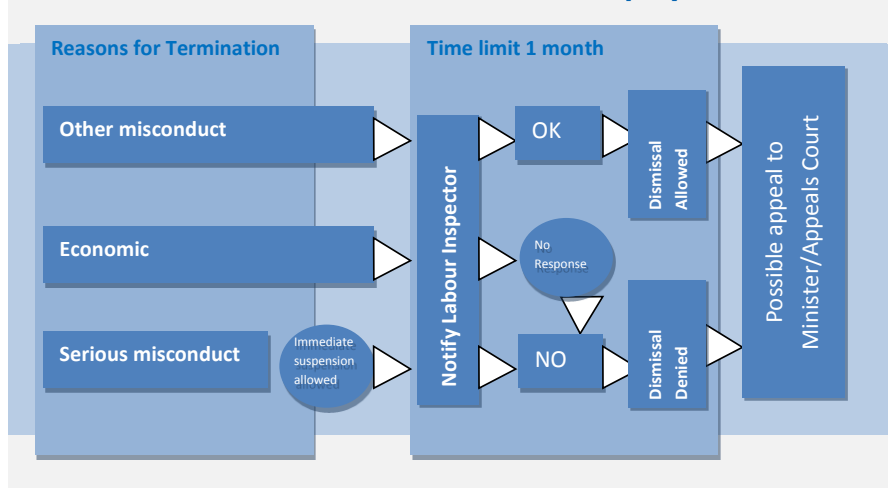
10.6.1 Protection of shop stewards and union activists

Employers must follow special rules when they dismiss shop stewards and certain union activists (referred to as *protected employees*). The rules are as follows:

LABOUR LAW ARTS 293-295
AC AWARDS: 95/09(6), 002/12(1),
26/12(1), 125/12(1)

- employers may dismiss *protected employees* only after receiving permission from the Labour Inspector;
- however, if a *protected employee* is accused of serious misconduct, the employer can suspend them immediately, while waiting for authorisation from the Labour Inspector;
- the Labour Inspector must decide within one month of receiving the employer's request for dismissal. If the Labour Inspector does not give a decision within one month, the request is considered rejected;
- the employer, the employee or the union can appeal the decision of the Labour Inspector to the Minister of Labour within 2 months of being notified of the decision.

Termination of a Protected Employee



10.6.2 Categories of protected employees

The protected employees are:

- | | |
|--|---|
| i. candidates for shop steward elections | LABOUR LAW ARTS 282, 293
PRAKAS 313/00, 305/01 |
| ii. full shop stewards and substitutes | LABOUR LAW ART 293 |
| iii. unelected candidates for shop steward elections (for 3 months after the publication of election results) | LABOUR LAW ART 293 |
| iv. former full shop stewards and substitutes (for 3 months after their terms finish) | LABOUR LAW ART 293 |
| v. founding members of a union and those who join a union during the application period for its registration, starting from the date of application and continuing for 30 days after the date when the union is registered with the Ministry in charge of Labour | PRAKAS 305/01 ART 4 |
| vi. the union leaders (president, first vice president, first secretary) if the employer is notified in writing of their identity | PRAKAS 305/01 ART 4
PRAKAS 313/00 |
| vii. candidates for office of union leaders, starting 45 days before the election and ending, if the candidate is not elected, 45 days after the election | LABOUR LAW ART 293
PRAKAS 305/01 ART 3 |
| viii. former union leaders (for 3 months after the end of their terms) | LABOUR LAW ART 293
PRAKAS 305/01 ART 4 |
| ix. union delegates | LABOUR LAW ART 282 |
| x. former union delegates (for 6 months after the end of their terms) | LABOUR LAW ART 282 |
| xi. union representatives appointed at the enterprise level by industry-wide or national unions that have members in the enterprise | PRAKAS 305/01 ART 5 |
| xii. former union representatives referred to in xi (for 3 months after the end of their terms) | LABOUR LAW ART 293
PRAKAS 305/01 ART 5 |

10.7 NON DISCRIMINATION

The Cambodian Constitution guarantees all Khmer citizens equal treatment under the law.

CONSTITUTION ART 31

10.7.1 Non discrimination in employment

LABOUR LAW ART 12

No employer is allowed to take into consideration:

- race
- sex
- political opinion
- social origin
- color
- religion or beliefs
- ancestry
- union membership or union activities

when making a decision on:

- hiring
- vocational training
- promotion
- granting of social benefits
- assigning of work
- advancement
- pay
- discipline or termination of employment

10.7.2 Permissible discrimination

LABOUR LAW ART 12

The employer must make the above decisions based on a person's merit and not on such factors as race, sex, religion or political affiliation. However, where the nature of the job requires a particular qualification, discrimination allowed.

10.7.3 Equal pay for equal work

LABOUR LAW ART 106
AC AWARD 14/04, 185/12(2)

Wage differences on the basis of origin, sex, or age of an employee are prohibited.

PART 11 DISPUTE RESOLUTION

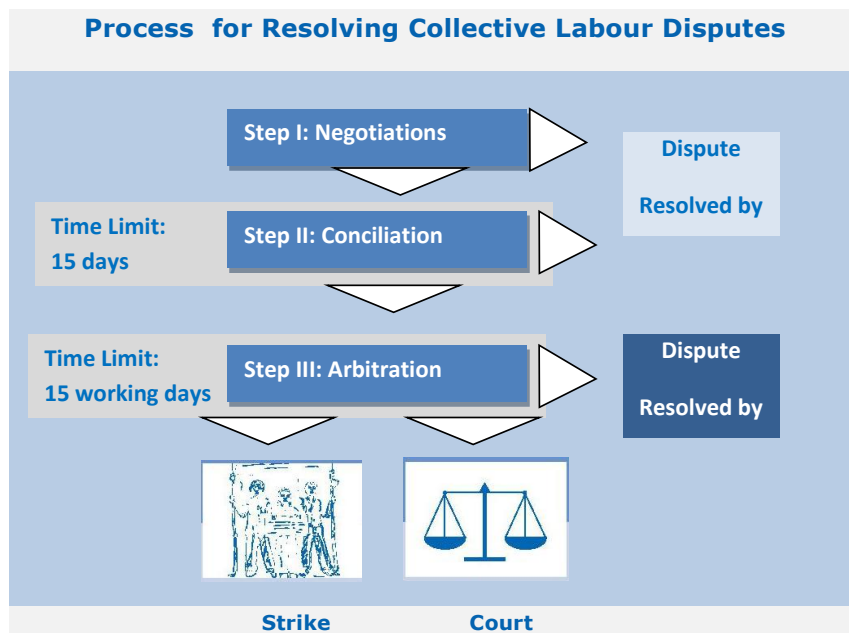
References

A dispute can occur in any workplace no matter how well it is managed. For this reason, employers and employees should anticipate disputes and set up ways of resolving disputes when they occur.

Unless an employer and their employees agree to a different system of dispute resolution they must follow the dispute resolution procedure set out in Chapter XII of the Labour Law.

According to the Labour Law employers and employees can resolve their disputes in a number of ways. These include:

- negotiation
- conciliation
- arbitration
- strike/lockout
- court action



11.1 INDIVIDUAL DISPUTES AND COLLECTIVE DISPUTES

The steps that employees and employers need to go through to resolve a dispute depend on whether the dispute is collective or individual.

LABOUR LAW ARTS 300, 302

References

11.1.1 Individual disputes

Individual disputes are disputes that involve an employer and one or more employees as individuals.

LABOUR LAW ART 300
AC AWARD 10/03

11.1.2 Collective disputes

A collective dispute involves a group of employees. If a union is involved in a dispute then it will generally be considered to be a collective dispute.

LABOUR LAW ART 302
AC AWARD 10/03, 58/10, 119/12 (1)

A collective dispute can also involve employees who do not have a union if they act as a group.

11.2 GRIEVANCE PROCEDURES/LIAISON OFFICER

Many employers set up workplace level grievance procedures in consultation with their employees so that disputes can be resolved quickly and fairly.

CIRCULAR 21/99

The Labour Law does not require employers to have workplace level grievance procedures, but it does require employers to have a liaison officer who is responsible for resolving employee requests and complaints.

11.2.1 Appointment of the liaison officer

Before appointing the liaison officer, the employer must consult with the representatives of the employees to seek agreement in choosing a neutral and independent person.

11.2.2 Duties of the liaison officer

The liaison officer must inform the employer if an employee makes a complaint which the officer cannot solve.

If the liaison officer cannot resolve a problem, then the employer must meet with the employee or his/her representative. A shop steward or union official may assist the employee at this meeting.

If the parties do not reach agreement, they may be required to notify the Labour Inspector for further conciliation.

11.3 CONCILIATION

11.3.1 Voluntary conciliation of individual disputes

Conciliation of individual disputes is voluntary: either the employer or the employee may file a complaint with the Ministry in charge of Labour for conciliation of their dispute before going to court. However, if one party requests conciliation of an individual dispute, the other party must also go to the conciliation meeting.

If the conciliation results in an agreement, the employer and the employee must implement the agreement.

If the conciliation is not successful, the dispute may be filed with the ordinary court.

LABOUR LAW ARTS 300-301
PRAKAS 318/01

11.3.2 Compulsory conciliation of collective disputes

Unless they have agreed on a different dispute resolution procedure, the parties to a collective labour dispute are required to notify the Ministry in charge of Labour of their dispute. The Ministry in charge of Labour must attempt to conciliate collective labour disputes.

LABOUR LAW ARTS 302-308
PRAKAS 317/01

11.3.3 No strike or lock out during conciliation

During conciliation, employees may not go on strike and the employer may not conduct a lock out.

LABOUR LAW ARTS 306, 320

11.3.4 Conciliation agreement binding

An agreement reached during conciliation of a collective dispute must be implemented and the employer must post it in the workplace and in the office of the local Labour Inspectorate.

LABOUR LAW ARTS 307-315

11.4 ARBITRATION

If conciliation of a collective dispute does not lead to an agreement, the Ministry in charge of Labour will refer the dispute to the Arbitration Council.

LABOUR LAW ARTS 309-317
PRAKAS 099/04

References

11.4.1 No strike or lock out during arbitration

During arbitration, employees may not go on strike and the employer may not conduct a lockout. The Arbitration Council has refused to hear cases until the parties cease strikes and lockouts.

LABOUR LAW ARTS 320
PRAKAS 099/04
AC AWARDS 04/04, 18/04, 227/12,
228/12

11.4.2 Requirement to cooperate with Arbitration Council

The parties to a dispute which is being heard by the Arbitration Council must attend all meetings to which the arbitrators call them and must also provide all documents and other information which the arbitrators request.

LABOUR LAW ARTS 314, 315
PRAKAS 099/04
AC AWARDS 22/04, 201/12

11.4.3 Arbitral awards

Decisions of the Arbitration Council are called awards.

Awards of the Arbitration Council must be implemented unless one of the parties to a dispute objects to the award within 8 days of being notified of it. In this case the award is cancelled.

If there is no objection to the award, the employer must post a copy of the award in the workplace and in the office of the local Labour Inspectorate.

For more information, see The Arbitration Council and the Process for Labour Dispute Resolution in Cambodia (CLEC/ILO, 2nd ed., 2004).

LABOUR LAW ARTS 312, 315
PRAKAS 099/04
AC AWARD 209/12 (1)

References

11.5 STRIKES & LOCKOUTS [INDUSTRIAL ACTIONS]

CONSTITUTION ART 37
LABOUR LAW ARTS 318-337
PRAKAS 338/02
CIRCULAR 005/00
NOTICE 20/00

11.5.1 When employees can go on strike

Employees can go on strike to defend their rights and interests but only after all other methods of dispute resolution have failed. In most cases employees will need to try the following forms of dispute resolution before going on strike:

- negotiation;
- conciliation; and
- Arbitration.

LABOUR LAW ART 320
AC AWARDS 29/03, 204/12(12)

11.5.2 When employees cannot go on strike

It is illegal to strike to try to force an employer to revise a CBA or arbitral award which is still in force.

LABOUR LAW ART 321

11.5.3 Legal procedures for calling a strike

Before going on strike employees must follow the procedures set out in the union's statute. These must include the following requirements:

Secret ballot

A strike is not lawful unless the members of the union have approved the strike by secret ballot.

Prior notice

A strike is not lawful unless the union gives 7 working days notice of the strike to the employer and to the Ministry in charge of Labour.

LABOUR LAW ARTS 323-329, 336,
337

LABOUR LAW ART 323

LABOUR LAW ARTS 324, 325, 327,
329

References

11.5.4 Illegal strike

Strikes that do not comply with the procedures set out in the Labour Law are illegal. Non-peaceful strikes are also illegal. Only the courts can declare a strike illegal.

LABOUR LAW ARTS 336, 337

11.5.5 Non-violence

Any violent acts committed during a strike by either party are serious misconduct. An employer may discipline or dismiss an employee for committing violent acts during a strike.

LABOUR LAW ARTS 330, 336
AC AWARD: 16/11(1)

11.5.6 Freedom of non-strikers

Strikers must allow other employees who want to go to work during a strike to do so. Strikers must not threaten non-strikers.

LABOUR LAW ARTS 331

11.5.7 No punishment for strikers

Unless the employer can prove that strikers have committed acts of misconduct, the employer must allow them to return to work without punishment once the strike is over.

LABOUR LAW ARTS 332-333, 337
AC AWARDS 04/03, 18/04, 22/04,
17/10, 22/11(1 & 2),
169/09(1), 204/12(12)

Participating in an illegal strike is not, by itself, serious misconduct. However failure to return to work, without valid reason, within 48 hours of a court order is serious misconduct.

The Arbitration Council has interpreted this rule about no punishment after a strike to mean that the employer cannot deduct the full \$10 regular attendance bonus from employees who participate in a legal strike.

In the case of a legal strike, the employer may only deduct the \$10 bonus proportionally. For example, if employees conduct a 2 day strike the employer can only deduct the following amount:

$$\begin{aligned} & 2 \text{ days} \times \$10 \\ = & \frac{\quad}{26 \text{ days}} \\ = & \$0.77 \end{aligned}$$

(leaving a bonus of \$9.23 if the employee attended as required on all other days in the month).

In case of an illegal strike, the employer may deduct the full \$10 attendance bonus.

References

11.5.8 Pay during a strike

Employees are not entitled to pay when they go on strike. This rule applies to both legal and illegal strikes.

Sometimes management and unions do agree for striking employees to be paid as part of the settlement of the dispute.

LABOUR LAW ART 332
AC AWARD 204/12 (12)

11.5.9 No recruitment during strike

Employers may not recruit new employees to replace striking employees. The Arbitration Council has found that transferring raw materials to another factory in order to get the work of striking employees done there can be equivalent to hiring new employees during a strike.

If an employer does hire replacement employees, the employer has to pay the salaries of the striking employees for the duration of the strike. The Arbitration Council has found that the strikers are only entitled to pay under Art. 334 if they followed the legal procedures for calling a strike

LABOUR LAW ART 334
AC AWARDS 04/03, 08/04, 15/04,
178/12 (1,2,&3), 197/12 (10)

11.5.10 Lockouts

Employers may also lockout their employees as part of a labour dispute. The right to lockout is subject to the same rules and restrictions as the right to strike.

If an employer conducts an illegal lockout they must pay the employees' salaries during the lockout and penalties also apply.

LABOUR LAW ART 318, 319, 322,
369

PART 12 UNION AND SHOP STEWARDS

References

12.1 FREEDOM TO FORM OR JOIN A UNION

Employers may not make it difficult for employees to form unions.

LABOUR LAW ARTS 266, 271

Employers may not force or offer incentives for an employee to be a member of a union or not to be a member of a union.

Employees have the right to be a member of the union of their choice.

12.2 DISCRIMINATION ON THE BASIS OF UNION MEMBERSHIP

Employers must not consider union membership or participation in union activities when making decisions relating to work (such as hiring, promotion, dismissal etc.)

LABOUR LAW ART 279
AC AWARD 57/11, 155/11

12.3 COMBINED EMPLOYER - EMPLOYEE UNIONS PROHIBITED

No union may represent both employees and employers.

LABOUR LAW ART 266

12.4 NO INTERFERENCE WITH OPERATION OF UNION

An employer is not allowed to:

- interfere in union affairs, or
- support a union that is under the control of the employer or an employer's organization.

LABOUR LAW ART 280
AC AWARD 17/04

12.5 DEDUCTION OF UNION DUES

Employees can authorise the employer to deduct union dues from their wages. These authorisations must be given in writing and may be withdrawn at any time. Where an employee has authorised the deduction of union dues the employer must make the deduction and forward this amount to the relevant union.

LABOUR LAW ART 129
PRAKAS 305/01
AC AWARDS 03/03, 05/03, 25/03
74/11 (10), 108/12 (1)

12.6 PROTECTION OF UNION ACTIVISTS AGAINST DISMISSAL

See paragraph 10.6 above.

References

12.7 SHOP STEWARDS

In enterprises with 8 or more employees, employers must organise elections of shop stewards. The elections must be held within 6 months after the opening of the enterprise. Shop stewards serve 2-year terms and may be re-elected.

Shop stewards communicate employee concerns to the employer and Labour Inspector.

LABOUR LAW ARTS 283-299
PRAKAS 286/01

12.7.1 Employer responsible for elections of shop stewards

Comment [v1]: Suggest to add Art. 292

The employer must organise the elections according to the following procedure:

LABOUR LAW ARTS 287, 288, 291,
292
PRAKAS 286/01
AC AWARDS 54/10 (1), 189/11 (2)

- consult with unions (if any) before holding elections;
- allow representative unions to nominate candidates;
- publish the date of the election within 15 days and hold the elections within 45 days after receiving a request from an employee, union or Labour Inspector;
- post election procedure and the list of candidates at least 3 days before election date;
- allow employees at least 2 hours off work to consider the candidates;
- conduct elections by secret ballot;
- hold elections during working hours;
- hold elections at least 15 days before the expiration of the terms of shop stewards;
- report the results of the elections within 8 days after the elections;
- pay the cost of holding the elections.

12.7.2 Employer's obligations to shop stewards

The employer must:

PRAKAS 286/01
CIRCULAR 40/98
AC AWARD 68/06 (3)

- provide shop stewards with a meeting place, working materials and appropriate poster-displaying sites;
- provide a place for shop stewards and unions to post the names, pictures, and position of shop stewards and union leaders, and their activities;
- give each shop steward 2 paid hours per week to do their work.

References

12.7.3 Shop stewards protected against dismissal

The employer may dismiss a shop steward or candidate for shop steward only after authorization from a Labour Inspector. The same applies to un-elected candidates for 3 months after publication of the election results and to former shop stewards for 3 months after the end of their terms (for details see paragraph 10.6 above).

LABOUR LAW ARTS 293-295
AC AWARD 149/08 (1)

12.7.4 Duties of shop stewards

Shop stewards have the following duties:

- to present to the employer grievances regarding wages and the enforcement of Labour Laws, Regulations and the applicable CBA;
- to refer complaints to the Labour Inspector;
- to ensure enforcement of health and safety regulations;
- to suggest improvements in safety, health and working conditions and work-related accidents and illnesses;
- to consult with the employer on the draft of internal regulations of the enterprise (see paragraph 2.4.2 above);
- to consult with the employer on plans for collective termination (see paragraph 10.5.1 above).

LABOUR LAW ARTS 24, 95, 284
PRAKAS 286/01

12.7.5 Number of shop stewards in an establishment

Enterprises must have the following number of shop stewards depending on their size.

LABOUR LAW ART 285

Number of Employees	Number of Shop Stewards (+ number of Assistant ShopStewards)
1-7	0
8-50	1 (+1)
51-100	2 (+2)
101-200	3 (+3)
201+	one extra shop steward and one extra assistant shop steward for every additional 100 employees or part thereof.

References

12.8 COLLECTIVE BARGAINING AGREEMENTS

A CBA is an agreement between a group of employees and one or more employers about wages and working conditions.

A CBA can provide better benefits to employees than those provided in the law. However, provisions of a CBA which are less favorable to employees than the law cannot be enforced.

LABOUR LAW ARTS 96-101
PRAKAS 287/01
PRAKAS 305/01
AC AWARD 148/12 (5)

Example

The union at Factory K signs a 3 year CBA which says that the employees only get 12 days annual leave per year. One year after signing the CBA employees claim 18 days annual leave per year.

The employees at Factory K still have the right to get 18 days leave because a provision of a CBA which is less favorable to employees than the law is not valid.

12.8.1 Who can make a CBA?

Generally, employees will be represented by a union when negotiating a CBA. The union must be representative of employees in that enterprise. The Ministry in charge of Labour gives an official decision as to whether a union is representative.

Only if there is no union in a workplace may an employer negotiate a CBA with shop stewards.

LABOUR LAW ARTS 92(2), 277
PRAKAS 305/01
AC AWARDS 22/04, 29/09, 14/12 (1)

12.8.2 Duration of a CBA

A CBA can be for a definite time period or an indefinite time period. When it is for a definite term the term cannot be more than 3 years.

When a CBA is for an indefinite time period the CBA can be cancelled, but it will still be effective for a period of one year after giving notice of cancellation.

Shop stewards cannot make a CBA which has a term longer than one year.

LABOUR LAW ART 96(3)

References

12.8.3 Obligation to bargain collectively

Employers must bargain in good faith if a representative union asks to negotiate a CBA. The obligation to bargain in good faith includes the requirement to:

- agree to reasonable rules for bargaining;
- respond to proposals made by the union in a reasonable way;
- provide reasonable resources and information to unions involved in collective bargaining.

PRAKAS 305/01 ART 11
AC AWARDS 06/04, 29/09

12.8.4 Registering a CBA

An employer must register a CBA with the Ministry in charge of Labour and post it in the workplace.

The registered version of a CBA must be written in Khmer.

PRAKAS 287/01

12.8.5 Dispute resolution

If parties fail to reach an agreed CBA within an agreed time period, they have the right to go on strike or conduct a lockout, but not before attempting to resolve their dispute through conciliation and arbitration.

In such cases the Arbitration Council can make an award which has the same status as a CBA.

PRAKAS 197/98, 305/01 ART 12,
099/04 ART 43
AC AWARDS 24/03, 28/03, 29/03

PART 13 DOCUMENTATION, RECORD KEEPING, POSTING

References

13.1 DECLARATION OF OPENING & CLOSING OF ENTERP

The employer must make a declaration of opening of an enterprise to the Ministry in charge of Labour.

For an enterprise with 8 or more employees or with machinery, this must be done before the opening of business.

For an enterprise with fewer than 8 employees, the declaration must be made within 30 days of opening.

The employer must make a declaration of closing of an enterprise to the Ministry in charge of Labour within 30 days of closing.

LABOUR LAW ARTS 17-19
PRAKAS 288/01

13.2 ESTABLISHMENT REGISTER

Every employer must keep an establishment register listing the name of the establishment, the type of activity engaged in, the name and address of the employer, the number and initial signature.

The employer must keep used registers for 3 years and allow a Labour Inspector to examine them at any time.

LABOUR LAW ART 20
PRAKAS 267/01

13.3 PAYROLL LEDGER

A payroll ledger must include information about:

- each employee
- their salary
- the work they perform
- their time off

The payroll ledger must be kept at the cashier's office or the business office of the employer.

Payroll records must be kept for 3 years.

The payroll ledger is only valid if every page is numbered and signed by a Labour Inspector.

The Labour Inspector must be allowed to inspect the payroll ledger at any time.

LABOUR LAW ARTS 39-41
PRAKAS 269/01

References

13.4 DECLARATION OF MOVEMENT OF PERSONNEL

Employers must make a declaration to the Ministry in charge of Labour every time they hire or dismiss an employee.

LABOUR LAW ART 21

13.5 EMPLOYMENT CARD AND EMPLOYEE WORKBOOK FOR CAMBODIAN AND FOREIGN EMPLOYEES

Every Cambodian citizen and foreigner working in Cambodia is required to have an employment card and employment book. Nobody may be employed without an employment card and employment book.

LABOUR LAW ARTS 32, 37, 261
PRAKAS 56/01, 147/01, 162/01
NOTICE 13/97

Employers must record the hiring and dismissal of employees, their salary and any changes of salary on their employment card.

AC AWARD 21/03

Within 7 days after an entry has been made in an employee's employment card, the card must be presented to a Labour Inspector for his/her approval. The record must be approved by the Labour Inspector within 7 days.

The Arbitration Council has found that employees should pay for the cost of the employment card but only up to the amount set by the Ministry.

13.6 POSTING

Employers must install an information board in an appropriate place with easy access for all employees.

LABOUR LAW ARTS 29, 109, 296, 315

On this board must be posted:

CIRCULAR 40/98

- the annual Prakas on paid public holidays;
- any CBA;
- decisions of the employer or of management relating to the employees;
- the internal regulations;
- health and safety rules or warnings;
- the minimum wages set under the Labour Law;
- report on the election of shop stewards;
- reports on conciliation agreements and awards of the Arbitration Council which are in force at that workplace.

The employer must provide a separate board for use by unions and shop stewards.