



## **LABOUR LAW**

### **TABLE OF CONTENTS:**

1. Overview of Myanmar's labour laws
2. Labour contracts: MoL's template
3. Minimum wage
4. Regular working hours and overtime
5. Leave and holidays
6. Probationary period
7. Termination and dismissal

### **1. OVERVIEW OF MYANMAR'S LABOUR LAWS**

Unlike e.g. Vietnam, Myanmar has no single, comprehensive labour code. Rather, labour legislation is spread over a number of laws of which some date back to colonial times. On the whole, protection of workers is not very pronounced in Myanmar; the country's labour laws are usually not an issue that worries foreign investors. Important pieces of labour legislation (including implementing rules) are:

- Workmen's Compensation Act (1923)
- Leave and Holidays Act (1951) - last amended 2014
- Factories Act (1951) - last amended 2016
- Oilfields (Labour and Welfare) Act 1951
- Social Security Act (1954) - to a certain extent still applied
- Sections 91-108 Mining Rules (1996)
- Law Relating to Overseas Employment (1999)
- Labour Organization Law & Rules (2011)
- Social Security Law (2012)
- Settlement of Labour Dispute Law & Rules (2012)
- Employment and Skill Development Law (2013)
- Minimum Wage Law & Rules (2013)
- MoL Notification No. 84/2015 on severance payments
- National Minimum Wage Committee Notification No. 2/2015
- MoL Notification No. 1/2015 on the signing of labour contracts; MoL labour contract template; MoL work rules template; MoL salary payment slip template



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

- Payment of Wages Law (2016)
- Shops and Establishments Law (2016)

The applicable labour law depends, to a certain extent, on the sector in which an employee is working.

Example 1: The Factories Act covers workers in factories, certain warehouses, ports, vehicle repair and painting shops, pressing plants and oil factories and workers engaged in the loading and unloading or fuelling jobs at ports. The Act obliges employers to comply with certain health and safety standards, specifies the regular working hours and the overtime salary and designates Sunday a holiday.

Example 2: The Shops and Establishments Law covers workers in a variety of establishments not used for production. It provides for one free day per week, sets the regular working hours and overtime salary and contains provisions as to when the salary has to be paid.

Example 3: The Oilfields (Labour and Welfare) Act covers workers on oilrigs, oilfields, etc. and contains provisions similar to that of the Factories Act.

Example 4: Sections 91-108 of the Mining Rules contain provisions on working hours, working days and the health and safety of workers in mines.

Example 5: The Leaves and Holidays Act covers regular workers, temporary hires and day labourers in all types of businesses. Family members, business partners, cooks, cleaners, babysitters and security guards are not covered.

Compliance with the rules on health and safety, working hours, holidays and overtime is monitored by the following departments:

- **Factories; shops and establishments; oilfields:** Factories and General Labour Laws Inspection Department under the Ministry of Labour, Employment and Social Security (MoL)



- **Mines:** Mining Department under the Ministry of Mines

## **2. LABOUR CONTRACTS: MOL'S TEMPLATE**

By Notification 1/2015 dated 31 August 2015 (English translation: see this newsletter, page <http://tinyurl.com/oqjkb9s>), the Ministry of Labour, Employment and Social Security (“**MoL**”) requested all employers to provide their employees with a signed labour contract within 30 days from the start of the employment.

This requirement is also contained in section 5(a)(1) Employment and Skill Development Law (“**ESDL**”; English translation: <http://tinyurl.com/pa26w92>), in effect since 1 December 2013. Furthermore, section 5(g) ESDL requires that the employer send a copy of the labour contract to the township labour office to obtain its approval.

Section 5(b) ESDL lists items that must be included in a labour contract, but the law itself does not require that the contract follow a certain template. However, township labour offices have routinely refused to approve labour contracts that did not follow their, at the time, unofficial template.

On 2 September 2015, the MoL published its labour contract template, its work rule template and its salary payment record book template on its homepage. According to Notification 1/2015, all employers in the country must use the templates (an English translation of the templates can be found in this newsletter <http://tinyurl.com/oqjkb9s> starting from page 7). Non-compliance may theoretically lead, according to one interpretation of section 36 ESDL, to “imprisonment for up to one year and/or a fine”.

That all employers must use the templates is a bit surprising as the idea behind the standardized contracts is to protect factory workers in particular in the garment industry who presently often work without a written contract. The MoL templates are geared towards factory workers.

Nevertheless, at least some township labour offices stress that the requirement to use the MoL templates applies to all companies irrespective of their size and business line, that all employees irrespective of their rank, function and nationality have to sign it, and that no amendments could be made to the templates. They also stress that they intend to monitor compliance.



Chambers of industry and commerce have in the meantime made submissions to the MoL suggesting that the MoL should change its policy. The standard labour contract only fits factory work. Having a one-fits-all labour contract for jobs in all industries and sectors will not yield positive results.

In January 2016, representatives of employers and employees formed a committee consisting of representatives from employers and employees, charged with drafting an alternative template to be submitted to the government.

**For the time being, we think that employers should do the following:**

- Factory owners should use the standard labour contract and submit a signed copy to the township labour office.
- With regard to other sectors, we think that it is justifiable to wait with compliance (i.e. to use, for the time being, individual contracts that are not handed in to the township labour office) until the MoL has clarified at least the most pressing issues in response to queries from the business community.

**3. MINIMUM WAGE**

The National Committee for the Setting of the Minimum Wage published, on 28 August 2015, a Notification setting the minimum wage as follows:

<b>Minimum wage per hour</b>	Ks. 450
<b>Minimum wage for an 8 hour day</b>	Ks. 3,600
<b>Applies to</b>	All workers across all sectors and industries in the entire country
<b>Does not apply to</b>	<ul style="list-style-type: none"><li>▪ Small and family-run businesses with 15 or less workers (section 9 Minimum Wage Notification)</li><li>▪ Spouse and certain relatives living with the employer; civil servants; seamen (section 2(a) Minimum Wage Law)</li></ul>
<b>Entry into force</b>	1 September 2015



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

The Notification does not stipulate a monthly minimum wage. However, the monthly minimum wage seems to be calculated on the basis of a seven day week as follows: Number of days per month x Ks. 3,600, i.e.:

Month	Minimum wage
February (28 days)	Ks. 100,800
February (29 days)	Ks. 104,400
Month with 30 days	Ks. 108,000
Month with 31 days	Ks. 111,600

In spite of the definition of “wage” in the Minimum Wage Law (“includes overtime pay and bonuses paid by the employer for good work or character”), overtime pay and bonuses seem to have to be added to the minimum wage when determining a worker’s minimum salary.

Example:

8 regular working hours:	Ks. 450 x 8 =	Ks. 3,600
1 hour overtime:	Ks. 450 x 2 =	<u>Ks. 900</u>
Worker to receive at least:		Ks. 4,500
		=====

#### 4. REGULAR WORKING HOURS AND OVERTIME

The maximum working and overtime hours are as follows:

	Factories Act	Shops and Establishments Law	Oilfields (Labour and Welfare) Act
<b>Regular working hours per day</b>	8 hours	8 hours	8 hours
<b>Maximum regular working hours per week</b>	44 hours (48 hours if “continuous work” for technical reasons is required)	48 hours	44 hours (48 hours if “continuous work” for technical reasons is required)
<b>Maximum overtime hours</b>	Not specified	12 hours per week (16 hours if	Not specified



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

	Factories Act	Shops and Establishments Law	Oilfields (Labour and Welfare) Act
		required in special cases)	

- Theoretically, permission from the Factories and General Labour Law Inspection Department required before requesting workers to work overtime (FGLLI letter, July 2012, paragraph 1(x) - an English translation of this letter can be found in this newsletter <http://tinyurl.com/hz2bla6> on page 5). This requirement is routinely ignored in practice.
- Overtime is, at least theoretically, voluntary; i.e. employees cannot be forced to work overtime.
- Overtime salary: Twice the basic salary (sections 73 Factories Act; section 17(a) Shops and Establishments Law: “agreed overtime fee”). The following is to note:
  - In practice, the owner of a factory would simply announce “overtime” and only pay the overtime salary for work performed during the announced overtime hours.
- The formula for calculating overtime salary must be displayed in a visible place (FGLLI letter, July 2012, paragraph 1(z)).

$$\text{Hourly overtime salary} = ( (12 \times \text{basic monthly salary}) / (52 \text{ weeks} \times 44 \text{ or } 48 \text{ hours}) ) \times 2$$

- Workers and other employees are entitled to twice the basic salary if they work on a holiday (e.g. Sunday); section 3(2) Leave and Holidays Act.
- Workers in a factory can be required to work on Sunday (and, presumably, also on other holidays) if they are given a day off instead within three days before or after the Sunday (section 60 Factories Act); in this case, the factory owner is not required to pay twice the basic salary.



## **5. LEAVE AND HOLIDAYS**

Employees are entitled to the following **paid leave**:

- One **off day** per week (usually, Sunday).
- **Gazetted holidays** (in 2016: 25 days).
- **Earned leave**: 10 days per year. The employee must have worked continuously for more than 12 months on at least 20 days per month. One day will be deducted from the earned leave for each month in which the number of working days was not at least 20. If both employer and employee agree, earned leave can be carried forward for up to 3 years. Unused earned leave (due to, e.g., the employee leaving the company) has to be bought up by the employer.
- **Casual leave**: Up to 6 days during 12 months starting from the first day of work. Unused casual leave is forfeited; it is not carried forward and does not have to be bought up by the employer.
- **Sick leave**: Up to 30 days during a year if the employee has continuously worked for 6 months (only 50% of the salary has to be paid during the first 3 days of the sick leave).
- **Maternity leave**: 6 weeks before and 8 weeks after delivery.

Employees are entitled to **unpaid sick leave** of up to 30 days during a year if they have not continuously worked for 6 months.

## **6. PROBATIONARY PERIOD**

Probationary period: Up to 3 months; minimum pay during probationary period: At least 70% of the basic salary.

## **7. TERMINATION AND DISMISSAL**

Labour contracts in Myanmar are usually for a fixed term (cf. clause 5(a) of MoL's standard labour contract). In many jurisdictions, neither employer nor employee can terminate a fixed term labour contract before the end of the term unless special reasons exist. In Myanmar, however, both employer and employee can walk away from the contract fairly easily.

**The employee** can terminate the contract:





## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

- **During the probationary period:** by giving 7 days notice.
- **During the “regular” period:** by giving 30 days notice.

The employer is not required to pay severance allowance if the employee terminates the contract.

**The employer** can terminate the contract:

- **During the probationary period:** By giving “one month” notice or paying probationary salary for one month (clause 2(d) of MoL’s standard labour contract); no such payment is required if the employee is dismissed for “important reasons”.
- **During the “regular” period:** By giving “one month” notice and paying a severance allowance (see below); clause 14(b)(2) of MoL’s standard labour contract.
- **For misconduct on the part of the employee:** Disciplinary dismissals are possible during the probationary and the “regular” period; the employer is neither required to observe a notice period nor to pay a severance allowance. Disciplinary dismissals require three warnings: (i) personal warning, (ii) written warning, (iii) warning which the employee has to sign (clause 14(b)(1) MoL’s standard labour contract). It is common understanding that employees engaging in certain grave misconduct (specified in MoL’s standard work rules; e.g.: stealing, gambling, breaking secrets) can be dismissed on the spot without payment of a severance allowance.

Township labour offices seem to be of the opinion that the employer is obliged to pay a severance allowance not only in case of a “normal” dismissal, but also if a fixed-term labour contract ends and the employer does not want to renew it.

The amount of the severance allowance is specified in MoL Notification 84/2015 dated 3 July 2015.

<b>Period of employment</b>	<b>Severance allowance</b>
6 months - less than 1 year	Last basic salary for 1/2 months
1 year - less than 2 years	Last basic salary for 1 month
2 years - less than 3 years	Last basic salary for 1 1/2 months





## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

<b>Period of employment</b>	<b>Severance allowance</b>
3 years - less than 4 years	Last basic salary for 3 months
4 years - less than 6 years	Last basic salary for 4 months
6 years - less than 8 years	Last basic salary for 5 months
8 years - less than 10 years	Last basic salary for 6 months
10 years - less than 20 years	Last basic salary for 8 months
20 years - less than 25 years	Last basic salary for 10 months
25 years and more	Last basic salary for 13 months