International Labour Organization

Introduction to Myanmar Labour Law

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ILO Liaison Office in Myanmar

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DISCLAIMER

This is an introductory guide to Myanmar's labour laws. While every effort has been made to provide comprehensive information, the ILO is not responsible for any loss arising as a result of relying on the content of this guide. The ILO is not responsible for any inaccuracies or differences in the interpretation of the laws described in this publication.

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FOREWORD

This ILO Guide to Myanmar Labour Law and has been developed with funding support from the European Union under the Trade for Decent Work Project. Its purpose is to provide accessible information for human resource practitioners, academics, students, employers, trade unions and workers about labour laws in Myanmar. The legal framework referred to in this guide was up-to-date as of January 2021.

Now more than ever, respect for international labour standards and the preservation of the rights and responsibilities of workers and employers is of paramount importance following the military takeover on 1 February 2021. This guide provides important information relevant international labour standards ratified by Myanmar including prohibitions on child labour and forced labour and how these are translated into national laws. Myanmar also ratified the Freedom of Association and Right to Organize Convention, 1948 (No. 87) which protects the right of workers and employers to form organizations representing their interests. National labour laws protect workers from dismissal due to their participation in trade unions.

This guide also provides introductory information about establishing employment contracts, collective bargaining, wages, dismissal, maternity and paternity leave, social security, establishing employer and worker organizations as well as resolving disputes.

This guide does not cover occupational safety and health laws or directives relating to workplace safety and health to manage and limit the spread of COVID-19 in workplaces. As these directives change frequently, it is not possible to include them in this guide.

I hope that this guide will be useful for everyone who wants to understand and apply Myanmar's labour law and promote international labour standards.

Donglin Li

ILO Liaison Officer

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1. INTRODUCTION

1.1 International labour standards and Myanmar

The 1998 Declaration on Fundamental Principles and Rights at Work commits International Labour Organization (ILO) Member States, including Myanmar, to respect and promote principles and rights in four areas covered by eight Fundamental ILO Conventions. This applies whether or not Myanmar has ratified the relevant Conventions. These are: freedom of association and the right to bargain collectively; the elimination of forced or compulsory labour; the abolition of child labour; and the elimination of discrimination in employment and occupation.

International labour standards are legal instruments setting out basic principles and rights at work. They are either:

- ILO Conventions (or Protocols) - which are legally binding international treaties that can be ratified by member States. When an ILO member State ratifies a Convention or Protocol, it means the country commits to implementing its requirements.
- ILO Recommendations - which are non-binding guidelines. These provide important guidance for ILO member States on how to apply a particular Convention, or on a wider subject.

What are the eight fundamental ILO Conventions?

1. Freedom of Association and Right to Organize Convention, 1948 (No. 87)
2. Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
3. Forced Labour Convention, 1930 (No. 29)
4. Abolition of Forced Labour Conven-tion, 1957 (No. 105)
5. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
6. Equal Remuneration Convention, 1951 (No. 100)
7. Minimum Age Convention, 1973 (No. 138)
8. Worst Forms of Child Labour Conven-tion, 1999 (No. 182)

To date, Myanmar has ratified four of the eight Fundamental ILO Conventions

- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Minimum Age Convention, 1973 (No. 138)
- Forced Labour Convention, 1930 (No. 29)
- Freedom of Association and Right to Organize Convention, 1948 (No. 87).

Myanmar has also ratified 21 technical Conventions. When a country ratifies a Convention, it is required to implement the Convention in laws, policies and practices.

2. HIRING A NEW WORKER

Relevant laws

Child Rights Law 2019

Factories Act 1951

Rights of Persons with Disabilities Law, 2015

Penal Code 1861

Ward or Village Tract Administration Law 2012

Anti-Trafficking in Persons Law 2005

2.1 The minimum age for employment

A minimum age of 14

Under s.48 and s.49 of the Child Rights Law 2019, a child under the age of 14 shall not be employed. If free compulsory education requires a child to be in school until after the age of 14, they shall also not be employed. If a child is employable under the Child Rights Law, they may engage in employment in accordance with existing labour laws.

Hazardous work and the worst forms of child labour

The Child Rights Law defines hazardous work as one of the worst forms of child labour and prohibits it for all children under 18 years.[1] However, other labour laws, such as the Factories Act, contain provisions which are not consistent with the Child Right Law, as they provide for the possibility for children from the age of 16 years to be employed in hazardous work, sometimes as a general rule (and not as an exception) without the necessary safeguards provided for in international labour standards.

Section 49(a) of the Child Rights Law provides that the Ministry shall establish what types of work shall be considered hazardous, in consultation with relevant employers' and workers' organizations. The types of hazardous work to be covered by s.49(a) have not been promulgated at the time of publication.

The Child Rights Law of 2019 provides for a comprehensive definition of the worst forms of child labour.[2] A legal review of child labour in Myanmar[3] provides a detailed analysis of provisions in Myanmar's laws prohibiting the worst forms of child labour, including: the sale and trafficking of children; debt bondage; compulsory recruitment of children for use in armed conflict; persuasion, purchasing, utilizing or proposing a child for prostitution; child pornography or acting in a pornographic performance; and the persuasion, purchasing, use, or proposing of a child for illegal drug operations.

1 Sections 3(t) and 48(a).

2 Section 3(t).

3 ILO, Myanmar: Legal review of national laws and regulations related to child labour in light of international standards (2020).

Medical certificates are required for children in factories

If an employer is hiring a worker in a factory that is covered by the Factories Act 1951, there are specific requirements for a medical certificate.[4] A certifying doctor may provide one of two types of medical certificate:

- A certificate verifying a child is 14 years of age or more and may be employed on a restricted basis as a child
- A certificate verifying that a child is 16 years of age or more and is medically fit to work as an adult.

A certificate is valid for 12 months.[5] The doctor may limit the types of work the young person may perform. A doctor who refuses to issue (or re-issue) a medical certificate must state in writing the reasons for refusal.[6] Fees for a certificate must be paid for by the employer, child or his or her parents.[7]

2.2 Prohibition of forced labour

The 2008 Constitution states that forced labour is prohibited except hard labour as a punishment for persons convicted of crimes or labour required in a state of emergency with duties assigned by the Union in accord with the law (Article 359). Several laws prescribe sanctions for use of forced labour including the Penal Code, Ward or Village Tract Administration Law and Anti-Trafficking in Persons Law.[8] Under the Anti-Trafficking in Persons Law (sections 24 and 25), persons found guilty of trafficking women, children and youth shall be punished with imprisonment from a minimum of ten years to life imprisonment and a fine, while those who are found guilty of trafficking other persons shall be punished with imprisonment from a minimum term of five years to a maximum term of ten years, and may also be liable to a fine.

A person who unlawfully compels any person to labour against the will of that person shall be punished with imprisonment up to one year and/or fined. Anyone who makes someone undertake some work or service against his or her will and under threat of punishment shall be liable to an imprisonment up to one year and/or fined up to 100,000 kyats. Forced labour, forced service, slavery, servitude and debt-bondage are all forms of exploitation punishable under the Anti-Trafficking in Persons Law.

4 Section 77 (1) and (2), Factories Act, 1951 as amended in 2016.

5 Section 77(3), Factories Act 1951.

6 Section 77(6), Factories Act 1951.

7 Section 77(8), Factories Act 1951.

8 As Myanmar has ratified the Forced Labour Convention, 1930 (No. 29), it is obliged to ensure there is an absolute elimination of forced labour. However, over many years, the country maintained a practice of exacting forced labour as a public policy contributing to national development. As one of the few countries in the world where the government continued to make use of the practice, in 1997 the ILO established a Commission of Inquiry under Article 33 of the ILO Constitution and in 2000 to call for sanctions on investments in Myanmar that could lead to the use of forced labour. In 2002, an agreement was reached with the government to appoint a liaison officer in the country, which then led to a Supplementary Understanding (SU) signed in 2007 that established a complaints mechanism run by the ILO to aid the Government in the elimination of forced labour. Subsequent joint efforts have sought to ensure compliance with ILO standards in law and in practice, under the Myanmar 2008 Constitution and the Penal Code, as well as the amended Ward or Village Tract Administration Law, and Anti-Trafficking in Persons Law.

The following types of activities are also considered forced labour:

- public works – use of the population as labourers to undertake national development projects, such as road construction, bridge building, dam building, etc.;
- community service – Use of people in the repair and maintenance of public structures such as schools, government buildings, public gardens, military establishment etc.;
- forced and underage recruitment of people or children into the armed forces;
- forced portering – use of people in conflict zones to carry military food rations and ammunition between locations;
- sentry duty – use of people to be on duty in warfare strategic locations with a demand that they report on enemy intrusion at the given strategic position;
- forced labour related to land confiscation – either where the confiscation of land is used as a threat to forced labour or the confiscation of their land enables the authorities to exact forced labour upon the person / farmers;
- forced cropping – where people are forced to grow a crop not voluntarily chosen;
- trafficking;
- debt bondage.

Exceptions to forced labour include:

- prison labour undertaken under the direct supervision of prison authorities;
- humanitarian relief work in emergency situations;
- minor communal works;
- compulsory military service, where provision of compulsory service is required under the law.

Overtime is not forced labour provided it is within the limits permitted by national legislation or collective agreements. In Myanmar, legally permitted overtime is 12 hours per week in shops and establishments. In factories, 20 hours per week for non-continuous work. Therefore, forced overtime work in excess of these limitations may be inconsistent with protections against forced labour.[9]

In addition, the ILO Committee of Experts on the Application of Conventions and Recommenda-tions has said: "Although workers may in theory be able to refuse to work beyond normal working hours, their vulnerability means that in practice they may have no choice and are obliged to do so in order to earn the minimum wage or keep their jobs, or both. In cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of a penalty, dismissal or payment of wages below the minimum level, such exploitation ceases to be merely a matter of poor conditions of employment; it becomes one of imposing work under the menace of a penalty which calls for protection of the workers."[10]

9 General Survey concerning the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), 2007, paragraph 132.

10 Ibid.

2.3 Hiring people with disabilities

The Rights of Persons with Disabilities Law, 2015 is a comprehensive law covering rights across the economic and social life of people with disabilities. The law includes special sections relating to the rights of people with disabilities in employment.

Section 36(a) – (e) requires employers hiring people with disabilities to:

- Employ people with disabilities in appropriate work in accordance with a quota[11]
- Employ people with disabilities registered at Employment Exchange Offices in relevant townships and departments.
- Make appropriate arrangements including interviewing, equal rights for salaries and opportunities, promotion, job security, access to the free vocational education and training based on employability.
- Pay funds to the National Committee for the Rights of the Disabled where it is impossible to employ people with disabilities in accordance with the quota.[12]
- Submit the list workers with disabilities and the vacant positions to the Department and the Employment Exchange Offices in the relevant township in accordance with quota requirements.[13]

Further requirements, including offences and penalties are also set out in sections 75, 76 and 81 of the Rights of Persons with Disabilities Law, 2015.

11 This quota has not yet been set under the law.

12 This provision is not currently applied as the quota has not yet been set.

13 This provision is not currently applied as the quota has not yet been set.

3. EMPLOYMENT CONTRACTS

Relevant laws

Employment and Skills Development Law 2013

Standard Employment Contract Template (Notification No.140/2017)

Factories Act 1951

Settlement of Labour Dispute Law 2012

3.1 Forming a contract

The employment relationship in Myanmar is governed by contracts. Two types of contract are possible:

- Collective agreements covering workers who may be members of a labour organization (trade union)
- An employment contract for an individual worker.

An employer and worker (or labour organization) can negotiate and agree to the terms and conditions contained in a contract. But these terms and conditions shall not be less favourable to workers than minimum requirements in the law.

An employer and a worker shall sign an employment contract within 30 days after the employer has employed a worker for any job.

It is good practice to make sure all points that are agreed by an employer and worker are included in a contract. This protects both the employer and worker if there is a future dispute about what was agreed to when a contract was signed.

A collective agreement or individual employment contract may include terms and conditions that are ***more favorable*** to workers than what the law requires. However, employment contracts shall not include terms and conditions that are ***less favorable*** than what is required in the law. Any provisions in an employment contract or collective agreement that are less favorable to the worker than the provisions in the law are void.

3.2 Collective bargaining

A group of workers (a labour organization or union) can negotiate a collective contract with an employer. The process of negotiating a collective contract is called collective bargaining. A collective contract is negotiated by the labour organization for a group of workers who provide authority to the labour organization to negotiate on their behalf.

Under the Settlement of Labour Dispute Law 2012, collective bargaining is defined as follows:

> **"... a process which is carried out between employer or employer organizations and workers or worker organizations to enable them to negotiate and conclude collective agreement on terms and conditions of employment, their labor relations or measures to prevent and settle disputes".**[14]

The same law defines a collective agreement as follows:

> **"... a bilateral written agreement concluded through collective bargaining to stipulate provisions regarding employment, including workplace and employment conditions of workers, terms and conditions concerning relations between employers and workers as well as among their respective organizations, recognition of the legal entity of labour organizations and enhancement of guarantees for workers regarding social protection."**[15]

3.3 Content of a contract

Terms and conditions

Employment contracts must include specific terms and conditions of employment. These are described in s.5(b) of the Employment and Skills Development Law 2013, and a Standard Employment Contract Template issued under Notification No.140/2017. It is advisable to use the Standard Employment Contract template when developing a contract. The terms and conditions that must be included in a contract are:

- Type of employment
- Wage or salary, including information for piece rate and temporary work
- Employment location
- Working and overtime hours
- Days off, holidays, and leave
- Medical treatment
- Internal regulations to be followed by workers
- Terms relating to the resignation of an worker or termination of employment
- Responsibilities of the employer
- Responsibilities of the worker
- Length of the contract.

14 Section 2(k).

15 Section 2(l).

The employment contract may include other provisions if they are relevant to the type of employment:[16]

- Meal arrangements
- Provisions relating to a worker's accom-modation
- Work uniforms or dress code
- Transportation to and from the workplace
- Worker skill development training.[17]

The employer and worker (or labour organization) can agree to additional terms and conditions in a contract, provided they are not contrary to existing law, rules and regulations. When these additional terms and conditions are included, they are legally binding.

Training periods

An employer may require a worker to undergo training for up to three months before the worker begins a new job. The initial training period must be paid at no less than 50 percent of the worker's full wage.

Probation

Following training, an employer may require a worker complete a probationary period for up to three months. This must be paid at no less than 75 percent of the worker's full wage. If the employment is continued after the probationary period, the worker's length of service during probation must be included in the worker's overall length of service.

Within 30 days of signing the employment contract, it must be submitted to the township or district labour office to ensure that it is consistent with the governing laws. If any provision in the employment contract proves to be inconsistent with the law, the contract will be returned to the parties for renegotiation, and the parties must resubmit their amended agreement to the relevant labour office.

Internal workplace regulations

The Standard Employment Contract Template issued under Notification No.140/2017 includes an attachment covering work discipline and rules. Internal regulations must comply with the law. The law does not require workplaces to have a separate set of internal work regulations other than those covered in the Standard Employment Contract Template.

Employers should consult with workers or the relevant labour organization (if there is one in the work place), about any additional internal workplace rules and confirm that expectations are clear. If the internal workplace rules change, it is good practice to ensure that any changes are communicated to all workers. Employers and workers (including labour organizations) should consider what additional workplace regulations are needed in the workplace. For example, policies could be developed to prohibit bullying, violence, discrimination and harassment (including sexual harassment).

16 As these topics are included in the Standard Employment Contract Template, township labour officers require these to be included in an employment contract, even if they are not necessarily relevant to the employment relationship.

17 The Employment Skills and Development Law establishes an Employee Skill and Development training program and school to which employers may contribute funds and send employees for training and capacity building. This section of the law is not in force at the time of publication of this Guide.

Other rules applying to factories

Notices to be displayed in enterprises covered by the Factories Act must cover:

- A summary of the Factories Act and the Rules made under it[18]
- A summary of the Payment of Wages Act, and the Rules made under it
- Notice of working hours, including hours for child workers if applicable
- The name and address of the labour inspector
- The name and address of the certifying surgeon[19]
- Any other information relating to the health, safety, and welfare of workers as ordered by the labour inspectorate.

18 These summaries are currently not made available by the relevant government ministries.

19 Doctors at any workers' hospitals and clinics run by the Ministry of Labour.

4. WAGES

Relevant laws

Minimum Wage Act 2013

Notification on Minimum Wage No.2/2018 effective May 14, 2018

Payment of Wages Law 2016

4.1 Coverage

Workers covered by the Minimum Wage Law 2013 include any person working in commerce, production businesses and services, agriculture and livestock breeding. Some workers or businesses are excluded from the minimum wage such as:

- Workers in the civil service, seafarers, and the employer's close family who depend on and live with the employer[20]
- Small businesses with less than 10 workers[21]
- Family owned businesses.[22]

Workers covered by the Payment of Wages Law 2016 also includes any person working in commerce, production businesses and services, agriculture and livestock breeding. However, this law is wider than the Minimum Wage Law and covers workers in workplaces with less than 10 workers.

4.2 Defining wages

The term "wage" is defined in the Minimum Wage Act 2013[23] and the Payment of Wages Law 2016.[24] The calculation of wages includes:

- Wages or salary
- Overtime pay
- Bonuses
- Other compensation or benefits that may be determined as income.

A wage calculation does not include:

- Pension payments
- Gratuity for services
- Social security cash benefits

20 See s.2(a)(i), Minimum Wage Law.

21 Notification No. 1/2018 issued under the Minimum Wage Law.

22 Notification No. 1/2018 issued under the Minimum Wage Law.

23 Section 2.

24 Section 2.

- Travel allowances
- Meals
- Medical treatment or other services
- Accommodation
- Electricity or water service
- Duties and taxes
- Work-related expenses[25]
- Bonuses due at the end of contracts
- Recreation;
- Contributory dues paid by the employer to the worker under the existing laws[26]
- Severance pay and gratuities.

Employers' obligations

An employer is required to inform workers of the minimum wage and advertise the minimum wage rate in the workplace.

An employer must keep a record each worker's wages, overtime and deductions, and submit this information to the relevant department as required (as set out in Forms 6 and 7 of the Payment of Wages Rules).

A workplace may be subject to inspection, and an employer must allow an inspector to enter and inspect records when asked to do so.

Employers must pay the minimum wage to full-time, part-time and hourly workers.

4.3 The minimum wage

Minimum wage rate

A minimum wage is set according to procedures contained in the Minimum Wage Law 2013. The purpose of the minimum wage is to meet the basic, essential needs of workers and their families, to increase worker capacity, and to encourage competitiveness. In addition to employers with a threshold number of full-time workers, the law also covers all part-time and hourly workers.

25 Note this exclusion is only specified in Payment of Wages Act and not in the Minimum Wage Law. It is open to interpretation whether work-related expenses could be included in the calculation of wages for workers who are covered by the latter.

26 Such as contributions to the pension fund and the provident fund.

The current minimum wage is 600 Kyat per hour or 4,800 Kyat per day.[27] This daily rate is based on an eight-hour day, and does not include overtime, bonuses, incentives, or any other allowances, and so must be considered separate from the general definition of "wage" as described above. Part-time workers must be paid on a pro rata basis.

A full-time worker who works less than the normal working hours (44 per week for factory workers) through no fault of their own or due to a shortage of work from the employer is entitled to remuneration as if that person had worked a full 44-hour week.

Employers and workers can negotiate wages that are higher than the minimum wage through employment contracts and collective agreements. However, an employer must not pay a worker less than the minimum wage.[28]

Application to workers during an initial training period or on probation

If a worker is undertaking an initial training period under he or she must be paid no less than 50 percent of the proposed minimum wage during the three month training period.[29] If an worker is completing a probationary period he or she must be paid no less than 75 percent of the proposed minimum wage during this period.[30]

4.4 Payment of wages

When and how wages must be paid

Workers must be paid at least monthly in cash, cheque or through a bank transfer by mutual agreement between the employer and worker.[31]

If there are less than 100 workers in a workplace, the employer must pay wages within one day of the previous wage period for which wages are payable.[32] If there are more than 100 workers in a workplace, the employer must pay wages within five days of the previous wage period for which wages are payable.[33]

If a worker's employment is terminated by the employer, the employer must pay wages due to the worker within two working days from the day the employment is terminated.[34] If a worker resigns from his or her employment by submitting advance notice, the employer must pay wages due to him within a day of the expiry of the wage period.[35]

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27 Notification on Minimum Wage No.2/2018 effective from May 14, 2018.

28 Section 12, Minimum Wage Law 2013.

29 Notification No. 1/2018 issued under the Minimum Wage Law

30 Notification No. 1/2018 issued under the Minimum Wage Law

31 Section 3, Payment of Wages Law 2016. Note there is an exception for workers in the agricultural and livestock breeding sectors. Under the exception an employer may pay wages through a combination of cash and "in kind", according to local custom and for the personal use and benefit of the worker. The Minimum Wage Law also enables some benefits to be paid partly in cash and in kind according to criteria set out in s.43(j).

32 Section 4(c)(i), Payment of Wages Law 2016

33 Section 4(c)(ii), Payment of Wages Law 2016

34 Section 4(d) Payment of Wages Law 2016

35 Section 4(d) Payment of Wages Law 2016

If the employer is unable to pay wages on time in accordance with the provisions above due to an extraordinary situation (e.g. a natural disaster), he or she can reach an agreement with the worker or Labour Organization to delay the payment. This agreement must be recorded using Form 2 and accompanied by an application using Form 1 of the Payment of Wages Rules and submitted to the Factories and General Labour Law Inspection Department of the Ministry of Labour, Immigration and Population.[36]

Wage deductions

Employers are not permitted to make any deductions from workers' pay except those permitted by law. A record of deductions must be kept by an employer in accordance with Form 7 of the Payment of Wages Rules. Authorized deductions include:

- Absences from work without leave
- The cost of accommodation supplied by the employer, water and electricity
- Meal allowances
- Transportation allowances
- Income tax
- The recovery of wages overpaid by mistake
- Advances
- Payments made under a court order
- Payments made under an arbitration award
- Social Security payments
- Contributions made under other laws
- Deductions by way of fine in accordance with specific criteria set out below.

The total deductions for a pay period must not be more than 50 percent of a worker's wages. Deductions shall not be made for tools or materials necessary for work. Deductions of wages should not be made for leave absences (e.g., annual leave, sick leave or attending a funeral)

Deductions or fines due to neglect or default by a worker

Deductions may be made from a worker's wages in the following circumstances:

- Willful negligence, lack of due diligence, dishonest performance or default of the worker which cases direct loss of money and damage or loss of something which the employer openly entrusted to the worker[37]
- Breach of workplace regulations by the worker, where fines are specified in the employment contract.[38]

36 See sections 3 – 6 of the Payment of Wages Law.

37 Section 11(a), Payment of Wages Law.

38 Section 11(b), Payment of Wages Law.

Employers must comply with the following rules relating to fines:

- A worker cannot be fined without giving the worker an opportunity to defend themselves
- A worker under the age of 16 cannot be fined
- Deductions that are more than five percent of salary are not permitted.

Such deductions shall only be made after the employer after negotiating it with the WCC, labour organization or relevant worker and then obtaining permission from FGLLID. Deductions as fines for damage or loss caused by the performance or default of the worker shall not exceed the value of the damage or loss, and they shall not exceed 5% of the worker's salary. No deductions as fines shall be made from the wages of a worker who is under the age of 16 years.

Employers shall not deduct from the worker's wages for any other matters. No deductions shall be made without giving the worker the chance to explain.

5. WORKING HOURS, OVERTIME AND WEEKLY REST

Relevant laws

Factories Act 1951

Shops and Establishments Act 2016

Shops and Establishments Rules 2018

Leave and Holidays Act 1951

Leave and Holidays Rules 2018

5.1 Working hours and overtime

Adult workers in **factories**:

- shall not be required to work more than eight hours per day or 44 hours per week
- should not work longer than five hours at a stretch without receiving a rest of at least 30 minutes
- shall have periods of work and rest periods that may not exceed a total of 10 hours in a workday.

Adult workers in factories engaged in work that, for technical reasons, must be continuous throughout the day may be required to work 48 hours in a week.[39]

Adult workers in **shops or establishments**:

- shall not be required to work for more than eight hours per day or 48 hours per week
- shall not work longer than four hours without receiving a rest of at least 30 minutes
- shall have periods of work and rest periods may not exceed a total of 11 hours.

5.2 Weekly rest days

All workers covered by the Leave and Holidays Act are provided one paid weekly day of rest that is taken into account when calculating salaries.

Enterprises covered by the Factories Act provide a weekly rest day on Sundays. Before requiring work on a Sunday or rest day, the employer must notify both the labour inspectorate and the worker(s) of its intention to impose a workday, and a replacement rest day.

39 "[T]he term "necessarily continuous process" covers work in which the technical processes have to be carried on without interruption day and night (such as blast furnaces, coke manufacture, the refining of mineral oils, certain branches or operations in the chemical industry, cement manufacture, salt making, mining) or have to be kept going seven days a week due to the perishable nature of the product in question (such as dairy products in general), as well as public utility services (water, gas, electricity)." http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-iii-1b.pdf Fn. 102.

Under the Leave and Holidays Act, employers may set the weekly rest day as a Sunday or any other day with the workers or labour organization's agreement. The Leave and Holidays Rules provide that if a worker must work on a weekly holiday, they are to be provided an alternative day off either three days before or after the weekly holiday. In such a case, the worker is not entitled to claim overtime pay.

Security staff and workers engaging in shift work are entitled to a weekly rest day that may differ from Sunday or the established rest day, as agreed with the employer.

No one may work more than 10 consecutive days without a rest day.

Under the Factories Act, workers who work on rest days but are unable to substitute the rest day within the three days before or after the a rest day, are allowed to take the same number of days off within two months of the work on the rest days.

Work schedules for all shifts must be fixed in advance and posted in the enterprise. The employer must submit the proposed schedules to the Inspector before work in the enterprise begins, and notify the Inspector of changes. Shifts for workers under 16 years old may be changed only once in a month unless approved by the chief inspector.

5.3 Overtime work

Workers in shops and establishments shall not work overtime of more than 12 hours for any one week. However, if there are special circumstances which require overtime work, any overtime should not exceed 16 hours in one week. Furthermore, overtime work must not extend beyond midnight.[40]

Overtime hours for workers in factories are regulated under a Directive.[41] For workers who do not engage in continuous work, overtime hours shall not exceed 20 hours per week. These 20 hours can be worked as follows: 15 hours from Monday to Friday (3 hours x 5 days) and 5 hours for Saturday.

The formula to be applied for the rate of payment of overtime for workers is set out in the Payment of Wage Rules and the Factories Act. However, there is an exception, which provides that workers who are covered by the minimum wage notification are entitled to two times the rate per hour described in that notification.

40 Directive No.615/2/a la ya- law 2/12 (1584), dated December 11, 2012

41 Directive No.615/2/a la ya- law 2/12 (1584), dated December 11, 2012

Overtime calculations under the Factories Act and Payment of Wages Rules

The overtime calculation is the same under the Factories Act and the Payment of Wages Rules.

Figure 1: Overtime formula

For salary workers

$$\frac{\text{Basic salary x 12 months x 2}}{\text{52 weeks x 44 hours (or) 48 hours}} = \text{Hourly Rate}$$

For daily wage workers

$$\frac{\text{Daily wages x 6 days x 2}}{\text{44 hours (or) 48 hours}} = \text{Hourly Rate}$$

For piece rate workers[42]

$$\frac{\text{Average Daily income x 6 days x 2}}{\text{44 hours (or) 48 hours}} = \text{Hourly Rate}$$

42 The Shops and Establishments Rules provide that an average daily rate for piece-rate workers shall be calculated by dividing the wages earned within one week by the days the worker actually worked within one week.

6. PUBLIC HOLIDAYS AND LEAVE

Relevant laws

Leave and Holidays Act 1951

Leave and Holidays Rules 2018

Minimum Wage Act 2013

Social Security Law 2012

Social Security Rules 2012

Table 1: Leave entitlements

Type of paid leave[43]	Days/weeks
Public holidays[44]	Changes yearly but approximately 15 days
Earned (annual leave)	10
Casual (personal leave)	6
Medical	30
Maternity Leave (mothers)	14 weeks
Paternity leave (fathers)	15 days

6.1 Public holidays

The Leave and Holidays Act covers any worker, permanent or temporary, in factories, railways, ports, oilfields, mines, shops and establishments, and government-controlled factories. The Act does not apply to family members in small family enterprises (such as spouses, parents, children, or siblings), shareholders, domestic workers, and government workers not employed in government factories.

Workers who are required to work on a public holiday are paid at double the normal rate plus a cost-of-living allowance, if applicable (at the ordinary rate). The cost-of-living allowance means a "subsistence allowance" which is not the same as "accommodation and transportation allowances". The employer must obtain the worker's consent and FGLLID approval at least 24 hours prior to requiring work on the public holiday, and display a relevant notice at the workplace.

Public holidays that fall on a rest day or other holiday may not be taken on another day.

Religious holidays for non-Buddhists may be taken based on agreement between employer and workers, but workers do not have to be paid.

43 Note that criteria applies.

44 Notification No.138, dated 28 December 1964 of the Revolution Government. Public holidays are announced by the Government every year in the Government Gazette.

All workers earn 10 days of paid leave per year after their first 12 continuous months of work (continuous work includes interruptions of up to 90 days for illness, injury, and authorized absences; or, by voluntary suspension of work, lock-outs, or legal strikes totaling up to 30 days). Workers under the age of 15 years are entitled to 14 days of consecutive earned annual leave.

6.2 Annual leave

Workers must be paid their average wages or average pay for leave days before they take leave. There is no express definition of "average wages", but it should be assumed as the daily wage based on the standard working hours per day. In calculating average wages, it must be noted that s.2(a)(2) of the Payment of Wages Act (as amended) includes, in the definition of wages, overtime pay, bonus for good working or good character, other wages and benefits which can be set as income.

Earned annual leave must be used consecutively, unless otherwise agreed. Employers fix the time at which leave may be used within three months after the end of the 12-month accrual period during which the leave was earned. Employers and workers can agree to carry over workers' unused leave for up to three years. Under the Leave and Holiday Rules, a worker is entitled to the monetary benefit in lieu of the annual leave with the average salary or wage. However, the rules do not specify when this "cash out" can occur.

Under the Leave and Holidays Act (as amended in 2006), workers forfeit one day of earned leave for every month in which they do not work at least 20 days, with certain absences continuing to count as worked days (i.e., illness, injury, authorized absences, voluntary suspension of work, lock-outs, or legal strikes). For example, if a worker did not work at least 20 days in a certain month, the worker will lose one annual leave for that month, meaning that the total annual leave entitlements will be reduced from 10 days to nine days that year. Employers and workers are free to modify this policy in their employment contracts or collective agreements, but may not increase the number beyond 20 days per month.

Workers who resign or are terminated before using their leave must be paid for unused leave based on average daily earnings over the last 30 days. If the worker does not stay for 12 continuous months, the earned leave is granted in proportion to the months worked. Similarly, leave entitlements for temporary workers shall be decided in proportion to the length of their employment. Payment for unused leave must be made to workers within two days. Payment for unused leave cannot be paid out at the commencement of the year; it must be made only after the termination of the contract.

6.3 Casual and other leave

Workers are entitled to six days' paid casual leave per year and may use up to three days casual leave at one time. However, the employer may agree to a worker to using more than three days. Casual leave cannot be combined with other kinds of leave (such as annual leave). If a worker on casual leave requests to take additional leave of another kind, the total period of the leave will be converted to the other leave type.

Unused casual leave is lost at the end of the year and the employer is not required to pay out unused casual leave.

Casual leave is generally understood as "unexpected or sudden" leave and can be taken to attend the funeral of a family member, or for the health issues of spouses or children.[45]

The Leave and Holiday Rules include the required form a worker must complete to take casual leave. If the worker is unable to complete the form prior to the leave, then it must be completed after the worker returns to work.

6.4 Medical leave

Employers must give workers leave without deduction from wages for medical treatment when workers cannot work due to illness.

Workers who present a medical certificate may take paid medical leave up to 30 days per year after working for at least six months. Workers may ask to be paid their average daily earnings each week during medical leave. Unused medical leave is lost at the end of the year. Workers who have worked less than six months may take unpaid medical leave.

Medical certificates may come from the medical office or doctors approved by each given sector, industry, or enterprise concerned, or from any other registered medical practitioner. A worker who provides reliable evidence of donating blood is entitled to take the medical leave on the day of the blood donation and the following day.

Seasonal workers and others where work is not carried on continuously for 12 months must receive earned (annual), casual, and medical leave proportionate to the length of their employment.

The Leave and Holiday Rules include the forms workers should use to submit leave requests. A worker who cannot return to work at the end of the leave period due to a natural disaster, unexpected event or accident must report this to the employer by telephone or other means; and the worker must show evidence of what occurred after returning to work. With regard to any type of leave, if the worker does not resume work at the end of the leave period, such days will be regarded as an absence. Further, during any type of leave, the employer cannot relocate, transfer, demote, or dismiss a worker, or reduce their salary or wage.

6.5 Maternity leave, paternity leave, and maternity protection

Pregnant mothers are entitled to 14 weeks of maternity leave. This comprises six weeks paid prenatal leave and eight weeks paid postnatal leave. A woman may take maternity leave and medical leave continuously as long as the requirements for medical leave are met.

In the event of a miscarriage (other than an illegal or deliberate one), a worker not covered under the social security system is entitled to maternity leave for a maximum of six weeks from the date of the miscarriage per the registered physician's recommendation.

Fathers are entitled to 15 days of paternity leave if they qualify for such leave under the Social Security Law.

45 Clarification given to the ILO by FGLLID on 4 July 2016.

The Factories Act also contains a number of additional provisions relating to the protection of women workers, including a requirement that pregnant female workers shall be assigned only to do light work, without any effect to their original wage, salary and benefits. After 7 months of pregnancy, they shall not work overtime and at night. Employers and workers should refer to relevant provisions of the Factories Act for further restrictions and requirements.

7. SOCIAL SECURITY AND COMPENSATION FOR INJURY AND ILLNESS

Relevant laws

Factories Act 1951

Social Security Law 2012

Shops and Establishments Rules 2018

7.1 Social security coverage for workers and employers

Under the Social Security Law 2012, unless exempted by law, companies with five workers or more must register with the Social Security Township Office of the Social Security Board (SSB) within 30 days of the start of operating a business,[46] and must pay monthly contributions in order to protect workers in case of sickness, maternity or paternity leave, death or work injury. An employer is required to register a worker within 10 days of appointing them.[47]

Workers who are permanent or temporary, as well as apprentices must be registered. All sectors are required to participate in the Social Security programme with the exception of the following, to whom registration is voluntary:

- government departments and organizations (non-business)
- international organizations, embassies or consulates of foreign governments
- seasonal farming and fisheries
- establishments which carry out business only for a period of less than three months
- non-profit organizations
- family businesses
- domestic services not for business purpose
- any other establishments as may be exempted by the President.

Workers whose employers are not required to register to the social security township office can register on a voluntary basis.

7.2 Social security contributions by employers and workers

Where an enterprise has registered with the SSB, both the employer and workers make mandatory contributions to the social security fund. Employers must reserve workers' contributions from workers' pay.

46 Clause 40(b), Social Security Rules.

47 Clause 42(c) Social Security Rules.

Table 2: Social security contributions

Benefit name	Contribution level
Medical care Funeral grant Sickness cash benefit Maternity cash benefit Paternity cash benefit	"Health and Social Care Fund" If the insured person is less than 60 years old at registration: • Worker 2%. • Employer 2%. If the insured person is 60 years old or older at registration: • Worker 2.5%. • Employer 2.5%.
Work injury	"Employment injury Fund" Employer: 1%. Can increase to 1.5% as a sanction in case of repeated work injuries (threshold defined in Rule 58).

In calculating wages, wages are defined as "all remunerations entitled to be received by a worker for the work carried out by him", which includes other remunerations which may be determined as overtime fees and income" (Social Security Law s.2(j)).

The calculation of wages does not include:[48]

- pension payments
- gratuity for services
- social security cash benefits
- allowances for travel
- meals
- medical treatment or other services
- accommodation
- electricity or water service
- duties and taxes
- work-related expenses
- bonuses due at the end of contract
- recreation
- damages for dismissal from work and compassionate allowance.

48 See s.2, Payment of Wages Act.

7.3 Compensation for injury and illness

Compensation for workplace injury and illness is regulated under the Social Security Law and the Workmen's Compensation Act. The Social Security Law applies to all companies with five workers or more (unless exempted), and to workplaces that register voluntarily. An employer, however, shall pay for medical treatment for workplace injuries if there are omissions or criminal action by the employer, or they fail to keep occupational safety plans and protections.

Under the Social Security Law, if an insured worker is injured in an accident, the employer must report it to the township social security office. The employer will also need to report to the FGLLID, and hence, a dual reporting system. The SSB investigates the accident and whether the injured worker is insured under the social security system. If the worker is not insured, but the worker should have been insured, and because employer has failed to comply with this requirement, the SSB calculates the amount of benefit due and will require the employer to compensate the same amount to the worker. An insured worker receives the benefit due from the Social Security Fund.

Workers insured under the Social Security Law are also entitled to cash benefits during a period of reduced or lost income due to injury and illness, and the details are provided in the next section.

All workers with workplace injuries or illness who are not covered by the social security programmes can resort to the Workmen's Compensation Act. To be compensated under the Workers Compensation Act, an injured worker, or his/her family if the worker is deceased, can submit a case to the township committee on workmen's compensation. The committee investigates the issue and decides the amount of compensation the employer must pay. The law provides further details regarding notice, reporting, investigation, medical examinations, and compensation.

In case of accidents, employers shall offer free medical examinations to workers. Employers are also liable to pay compensation to workers for injuries and diseases arising out of and in the course of employment, provided that, in respect of injury, it should not be directly attributable to:

- the worker been under the influence of drink or drugs;
- the worker's wilful disobedience of the safety rules and orders of the employer; or
- the worker's wilful removal or disregard of safety guards or other devices which he/she knew to have been provided for the purpose of securing his/her safety.

7.4 Appealing decisions of the Social Security Board

Insured workers and employers have the right to appeal decisions of a local social security office to the region or state levels, and then to the appeal tribunal established by the SSB. Workers and employers covered under the Workmen's Compensation Act can appeal decisions of the commissioner to the High Court.

7.5 Types of benefits for workers

The table below identifies several types of benefits provided to workers registered at the SSB, including summaries of qualification periods, benefit formulas, and duration of benefits. The table is not a substitute for the law and should not be regarded as comprehensive.

Table 3: Benefits for workers registered with the SSB

Type	Qualification	Benefit	Duration
Medical care (Sec. 22 - 23)	Medical exam (in case of voluntary registration) Worker registered at the SSB and regularly paying contributions.	Free medical care in nationwide Social Security clinics and hospitals, as well as contracted private hospitals and clinics in certain areas. Reimbursement of care in other public hospitals under referral. Reimbursement of care in either public or private hospitals or clinics in case of emergency.	Up to 26 weeks
Sickness (SSL Sec. 23)	6 months work 4 months contribution	Cash benefit at 60% of average wages over the previous four months,	Up to 26 weeks
Maternity (SSL Sec. 25 - 27)	12 months work 6 months contribution	Mother: Free medical care in permitted hospitals, clinics. Child: medical care in first year. Cash benefit for maternity leave at 70 percent of the average wage (over the previous 12 months). Additional bonus of 50 percent, 75 pecent or 100 percent of the average wage at the time of delivery depending on the number of babies (1, 2 or 3).	Up to 14 weeks (six weeks before delivery of a child and 8 weeks after delivery of a child)
Paternity (SSL Sec. 28)	12 months work 6 months contribution	Cash benefit for leave at 70 percent of average wages (over the previous 12 months), plus maternity bonus for the uninsured spouse.	Up to 15 days
Funeral Grant (SSL Sec.30; SS Rules Sec.129)	Being registered and regularly paying contributions at least 1 month prior to the claim.	Between one and five times the average monthly wage of the deceased over the past four months depending on the deceased's contribution period.	Lump sum
Work Injury -Temporary Disability (SSL Sec. 55 - 56)	Temporarily incapable of work caused by work accident/injury. At least 2 months of contribution.	Cash benefit at 70 percent of monthly average wage (previous four months).	Up to 12 months
Work injury –Permanent Disability (SSL Sec. 57 – 59)	Permanently incapable of work caused by work accident/injury. At least 2 months of contribution.	Cash benefit at 70 percent of monthly average wage (previous four months).	Varies by level of disability decided by the Medical Board.[49]
Work injury – Survivor's benefit (SSL Sec.62)	Death of the worker due to a work accident or disease. At least two months of contribution.	Between 30 and 80 times the average monthly wage of the deceased over the past four months depending on the deceased's contribution period.	Either lump sum or periodical payment

49 If the loss of capacity for work is under 20 per cent, the benefit is monthly cash benefit for five years in a lump sum. If it is between 20 and 75 percent, the benefit is seven years of cash benefits either in a lump sum or periodical payment. For over 75 per cent loss of capacity to work, nine years' worth of the monthly average wage either in a lump sum or periodical payment.

7.6 Maternity benefits and child care

Under the Leave and Holidays Act, pregnant workers are entitled to six weeks of paid maternity leave before birth and eight weeks of paid maternity leave after birth (and four additional weeks' leave in the case of multiple births). Maternity leave and medical leave may be taken continuously, provided that the requirements for medical leave are met. Employers are responsible for providing the leave.

In cases where workers are registered under the social security scheme, their maternity leave will be provided from that source.

Pregnant workers registered under the social security scheme have the right to:

- free pre-natal examinations and medical care at permitted hospitals and clinics
- seven days paid leave for prenatal examinations at permitted hospitals or clinics
- free medical care for her child up to one year after birth
- six weeks of paid maternity leave before birth
- eight weeks of paid maternity leave after birth (and four additional weeks in the case of multiple births)
- six weeks of paid leave if there is a miscarriage and eight weeks of paid leave for adoptions.

Paid maternity leave is calculated on the basis of 70 percent of the average monthly wages earned during the previous 12 months.

Additionally, pregnant workers who have worked for at least one year and paid social security contributions for at least six months are entitled to:

- seventy percent of one year's average wages during maternity leave;
- a lump sum bonus equivalent to 50 percent (for a single child), 75 percent (for twins), or 100 percent (triplets or more) of the average monthly wage on the delivery of a child.

Males registered under the SSB are entitled to 15 days leave for infant care at 70 percent of their average wage from the previous year, and half of the mother's lump sum bonus.

In every factory with more than 100 female workers who are mothers of children under six years old, the Ministry concerned must provide a day-care center with the assistance of the employer. They may do so individually, or in cooperation with other establishments. If there are less than 100 female workers with children, the employer may make appropriate arrangements according to his or her ability.

8. TERMINATION OF EMPLOYMENT

Relevant laws

Employment and Skills Development Law 2013

Standard Employment Contract Template 2017

Labour Organization Law 2011

Leave and Holiday Rules 2018

8.1 Notice and grounds for termination

An employment contract must include provisions on resignation from employment, the termination of employment and the expiration of contract. The Standard Employment Contract Template provides that a worker who resigns from their job must provide 30 days' notice and a sound reason. An employer who wishes to terminate a worker's contract, similarly must provide 30 days' notice a sound reason.

Under the Standard Employment Contract Template, an employment contract can be terminated by the employer due to the (i) liquidation/winding up of the factory, workshop, company or enterprise; (ii) cessation of business due to an unforeseeable event; or (iii) death of the worker. Restructuring and redundancies for business reasons are generally acceptable grounds for employment terminations provided the employer gives the required notice and makes severance payments.

Reductions of a workforce or termination of employment must be carried out in coordination or consultation with the workplace labour organization (trade union) or, if this does not exist in the workplace, then with the Workplace Coordination Committee (WCC). If a workplace labour organization exists, the representative of the workplace labour organization and the representative of the WCC must coordinate with the workplace representative with respect to the workforce reductions or employment terminations.

The law requires the employer to pay severance to the worker if the employment is terminated on a no-fault basis.

8.2 Prohibited reasons for termination

As provided above, termination of employment requires a sound reason. It is prohibited for an employer to dismiss a worker under s.44 of the Labour Organization Law for the following reasons:

- for opposing an illegal lock-out[50];
- for membership in a labour organization for the exercise of organizational activities or participating in a strike in accordance with the law.

50 "Lockout" means the temporary closing of the workplace of any trade, suspension of work or refusal by the employer to allow the workers at the worksite to continue to work in consequence of the situation of any ongoing dispute between the employer and workers (Labour Organization Law, s.2(f)).

The exercise of organizational activities are defined in sections 16 to 28 of the Labour Organization Law. For instance, the functions and duties of the executive committee, the rights and responsibilities of the labour organizations, establishing and expending funds.

Under the Leave and Holiday Rules 2018[51] an employer is prohibited from reducing a worker's pay, relocating a worker or terminating their employment due to the worker taking maternity leave or medical leave available under the Leave and Holiday's Act 1952.

Employers must not terminate the employment or dismiss a worker unlawfully. In the case of unlawful termination or dismissal, the case shall be dealt with in accordance with the dispute settlement procedures.

8.3 Severance pay

Under the Employment and Skills Development Law,[52] if a worker is terminated from employment, the employer must pay severance on the basis of his or her last salary (without any overtime premium) as follows:

Table 4: Entitlements to severance pay

Duration of continuous employment		Severance payment rate (in months' salary, based on last salary)
From at least (years, unless specified)	To less than (in years)	
6 months	1	½
1	2	1
2	3	1.5
3	4	3
4	6	4
6	8	5
8	10	6
10	20	8
20	25	10
25	Over	13

51 See Rule 50(g).

52 See s.5 and Notification 84 of 2015.

8.4 Summary dismissals and disciplinary dismissals

An employer also has the right to dismiss a worker in cases where a worker is found, under the workplace disciplinary procedures, to have violated the workplace regulations which have been known to him or her. The Standard Employment Contract Template 2017 requires that offences relating to be included in two annexes to the employment contract which distinguish between minor and gross or serious misconduct.

An employment contract should also set out the disciplinary action which will be taken in the event of misconduct. The Standard Employment Contract Template[53] sets out a 'three warnings' process for violations of internal regulations. For the first violation, the employer can make the verbal warning and keep a record of it. If the worker violates the regulations for the second time, then the employer can issue a written warning. For the third violation, the employer can issue a final warning and ask the worker to sign the pledge promising not to violate again. Finally, on the fourth violation, the employer can dismiss the worker without paying severance.[54]

In both cases of summary dismissals and disciplinary dismissals, workers are not entitled to severance pay but they must receive other benefits that they are entitled to under the existing laws, rules, orders and directives.

53 Clause 15.

54 It is not clear if the four violations must relate to the same internal regulation, or can be for different internal regulations.

9. LABOUR AND EMPLOYER ORGANIZATIONS

Relevant laws

Labour Organization Law 2011

Settlement of Labour Dispute Law 2012

9.1 Right to join labour and employer organizations

The law applies to workers in both private and state-owned enterprises in the following sectors:

- factories, workshops, establishments and their production businesses;
- agriculture;
- construction and renovation;
- industries;
- transportation;
- services workers and other vocational works (which include domestic work);
- government departments and government organizations;
- education.

The only workers excluded under the Labour Organization Law are Defence Service personnel, police, and members of the Defence Services. Workers in civilian production operations owned by the Myanmar Economic Corporation have the right to form and join labour organizations.

With the very limited exceptions outlined above, every worker has the right to join a labour organization and the right to resign from such if they choose. This includes daily wage earners, temporary workers, apprentices and trainees, migrant workers, agricultural workers, teachers, and other government employees.

No one may force, threaten, or use undue influence on any worker to participate or not participate in a labour organization. This prohibition does not extend lawful efforts to convince workers as part of an organizing campaign.

Workers are restricted to only joining labour organizations that operate within their profession, trade, or activity.

9.2 Right to form labour organizations and employer organizations

Basic labour organizations (BLOs) may be formed by a minimum of 30 workers in a workplace (factory, workshop, establishment, construction business, transportation business, service business, or other vocational work).

If there are less than 30 workers in a particular workplace as listed above, workers may form a BLO together with workers from another workplace within that sector and region. In such a case, 10% of all

of the workers in workplaces seeking to form a BLO together must vote in favour of the organization. Votes are collected by signature.

Township labour organizations may be formed by at least 10% of all of the BLOs in the township within the same sector. Regional or state labour organizations may be formed by at least 10% of all of the townships labour organizations in the township in the same sector. Labour federations are formed by at least 10% of all regional or state labour organizations in the same sector or activity. Finally, labour confederations may be formed by at least 20% of all Myanmar labour federations.

All labour organizations have the right to carry out their activities under their own names and seals, free from interference by the public authority or employers.

Registered labour organizations have the right to sue and may be sued.

The Myanmar labour confederations and labour federations can work with other organizations as well as other labour federations, the international labour organizations, and the labour confederations or federations of any foreign country. They may also affiliate with international labour confederations and federations.

Employers may form employers organizations using the same structures as labour organizations.

9.3 Rights and responsibilities of labour organizations

Labour organizations have the right to:

- draw up their constitutions and rules;
- elect representatives;
- organize their administration, activities, and programmes without interference;
- operate free from discrimination or retaliation;
- negotiate with employers, or employers' organizations, with a view to reaching collective agreement;
- submit formal demands to the employer, and negotiate with a view to reaching agreement with employers when the rights provided for under the law are not upheld;
- join workers and their employer in discussions with the government about worker's rights or interests contained in the labour laws;
- participate in collective bargaining and dispute resolution;
- demand that employers re-appoint workers dismissed for labour organization membership or activities;
- demand that employers re-appoint workers whose dismissal did not follow the labour laws;[55]
- engage in industrial action, including strikes, in accordance with the relevant laws;
- assign a worker to spend up to two days per month on labour organization duties unless there is some other agreement;

55 There are no further provisions in the laws for dismissal, re-appointment procedures nor payments.

- send representatives to the conciliation body and tribunals in disputes between employers and the workers.

Labour organizations have the responsibility to:

- conduct meetings, strikes, and other collective activities peacefully and following the law, as well as their own rules;
- assist in making work-rules, individual employment contracts, bonds, and other individual agreements between the employer and workers.

9.4 Responsibilities of employers

Employers shall recognize the labour organizations of their enterprises and sectors as the organizations representing the workers.

Employers shall not take any actions to create labour organizations or bring labour organizations under their control by financial or other means. However, employers shall assist as much as possible if labour organizations request the employers' help in the interest of the employers' workers.

Employers shall allow a worker who is assigned duties by the executive committee of the labour organization to perform such duties as if they were official work functions. Such duties may not exceed two days per month unless otherwise agreed between the parties.

The government may also assist the labour organization but the right of labour organizations to carry out their legal activities must be respected.

One of the functions of the labour organization executive committee is to provide job training and skill-training with a view to the emergence of workers with improved qualification which supports the development of productivity. This should be read in light of s.27 and s.48 of the same law, which provides that the use of funds for training relating to skills and other matters are as provided for in labour organization constitutions and rules and must not be used for purposes outside of these areas.

9.5 Executive committees

Executive committees shall have odd numbers of members, and they shall be elected. BLOs shall have five or more (but always an odd number) members; townships, region/state, 7 - 15 members; and labour confederations, 15 - 35 members. No one may interfere with or obstruct the legal activities of labour organization executive committees.

The executive committee's duties include:

- representing workers;
- protecting the rights and interests of the workers;
- understanding the functions and duties of the workers;
- providing skill training to improve productivity;
- supporting members on housing, welfare, cooperatives and other issues.

9.6 Labour organization membership dues and use of funds

Monthly membership dues paid by workers to a labour organization cannot be more than two percent of the member's monthly wages. BLOs must share monthly membership dues to the township, regional/state, federation, and confederation that they are members of as directed by each labour organization's federation.[56] In practice, union membership dues are often fixed and do not fluctuate according to monthly wages.

Labour organizations may create their own funds from admission fees, monthly membership dues, income from labour organization cultural or sport activities, donations from employers, and grants from the government. Grants from the employer in this respect should be read in light of s.31 of the Labour Organization Law which provides that the employer shall not engage in acts designed to promote the functioning of such organizations under the employer domination or control by financial or other means. Consistent with this, the Labour Organization Law Rules state that government and employer funds shall not have the effect of bringing the organization under the domination of the government or employer.

Labour organization funds may only be used for the matters listed in their constitutions and rules such as social welfare, education, health, culture, sports, skills training, and other matters agreed by a majority of the members at a general meeting of the labour organization. Any person convicted of violating this provision will be fined and/or imprisoned for up to one year.

Labour organizations must open a bank account in Myanmar for their funds and must follow the Control of Money Laundering Law in administering their funds.

Labour organization funds are maintained by its executive committee. The executive committee must record each month's income from membership dues and other sources, as well as spending.

An annual statement of the labour organization's accounts must be sent at the end of the financial year to the township registrar (basic, township, and regional/state) or chief registrar (confederation and federations).

9.7 Registration of labour organizations

Constitutions or rules of labour organizations must have the approval of the majority of their members and contain the following:

- name of the labour organization;
- purpose of the formation of the labour organization;
- processes for granting membership, issuing membership certificates and resigning from membership;

56 The Committee of Experts for the Application of Conventions and Recommendations has made the following Observation regarding dues: "Recalling that Article 3 of the Convention protects the right of workers' and employers' organizations to organize their administration without interference by the public authorities includes in particular their autonomy and financial independence and the protection of their assets and property, the Committee requests the Government to take the necessary measures to amend this section so as to ensure that the transmission of funds to a higher-level worker's organization is a matter wholly for determination by the organizations themselves and without any legislative or other intervention on the part of the Government."

- processes for electing, assigning duties, removal, and resignation of executive committee members;
- processes for holding of meetings;
- processes for establishment, maintenance, and use of the labour organization's funds;
- process for monthly and annual auditing of funds.

Basic and region or state labour organizations must submit constitutions and letters from founding members or executive committee members (regional/state) to the township registrar.

Confederations and federations must submit their constitutions and a letter confirming that executive committee members have agreed to the constitution to the chief registrar.

Labour organizations in the same sector or activity can join together (or separate from each other) if their rules permit it and a majority of their executive committee approves. Labour organizations must apply to the township registrar when merging or separating.

Labour organizations should be registered, or provided with precise reasons why, if their registration is rejected within 60 days from receipt of the original application.

9.8 Powers and duties of registrars

Township Registrars are required to review labour organizations' applications for registration and submit them to the Chief Registrar.

Registrars must ask the labour organization to provide any information required under the laws or rules but missing in the application. Missing information may delay the application.

When registrations are approved by the chief registrar, a township registrar informs the labour organization of the decision and provides a registration certificate.

Township registrars also track membership numbers and financial reports. Registrars can be directed by the chief registrar to investigate labour organizations that are eligible for de-registration.

The chief registrar is required to:

- review labour organization registration decisions (including de-registration, mergers, and separations) made by township registrars;
- make decisions on registration decisions within 30 days;
- direct the township registrar to investigate and de-register a labour organization that has been registered for the wrong purpose, by fraud or by mistake;
- audit the annual accounts of federations and confederations, and other labour organizations when an audit is requested by an organization that represents at least 10 percent of the labour organization.

9.9 Non-registration and de-registration decisions

Labour organizations can be de-registered by the chief registrar if a labour organization's executive committee asks for the labour organization to be de-registered.

Labour organizations can also be de-registered if they do not have the minimum number of members required by the law.

Rejected registrations or de-registrations by the chief registrar can be appealed by any person to the Supreme Court. The decision of the chief registrar does not take effect for 90 days after the decision or until the Supreme Court makes a decision on the appeal.

10. DISPUTE RESOLUTION

Relevant laws

Settlement of Labour Dispute Law 2012

10.1 Purpose of the labour dispute laws

The legal framework relating to labour disputes aims to safeguard the rights of workers and ensure successful employment relationships through peaceful workplaces by settling disputes between employers and workers fairly and efficiently. Employers' and workers' should try and resolve disputes at the workplace level.

The Settlement of Labour Dispute Law (as amended in 2019) applies to most workers and includes apprentices and any person on probation. In addition, a worker who has been terminated or dismissed from their job has access to procedures in the Law. It is important to note that it excludes civil servants, defence services personnel, members of Myanmar police or members of armed forces under the control of the Defence Services.

10.2 Role of Workplace Coordination Committees

Employers with 30 or more workers must form a Workplace Coordination Committee (WCC) which is intended to promote a good relationship between the employer and workers and/ or their labour organization, negotiation and coordination on the conditions of employment, terms and conditions and occupational safety, health, welfare and productivity. A WCC shall be formed with the view to negotiating and concluding collective agreements.[57]

The number of worker representatives on a WCC will vary according to the number of labour organizations that exist in that workplace, and the percentage of workers who are union members. However, the principal requirements for individual workplaces are that:

- In a trade (with more than 30 workers) where one or more labour organization exists, the WCC shall comprise three representatives nominated by each labour organization and an equivalent number of employer representatives
- In a trade (with more than 30 workers) where there is no labour organization, three representatives shall be selected by the workers and three employer representatives.

In workplaces with both labour organizations and elected worker representatives, the employer cannot use the elected non-organized worker representatives to undermine the position of labour organizations and labour organization representatives. Members of the WCCs serve for two years and each side fills vacancies if members leave the committee.

Later in this chapter, the role of WCC's in relation to dispute resolution is discussed further.

57 The ILO recommends that collective bargaining takes place outside of the WCC, i.e., between trade union members and employers.

10.3 Types of labour disputes

Labour disputes are defined[58] as a disagreement between an employer (or employer's organization) and a worker (or worker's organization) in relation to: employment, working and termination; gratuities; bonuses and allowances; compensation for grievances; workplace injuries, deaths and occupational diseases; any matters relating to holidays and leave and in relation to matters relating to the interests of workers.

The Settlement of Labour Disputes Law defines **labour disputes** as either a dispute of **rights** or a dispute of interests as follows:

- A **dispute of rights** is defined as a dispute that relates to the rights of employers and workers specified in a labour law.
- A **dispute of interests** is defined as a dispute that relates to a collective agreement; or a dispute that is not covered by a labour law but related to the interests of workers; or is a dispute that relates to workplace relations.

10.4 The process for resolving disputes

The first step in resolving disputes that fall within the scope of the Settlement of Labour Dispute Law is to try and resolve them at a workplace level. It is important that workers and employers put particular effort into seeking low level solutions as this provides the most cost effective, speedy and efficient means of resolving disputes.

For workplaces with a WCC, a grievance should be raised by the worker, labour organization or the employer and be settled by the WCC within seven days from the date of receiving the request.

For workplaces where there are less than 30 workers (and therefore no WCC), a grievance should be submitted to the employer. The employer shall negotiate and settle with the worker or their representative within seven days of receiving the request.

If a dispute is settled, the parties can make a collective agreement or make a record of settlement. A form for making a record of settlement is provided in the Settlement of Labour Dispute Rules. For disputes that are not settled, s.9 of the Law provides a broad mandate for a complaint to be received by a conciliation body.

Section 12(b) of the Settlement of Labour Disputes Law provides that that the following complaints must be submitted to concerned departments or the competent court:

- complaints relating to rights contained and existing labour laws;
- complaints not otherwise under the mandate of a conciliation body.

Readers should note that at the time of publication, that the Rules had not been updated to implement 2019 revisions to the Settlement of Labour Disputes Law.

58 Section 2.

10.5 Composition of conciliation bodies

Township conciliation bodies have a term of three years and comprise:

- a chairperson, assigned by the respective region, state government, Nay Pyi Taw Council or a self-administered division or self-administered zone;
- three employer representatives from basic and township level employer organizations;
- three worker representatives from basic and township level workers' organizations selected by basic and township level workers' organizations;
- one government representative from a respective township;
- one person assisted by the Ministry who shall be the secretary.

If there is no particular law to conciliate disputes in special economic zones, then the procedure above will be applied. Employer organizations and labour organizations are responsible for selecting representatives to the conciliation body above. Each side fills vacancies if members leave.

A conciliation body is required to conciliate complaints or disputes it receives within seven days from the date of its knowledge or acceptance of a case and to prepare a contract of mutual agreement (otherwise known as a settlement agreement) if a dispute is settled.

If an "interests" based dispute is not settled, the conciliation body shall refer the dispute to the relevant arbitration body.

10.6 Arbitration bodies and processes

The arbitration body must make a decision on "interests" based disputes within seven days of receiving a case and the ruling must be delivered to the parties within two more days. If the decision relates to essential services or a public utility, a copy must be sent to the ministry and a respective region or state government. If the parties accept the ruling of the arbitration body, the decision is effective from the day of the decision.

If either party is not satisfied with the decision of an arbitration body, (except for a decision in respect of essential services):

- an employer can lock-out workers;
- workers can strike; or
- either party may appeal a decision to the Arbitration Council within seven days.

Where a decision relates to an essential service, a party may only apply to the Arbitration Council (and does not have the right to lock-out or and strike action).

When disputes are brought to the Arbitration Council, an Arbitration Tribunal will be established and must rule on the dispute within 14 days (or within seven days for disputes relating to essential services) and deliver its ruling to the parties within two more days. All persons involved in the dispute must comply with the rulings. This includes the legal successors of the employers and all workers in the enterprise(s).

10.7 Strikes and lockouts

The Settlement of Labour Dispute Law and Labour Organization Law both define a strike as a collective action taken some or all workers or workers' organizations resulting in a suspension of work, a refusal to work or to continue to work, or a slow-down or other collective actions that are designed to limit production or services and relates to social or occupational issues. Both laws define a lockout as a temporary closing of the workplace of any sector, suspension of work, or refusal by the employer to allow workers to continue to work when the employer and workers are engaged in a dispute.

The general rights relating to strikes and lockouts are set out in both laws. However, some complications arise because of the definition of a "worker" under each is different which affects the coverage of each law.[59]

The procedures to be followed depend on whether the workplace is a public utility service or other utility service. Section 12.3 sets out the rules relating to public utility services.

Employers and workers are advised to consult both the Labour Organization Law and the Settlement of Labour Disputes Law for the process and procedures to be followed for lawful strikes and lockouts.[60] Both laws set out when workers may go on strike, notice periods and unlawful strikes and lockouts.

10.8 Obligations of the parties to a dispute and penalties

There are a number of obligations applying to the parties to a dispute as set out below:[61]

- An employer or worker/s who fails to establish a WCC under the law is liable to a fine of a minimum of kyat 3 lakhs to a maximum penalty of kyat 10 lakhs.
- An employer or worker, shall not, without cause, fail to attend a negotiation of a complaint at the date and time set by a conciliation body.
- An employer shall not alter the terms and conditions of workers that have been set before a dispute occurs in order to affect the interests of workers, or shall carry out a lockout without sufficient cause.
- A worker shall not cause a reduction in production while settling a dispute or carry out activities that damage the interests of other workers. A worker who breaches this requirement, on conviction, is liable to a fine of a minimum of kyat 1 lakh to a maximum of kyat 2 lakhs.[62]
- No person shall fail to produce documents or appear as witness where requested to appear by an arbitration body or tribunal.

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59 It is important to note that there are different definitions of "worker" under Labour Organization Law and the Settlement of Labour Dispute Law. This affects government employees. While a government employee can be locked out or go on strike under the LOL because they are a "worker" under the Labour Organization Law, they may not have access to the Settlement of Labour Dispute Law for the purpose of resolving disputes because they are excluded under the definition of a worker.

60 See Labour Organization Law sections 37-43, 45-47 and 50 and Settlement of Labour Dispute Law sections 42 and 54.

61 Obligations relating to strikes and lockouts are dealt with in the following sections.

62 See further commentary in the strikes and lockouts section.

- No person shall violate any rules or notifications, orders or directives which are issued under the Settlement of Labour Dispute Law. A person who breaches this requirement shall on conviction, be liable to a fine of a minimum of kyat 1 lakh to a maximum of kyat 2 lakhs.
- Where an employer and a worker has made a contract of agreement (i.e. settlement agreement) before a conciliation body and fails to abide by it, on conviction, is liable to a fine of a minimum of kyat 50 lakhs to kyat 100 lakhs and ordered to pay a worker the cash benefit to which he or she would be entitled to.

Higher penalties are also in place for persons who repeatedly breach certain provisions in the Settlement of Labour Dispute Law.

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