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# ILO Guide to Myanmar Labour Law

# 2017



# **ILO Guide to Myanmar Labour Law**

## 2017

**ILO Liaison Office in Myanmar**

ILO Guide to the Myanmar Labour Law  
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## FOREWORD

Myanmar is currently undergoing rapid transformation. After decades of isolation, it is opening up to the international community and consolidating democratic governance and the rule of law. As part of its overall reform programme, the Government has been drafting and amending labour legislation to reflect this new environment and with the intention of complying with International Labour Standards. Thus, the legal environment in Myanmar is changing rapidly, with many draft laws currently under review and at various stages of the legislative process with various parts of the Government.

The awareness and understanding of national labour laws, as well as International Labour Standards, is low among both employers and workers in Myanmar. Translations of relevant laws and regulations are difficult or impossible to come by for various international actors. The current disparate legal framework, including both existing and draft laws and regulations that impact on the labour market, causes confusion as to the legal rights and obligations of employers and workers.

Since 2011, the Government of Myanmar has requested ILO's support for its legal reform process, including assisting the Government to conduct a labour law review, aimed at identifying gaps and overlaps, enhancing the legal framework in line with International Labour Standards, and consolidating the numerous laws in a more coherent manner.

Against this backdrop, this Guide to Myanmar Labour Law is intended to provide coherent and user-friendly information on the current legal framework and relevant International Labour Standards to employers, workers, and other relevant stakeholders. As the labour law reform is still ongoing, the ILO will update this Guide when major revisions are made.

ILO is pleased to lend its support to the Government, social partners and other stakeholders in advancing the labour law reform process through its Technical Cooperation programme of awareness-raising, training and other capacity-building activities.

We hope that this Guide will be useful for everyone who wants to understand and apply Myanmar Labour Law and promote International Labour Standards.

**Rory Mungoven**  
ILO Liaison Officer

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# I. INTRODUCTION

The legal framework regulating employment in Myanmar is found in a variety of different Laws and Rules enacted over the last century. This guide brings together many of the sources of Myanmar labour law in a single, user-friendly guide.

As with much legislation in Myanmar, the labour laws are presently undergoing considerable reform, and for this reason the guide should not be treated as comprehensive or final. Provisions of old labour laws may still be in force even as new laws covering similar areas are drafted and enacted. While all efforts have been made to ensure the accuracy and completeness of information contained in this guide, users are encouraged to consult the laws themselves to understand more fully their requirements. As labour law in Myanmar changes, the relevant sections of this guide will be updated.

The guide is designed as a quick reference to identify the main rights, powers, and obligations of employers, workers, unions<sup>1</sup>, and government under Myanmar labour law. The guide can be useful to employers and their organizations, workers and unions, policymakers, non-governmental organizations (NGOs), investors, and international buyers.

In addition to major areas of Myanmar labour law found in the Constitution, laws, and regulations, the guide includes an introduction to the ILO's Fundamental Principles and Rights at Work. All ILO member States are expected to ensure respect for the Fundamental Principles and Rights at Work.

## The Myanmar laws and regulations consulted for this guide include:

- Payment of Wages Act (2016)
- Factories Act (1951) amended in 2016
- Directive No.615/2/a la ya – law 2/12 (1584), dated December 11, 2012
- Shops and Establishments Act (1951) amended in 2016
- Leave and Holidays Act (1951) amended in 2006
- Penal Code (1974)
- Child Law (1993)
- Overseas Employment Act (1999)
- Anti-Trafficking in Persons Act (2005)
- Constitution of the Union of Myanmar (2008)
- Labour Organization Law (2011) and Rules (2012)
- Right to Peaceful Assembly and Peaceful Procession Act (2011)
- Social Security Law (2012) and Rules (2012)
- Ward and Village Tract Administration Amendment Act (2012)
- Settlement of Labour Disputes Law (2012) and Rules (2012)
- Minimum Wages Act (2013) and Rules (2013)
- Notification on Minimum Wage No.2/2015 dated August 28, 2015
- Foreign Investment Law (2013)
- Employment and Skills Development Law (2013) and Rules (2013) [Rules not in force]
- Notification No.84/2015 dated July 3, 2015
- Myanmar Special Economic Zone Law (2014)
- Occupation Safety and Health Law (Draft)
- Workmen's Compensation Act (1923) as amended in 1951 and 2005
- Rights of the Persons with Disabilities Law (2015)

<sup>1</sup> It should be noted that in Sections I and II the term "union" or "trade union" are used, whereas "labour organization" is used in Section III, to conform with the actual text appearing in Myanmar law. Nevertheless, these terms are interchangeable and mean the same thing.

## A. How the guide is organized

The guide is organised into three main sections, including this Introduction, a section on the Fundamental Principles and Rights at Work, and a section addressing Myanmar Labour Laws themselves. The later section is divided by subject area into seventeen chapters (listed in the Table of Contents). Key legal obligations, powers and rights in those subject areas are summarized under each chapter. Each summary lists the sources of the information in Myanmar law so that readers who require more detailed information can easily refer to the sections of the relevant law.

## B. How to Use This Guide

### 1. Checking what legal provisions apply to whom

The guide focuses chiefly on labour law for private-sector workers and employers, including light manufacturing such as garment production. However, some key provisions of the law apply more broadly and Appendix 1 of the guide notes the sectors/employers and types of workers covered by these provisions.

Workers and employers in *Special Economic Zones* must follow existing labour laws. The guide notes important differences between SEZ and non-SEZ standards in the relevant chapters.<sup>2</sup>

### 2. How to find issues and answers

The readers can easily find issues of their interest and find the corresponding legal provisions. For instance, if a reader wants to know about minimum wages, he or she can turn to the “Minimum Wages” section of the guide and learn what the relevant laws and provisions are (i.e. Minimum Wages Act, Preamble and sections 2-4, 7,12,14):

### 3.2 Minimum Wages (MWA Preamble, Sec’s 2-4, 7,12 and14; MWR Sec.43)

This indicates the relevant section of the law, for further reference

The current minimum wage has been set at 450 Myanmar Kyat per hour, and 3,600 Kyat per day. This daily rate is based on an 8-hour day, and does not include overtime, bonuses, incentives, or any other allowances, and so must be considered separate from the general definition of “wages” as described above. Part-time workers must be paid on a *pro rata* basis.

## C. Abbreviations

CLA	Cost of Living Adjustment
EO	Employer Organization(s)
ESD	Employment and Skills Development Law (2013)
FA	Factories Act (1951)
FIL	Foreign Investment Law (2012)
FIR	Foreign Investment Rules (2013)
ILO C	ILO Convention
LOL	Labour Organization Law (2011)
LHA	Leave and Holidays Act (1951)
MWA	Minimum Wages Act (2013)
MWR	Minimum Wage Rules (2013)
MOLIP	Ministry of Labour, Immigration and Population
PWA	Payment of Wages Act (1936)
Sec(s).	Section(s)
SLDL	Settlement of Labour Disputes Law (2012)
ShE	Shops and Establishments Act (1951)
SSL	Social Security Law (2012)
SSR	Social Security Rules (2012)
SEZ	Special Economic Zone(s)
WCA	Workmen’s Compensation Act (1923)
WCC	Workplace Coordinating Committee(s)

<sup>2</sup> The 2014 Special Economic Zone Law (SEZ) requires the appointment of a management committee in each SEZ to negotiate and mediate disputes between employers and workers, and “to coordinate in order to determine the rights and duties of the employer and employee, or terms and conditions relating to employment contained in the employment contract, so that employees can enjoy the benefit contained in the existing labour laws regarding minimum wages, leave, holiday, overtime pay, job loss allowance and workman’s compensation.” (SEZ Law (2014), Sec. 70, 76)

## II. FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

The ILO's 1998 Declaration on Fundamental Principles and Rights at Work commits the ILO's member states, including Myanmar, to respect and promote core labour standards in four main areas:

- Freedom of association and the effective recognition of the right to collective bargaining
- Elimination of forced or compulsory labour
- Abolition of child labour
- Elimination of discrimination in respect of employment and occupation

These principles are enshrined in eight specific ILO Conventions, which are indicated under each section below. Every ILO member State is committed to respect and promote these universal principles and rights even if the government has not ratified the relevant ILO Conventions covered by the Declaration. The international community endorses these principles and rights in order to establish a social "floor" in the world of work.<sup>3</sup> They apply to all people in all countries, regardless of the level of economic development.<sup>4</sup> In addition, these Conventions appear in most International Framework Agreements, and many companies have developed their compliance systems around them, making respect for these principles essential elements of their responsible sourcing frameworks.

Each of the Fundamental Principles and Rights at Work is described below. The language used here is drawn directly from the ILO's publication, *The*

*International Labour Organization's Fundamental Conventions*.<sup>5</sup>

### A. Freedom of association and collective bargaining ILO C. 87<sup>6</sup>, 98<sup>7</sup>

All workers and all employers have the right to freely form and join groups for the support and advancement of their occupational interests. This basic human right goes together with freedom of expression and is the basis of democratic representation and governance. People need to be able to exercise their right to influence work-related matters that directly concern them. In other words, their voice needs to be heard and taken into account.

Freedom of association means that workers and employers can set up, join and run their own organizations without interference from the State or one another. Along with this right is the responsibility of people to respect the law of the land. However, the law of the land, in turn, must respect the principle of freedom of association. These principles cannot be ignored or prohibited for any sector of activity or group of workers.

The right to freely organize and carry out their own activities means that workers' and employers' organizations can independently determine how they best wish to promote and

<sup>3</sup> ILO. 2002. *The International Labour Organization's Fundamental Conventions*. Available online at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_095895.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_095895.pdf)

<sup>4</sup> ILO webpage "About the Declaration". Available online at <http://www.ilo.org/declaration/thedeclaration/lang--en/index.htm>

<sup>5</sup> ILO. 2002, *supra* note at 3.

<sup>6</sup> Freedom of Association and Right to Organize Convention, 1948 (No.87). Available online at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312232](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232)

<sup>7</sup> Right to Organize and Collective Bargaining Convention, 1949 (No.98). Available online at [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C098](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C098)

defend their occupational interests. This covers both long-term strategies and action in specific circumstances, including recourse to strike and lock-out. They can independently affiliate with international organizations and cooperate within them in pursuit of their mutual interests.

If the collective bargaining system does not produce an acceptable result and strike action is taken, certain limited categories of workers can be excluded from such action to ensure the basic safety of the population and essential functioning of the State.

Voluntary collective bargaining is a process through which employers – or their organizations – and trade unions or, in their absence, representatives freely designated by the workers discuss and negotiate their relations, in particular terms and conditions of work. Such bargaining in good faith aims at reaching mutually acceptable collective agreements.

The collective bargaining process also covers the phase before actual negotiations – information sharing, consultation, joint assessments – as well as the implementation of collective agreements. Where agreement is not reached, dispute settlement procedures ranging from conciliation through mediation to arbitration may be used.

To realize the principle of freedom of association and the right to collective bargaining in practice requires, among other things:

- a legal basis which guarantees that these rights are enforced;
- an enabling institutional framework, which can be tripartite or between the employers' and workers' organizations;
- the absence of discrimination against individuals who wish to exercise their rights to have their voice heard, and;
- acceptance by employers' and workers' organizations as partners for solving joint problems and dealing with mutual challenges

## B. Elimination of forced or compulsory labour ILO C. 29<sup>8</sup>, 105<sup>9</sup>

Forced labour occurs where work or service is exacted by the State or by individuals who have the will and power to threaten workers with severe deprivations, such as withholding food or land or wages, physical violence or sexual abuse, restricting peoples' movements or locking them up.

For example, a domestic worker is in a forced labour situation where the head of a household takes away identity papers, forbids the worker to go outside and threatens him or her with, for instance, beatings or non-payment of salary in case of disobedience. The domestic may also work for an unbearably low wage, but that is another matter. If he or she were free to leave, this would not amount to forced labour but to exploitation.

Another example of forced labour arises where villagers, whether they want to or not, have to provide substantial help in the construction of roads, the digging of irrigation channels, etc., and where government administrators, police officers or traditional chiefs brandish a credible menace if the requisitioned men, women or children do not turn up.

Bonding workers through debts is, in fact, a widespread form of forced labour in a number of developing countries. Sometimes it originates with a poor and illiterate peasant pledging labour services to an intermediary or a landowner to work off a debt over a period of time. Sometimes the obligation is passed on from one family member to another, even down to children, and from one

generation to another. The labour service is rarely defined or limited in duration, and it tends to be manipulated in such a way that it does not pay off the debt. The worker becomes dependent on the intermediary or on the landowner and labours in slave-like conditions. The threat and, indeed, the occurrence of violence or other penalties for failing to work turns an economic relationship – one-sided as it is to start with – into a forced labour situation.

Labour trafficking can give rise to forced labour. One way in which traffickers tend to put themselves into a threatening position is to confiscate the identity papers of the person they move for employment purposes. Another is to trap people through indebtedness by cash advances or loans. Traffickers may also resort to kidnapping, notably of children. At any rate, traffickers, the persons linked to them or the employers at the point of destination, give their victims no choice as to what work to perform and under which conditions. Intimidation can range from revealing the victim's illegal status to the police, to physical assault and sexual abuse.

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<sup>8</sup> Forced Labour Convention, 1930 (No.20) Available online at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:P12100_ILO_CODE:C029)

<sup>9</sup> Abolition of Forced Labour Convention, 1957, (No.105). Available online at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C105](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C105)

### C. Abolition of child labour ILO C. 138<sup>10</sup>, 182<sup>11</sup>

Children enjoy the same human rights accorded to all people. But, lacking the knowledge, experience or physical development of adults and the power to defend their own interests in an adult world, children also have distinct rights to protection by virtue of their age. One of these is protection from economic exploitation and from work that is dangerous to the health and morals of children or hampers the child's development.

The principle of the effective abolition of child labour means ensuring that every girl and boy has the opportunity to develop physically and mentally to her or his full potential. Its aim is to stop all work by children that jeopardizes their education and development. This does not mean stopping all work performed by children. International labour standards allow the distinction to be made between what constitutes acceptable and unacceptable forms of work for children at different ages and stages of development.

The principle extends from formal employment to the informal economy where the bulk of the unacceptable forms of child labour are found. It covers family-based enterprises, agricultural activities, domestic service and unpaid work carried out under various customary arrangements such as children working in return for their keep.

To achieve the effective abolition of child labour, governments should fix and enforce a minimum age or ages at which children can enter into different types of work. Within limits, these ages may vary according to national social and

economic circumstances. However, the general minimum age for admission to employment should not be less than the age of completion of compulsory schooling and never be less than 15 years. In some instances, developing countries may make exceptions to this, and a minimum age of 14 years may be applied where the economy and educational facilities are insufficiently developed.

Certain types of work categorized as "the worst forms of child labour" are totally unacceptable for all children under the age of 18 years, and their abolition is a matter for urgent and immediate action. These forms include such inhumane practices as slavery, trafficking, debt bondage and other forms of forced labour; prostitution and pornography; forced recruitment of children for military purposes; and the use of children for illicit activities such as the trafficking of drugs. Dangerous work that can harm the health, safety or morals of children are subject to assessment by governments in consultation with workers' and employers' organizations.

A key characteristic of any effective strategy to abolish child labour is the provision of relevant and accessible basic education. However, education must be an integral part of a wide range of measures that combat many factors, such as poverty, lack of awareness of children's rights and inadequate systems of social protection, that give rise to child labour and allow it to persist.

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<sup>10</sup> Minimum Age Convention, 1973 (No.138). Available online at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138)

<sup>11</sup> Worst Forms of Child Labour Convention, 1999 (No.182). Available online at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182)

## D. Elimination of discrimination in respect of employment and occupation

### ILO C. 100<sup>12</sup>, 111<sup>13</sup>

Discrimination at work can occur in many different settings, from high-rise office buildings to rural villages, and in a variety of forms. It can affect men or women on the basis of their sex, or because their race or skin colour, national extraction or social origin, religion or political opinions differ from those of others. Often countries decide to ban distinctions or exclusions and forbid discrimination on other grounds as well, such as disability, HIV status or age. Discrimination at work denies opportunities to individuals and deprives society of what those people can and could contribute.

Eliminating discrimination starts with dismantling barriers and ensuring equality in access to training, education as well as the ability to own and use resources such as land and credit. It continues with fixing conditions for setting up and running enterprises of all types and sizes, and the policies and practices related to hiring, assignment of tasks, working conditions, pay, benefits, promotions, layoffs and termination of employment. Merit and the ability to do a job, not irrelevant characteristics, should be the guide.

Discrimination in employment or occupation may be direct or indirect. Direct discrimination exists when laws, rules or practices explicitly cite a particular ground, such as sex, race, etc. to deny equal opportunities. For instance, if a wife, but not a husband, must obtain the spouse's consent to apply for a loan or a passport to participate in an occupation, this would be direct discrimination on the basis of sex. Indirect discrimination occurs where rules or practices appear on the surface

to be neutral but in practice lead to exclusions. Requiring applicants to be a certain height could disproportionately exclude women and members of some ethnic groups, for example. Unless the specified height is absolutely necessary to perform the particular job, this would illustrate indirect discrimination.

Equality at work means that all individuals should be accorded equal opportunities to develop fully the knowledge, skills and competencies that are relevant to the economic activities they wish to pursue. Measures to promote equality need to bear in mind diversity in culture, language, family circumstances, and the ability to read and to deal with numbers. For peasants and owners of small or family enterprises, especially women and ethnic groups, equal access to land (including by inheritance), training, technology and capital is key.

In the case of both employees and self-employed or own-account workers, non-discrimination at work depends on equal access to quality education prior to entering the labour market. This is of chief importance for girls and disadvantaged groups. A more equal division of work and family responsibilities in the household would also permit more women to improve their work opportunities.

Effective mechanisms are needed to address the obstacles of discrimination when they occur. A common example involves claims for the non-discriminatory payment of wages, which should be set using objective criteria that takes into account the value of the work performed. ILO principles fix minimum thresholds while national laws and practices may well take a broader approach and include more comprehensive means in eliminating discrimination at work.

<sup>12</sup> Equal Remuneration Convention, 1951 (No.100). Available online at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C100](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C100)

<sup>13</sup> Discrimination (Employment and Occupation) Convention, 1958 (No.111). Available online at [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C111](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C111)

## E. Myanmar ratifications of ILO core Conventions

Myanmar has ratified three of the eight ILO Conventions designed to protect and promote these core labour standards. This is below the average number of core Conventions ratified by ASEAN countries (5.4), with eight of ten ASEAN Member States having ratified a majority of the core Conventions, and three countries (Cambodia, Indonesia and the Philippines) having ratified all eight. As noted above, every ILO member State is committed to respect and promote these universal principles and rights even if the State has not ratified the eight ILO Conventions covered by the Declaration on Fundamental Principles and Rights at Work. The table below lists the core Conventions and their ratification status in Myanmar.

Core Convention	Ratified <sup>14</sup>
Freedom of Association and Right to Organise Convention, 1948 (No. 87)	Yes
Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	No
Forced Labour Convention, 1930 (No. 29)	Yes
Abolition of Forced Labour Convention, 1957 (No. 105)	No
Minimum Age Convention, 1973 (No. 138)	No
Worst Forms of Child Labour Convention, 1999 (No. 182)	Yes
Equal Remuneration Convention, 1951 (No. 100)	No
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	No

<sup>14</sup> ILO webpage, "Ratification for Myanmar". Available online at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103159](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103159)

## III. MYANMAR LABOUR LAW

### 1. REGULATING EMPLOYMENT

#### 1.1 Employment Contract

(ESD, Sec. 5 and 38-39; ESD Rule 14  
[Rules not in force])

The employment relationship in Myanmar is governed by contract. An employer and a worker shall sign an Employment Contract within 30 days after the employer has employed a worker for any job. A good employment practice requires discussion and agreement between an employer and a worker on the contract provisions prior to signing and commencement of the contract.

It should be noted that various laws govern the terms and conditions included in a contract (i.e., days off, leave, and holidays are governed by the Leave and Holidays Act; wages are covered by the Payment of Wages Act and the Minimum Wage Law). The employment contract is an important tool for clarifying rights and obligations in employment relationships, as well as the agreed terms and conditions for the relationship. Both collective bargaining agreements and individual employment contract may provide for conditions that are more favorable to workers than what the law requires. However, employment contracts may not offer conditions that are less than the minimum protections provided in the law. Any provisions in an Employment Contract less favorable to the worker than the provisions in the relevant law (or of a collective bargaining agreement) are considered null and void.

Employment contracts **must** include the fundamental terms and conditions of employment:

- Type of employment;
- Wages/salary, including information for piece rate and temporary work;
- Location and contact information for employment location;
- Working hours and overtime hours;
- Days off, holidays, and leave;
- Medical treatment;
- Internal regulations to be followed by the employees;
- Terms for resignation or termination of service;
- Responsibilities of employer;
- Responsibilities of employee;
- Length of contract for employment.

The Employment Contract may include other provisions if they are relevant to the type of employment:

- Meals program or arrangements;
- Worker accommodation;
- Uniform or dress code;
- Transportation to and from work site;
- Employee skill development training, if employer participates.<sup>15</sup>

The employer may institute a training period for her/his employees prior to beginning permanent/full employment if s/he desires. The initial training period (similar to an internship) may be compensated at no less than 50% of the position's full wage, and may extend for up to 3 months.

<sup>15</sup> 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, and this is separate from the pre-employment training period described above. The employer will carry the cost of additional training under the ESD.

Following training, the employer may require a probationary period (considered an apprenticeship, or probationary employment), which may extend no longer than three months, and may be compensated at no less than 75% of the position's full wage. During the probationary period, employment contract does not need to be concluded.

Within 30 days of executing 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 agreement 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.

The Government has published an Employment Contract template under Rule 14 of the Employment Skills and Development Rules, which contains all of the terms and conditions that the Government envisions might need to be included in an employment agreement. The terms and conditions provided under Rule 14 are examples, and are not binding on current or future contracts executed in compliance with this Rule. The Rule 14 Employment Contract should be thought of as a helpful guide for drafting Employment Contracts, and township labour offices will look for employment contracts to follow the same format.

## 1.2 Internal Workplace Regulations

(ESD Sec.5; FA Sec. 67, 99; PWA Sec. 11; ESD Rules Sec.14 [Rules not in force])

Internal regulations in the Employment Contract must comply with the law, and as described above, benefits for workers cannot be less than the minimum standards under the law. In the event of a change in the governing laws or rules, it

is the employer's responsibility to update her/his internal regulations in order to remain compliant.

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

- A summary of the Factory Act and the Rules made under it;<sup>16</sup>
- A summary of the Payment of Wages Act, and the Rules made under it;
- Notice of working hours, including hours for child workers if any such are employed there;
- The name and address of the labour inspector;
- The name and address of the certifying surgeon<sup>17</sup>;
- Any other information relating to the health, safety, and welfare of workers as ordered by the labour inspectorate.

Notices to be displayed in enterprises covered by the Shops and Establishments Act:

- A summary of the Payment of Wages Act, and the Rules made under it;
- Notice of working hours.

Internal regulations relating to such issues as conditions of employment, labour relations, dispute prevention/resolution, occupational health/safety, welfare, productivity, and more can also be set by negotiation between workers and as appropriate their representative labour organizations or elected representatives and employers through Workplace Coordinating Committees (see Chapters 10 - 12 on Labour Organizations, Workplace Coordinating Committees and Dispute Resolution), and between labour organizations and employers' organizations at township, regional, industry, or at the national level. In cases where such collective agreements provide for better standards than the existing internal regulations, it is desirable to amend the employment contracts accordingly and send it to the labour exchange office.

<sup>16</sup> These summaries are currently not made available by the relevant government ministries.

<sup>17</sup> Doctors at any workers' hospitals and clinics run by the Ministry of Labour.

## 2. HIRING EMPLOYEES

### 2.1 Age Restrictions

(Child Law, Sec. 24; FA Sec's. 75-78; ShE Sec. 8)

No one under the age of 14 may be employed.

“Child worker” is defined as a juvenile 14 to 15 years of age, and must receive a certificate of fitness from a certifying surgeon in order to work legally. The Child Law states that children have the right to engage voluntarily in work permitted by the law, as well as the rights permitted to hours of employment, rest, and leisure. However, a child worker may work only 4 hours per day, and may not work between 6:00PM and 6:00AM. A child worker may not work in another factory after having completed work in one factory on the same day.

Workers 16 to 17 years of age are defined as adolescent workers “adolescent workers,” and must be qualified as fit to work by a certifying surgeon. All workers under 18 must carry an ID card or notice of their certificate of fitness while working. No one under 18 may engage in work that is deemed hazardous under the governing laws. (For more information, see Chapter 14 – Child Labour).

Employers must keep a register of all child workers in their enterprise, which must include:

- The name of the worker and the names of parents;
- The type of work;
- Working hours;
- Proof of certificate of fitness.

### 2.2 Medical Requirements

(FA Sec's. 68, 81)

Medical requirements at hiring are designed to protect children and adolescent workers. The certifying surgeon may provide one of two certificate types:

- A certificate verifying that a child is more than 14 years old and may be employed on a restricted basis as a child worker
- A certificate verifying that a child is more than 16 years old and is medically fit to work as an adult worker

The certificate is valid for 12 months. The doctor may limit the types of work the young person may perform. A doctor who refuses to issue (or re-issue) a certificate of fitness must state in writing the reasons for refusal. Fees for a certificate of fitness are born by the employer, not the worker or parents of the worker. (For more information, see Chapter 14 – Child Labour).

### 2.3 Hiring requirements for Foreign Investment and Special Economic Zone (FIL Sec. 24; SEZ Sec's. 71-78)

Foreign investors and employers in Special Economic Zones must hire Myanmar citizens for work that does not require special expertise. Employers must provide relevant training in order to improve the skills of Myanmar citizens.

Citizens must represent at least 25% of the total number of skilled workers, technicians, and staff during the first two years of operations. This percentage of citizens must increase to at least 50% during the 2-4 years of operation, and to at least 75% in years 4-6.

However, employers may hire a larger percentage of foreign employees for technological and managerial work with the approval of the SEZ's management committee. The Myanmar Investment Commission may extend the timeframes for knowledge-based work.

Skilled Myanmar workers must be paid at the same level as foreign experts. (See Chapter 16 for rules relating to the hiring of foreign workers in Myanmar).

## 2.4 Hiring requirements for people with disabilities

(Disabilities Law Sec's 36, 75-76, 81)

Employers must employ women and men with disabilities<sup>18</sup> to the jobs that are appropriate for their abilities and capacities and in accordance with the quota specified by the National Committee on the Rights of the Disabled People. In doing so, employers must select and employ persons with disabilities who are registered at the relevant township Employment Exchange Offices. Employers must make appropriate arrangements for the job interview for the persons with disabilities, and ensure them equal rights with other workers in relation to interviews, wages, opportunities, promotion, job security and access to free vocational education and training based on their employability. In particular, employers shall not suspend, fire, demote and transfer disabled employees without any sound reasons. Employers must submit the list of employees with disabilities, as well as the job vacancies, to the township Employment Exchange Offices.

When it is impossible for the employers to meet the employment quota, they must pay certain amount of money to the Funds established for the rights of persons with disabilities. At the time of writing, the implementing regulations were being drafted.

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<sup>18</sup> The Rights of the Persons with Disabilities Law (2015) defines a person with disabilities as a "person who has one or more of the long-term physical, vision, speaking, hearing, mental, intellectual or sensory impairments from birth or not" (Sec.2(a)).

### 3. WAGES

#### 3.1 Definition of Wages

(MWA Sec. 2; PWA Sec. 2)

The definition of wages is important for policymakers, employers, and workers and unions in calculating overtime pay, for example, and measuring compensation. The Minimum Wage Act (2013) and Payment of Wages Law (2016) state that calculation of wages includes:

- Wages or salaries;
- Overtime pay;
- Bonuses for good work or good character (for example, consistently arriving on time);
- 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;
- Allowances for travel;
- Meals;
- Medical treatment or other services;
- Accommodation;
- Electricity or water service;
- Duties and taxes;
- Work-related expenses<sup>19</sup>;
- Bonuses due at the end of contracts;
- Recreation;
- Contributory dues paid by the employer to the worker under the existing laws<sup>20</sup>;
- Severance pay and gratuities.

#### 3.2 Minimum Wages

(MWA Preamble, Sec.'s 2-4, 7, 12, 14, 46-47; MWR Sec. 43)

The current minimum wage law came into effect on 1 September 2015, and covers employers with 15 employees or more. 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 at least 15 employees and all full-time employees, the law covers all part-time workers and hourly workers as well.

The current minimum wage has been set at 450 Myanmar Kyat per hour, and 3,600 Kyat per day.<sup>21</sup> This daily rate is based on an 8-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. (Overtime rates are covered in Chapter 4.3, below).

Excluded from coverage under the law are civil service works and seafarers (covered by separate laws) and the employer’s close relatives such as spouse, children, parents, and siblings who depend on and live with the employer.

Employers may establish higher compensation than the minimum wage through Employment Contracts and collective agreements. However, employers may not pay less than the minimum wage, with the exceptions described in Chapter 1 (i.e. the initial training period, if instituted, may be compensated at no less than 50% of the position’s full wage; the probation period, if instituted, may be compensated at no less than 75% of the position’s full wage). Workers who were earning higher wages than the minimum wage at the time it was established retained the right to remain at their higher level of compensation.

The law clarifies that a full-time employee who works less than the normal working hours (44 per week) through no fault of her/his own or due to a shortage of work from the employer is entitled to remuneration as if s/he had worked a full 44-hour week.

<sup>19</sup> Note this exclusion is only specified in the PWA and not in the MWA(Sec.2). This means that, in theory, work-related expenses could be included in the calculation of wages for workers who are covered under the MWA.

<sup>20</sup> Such as contributions to the pension fund and the provident fund.

<sup>21</sup> Notification on Minimum Wage No.2/2015 dated August 28, 2015

### 3.3 Setting Minimum Wages (MWA Sec.'s 3-11; SEZ Sec.'s 70-76)

The President of the Republic appoints a National Committee every three years to prescribe the minimum wage for workers. The Committee includes equal numbers of representatives of Labour Organizations (or representatives of workers), and Employer Organizations (or representatives of employers), but does not specify the number of Government representatives. At least one independent wage expert may also be included.

The National Committee conducts wage research, sets the policy for determining the minimum wage, and determines which businesses are covered. The Committee also forms tri-partite Committees at the national and regional/state levels to study and recommend, as they see fit, minimum wages at the regional level and by sector in those regions.

Wage Committees must consider these factors when proposing a minimum wage:

- Needs of workers and their families;
- Existing wages/salaries;
- Social security benefits;
- Living costs and changes in living costs;
- Standards of living;
- Job creation and development needs;
- Size of the national economy and income per person;
- Nature of the work and risks for workers.

The National Committee reviews recommendations from the other Committees and publishes the proposed minimum wages at least 60 days before the wages take effect.

During the 60-day period following publication of the proposed minimum wage level, any person may object to the proposed minimum wage rate. The proposed wage must be debated again at the

National or Regional level, and a proposed wage is then re-submitted to the National Committee. The National Committee makes a final decision with the approval of the Government. Any person can appeal this decision to the Supreme Court. The setting of the minimum wage process will re-occur every two years.

In the case of SEZ's, the SEZ Committee may determine the minimum wages of employees and staff according to the nature of the enterprise (i.e., processing raw materials, providing warehousing for goods, importing/exporting, etc.) and must submit their proposals to the National Committee. The National Committee may then approve or disapprove the proposed minimum wage for that industry or enterprise within the SEZ.

### 3.4 Payment of Wage and Other Compensation

(PWA Sec.'s 3-6; MWA Sec.'s 12-20, 24-25; ShE Sec. 16)

Workers must be paid at least monthly. They must be paid in cash or in cheque or through bank transfer based on a mutual agreement between an employer and a worker, on a working day (not a leave day) and before the seventh day of the month for the previous month's work. Employers with 1,000 or more workers must pay by the 10<sup>th</sup> day of the month. Workers who are terminated by the employer must receive their pay within 2 working days.

Basic wages<sup>22</sup>, including the minimum wage, must be paid in cash. Some benefits or interests may be paid in property (non-monetary products) if this is agreed to in the Employment Contract or collective bargaining agreement, but property benefits may not be used in the this context to meet the minimum wage. Any such payments must be calculated based on the prevailing regional price.

<sup>22</sup> Significant confusion persists over the terms "wage," "basic wage," and "full wage" in Myanmar law and practice. A number of inconsistencies exist from law to law which at the time of publication of this guide had not been clarified. The best measures to rely on is the definition of "wage" set out in the Payment of Wages Act and the Minimum Wage Law.

A narrow exception to this rule exists for workers in the agricultural and livestock breeding sectors, which seeks to preserve the tradition of payment in property. Under this caveat, the employer may pay wages in a combination of cash and property, according to local custom and for the personal use and benefit of the worker.

Any worker who does not receive all of the wages and benefits to which s/he is entitled may complain to the National or Region/State Committee within an year of the violation in order to receive lost wages and benefits. The Labour Inspectorate may inspect workplaces to ensure compliance with wage laws, as well as make claims and institute court proceedings against employers who are in violation of the law with the approval and the relevant Union, Region or State Committee.

Employers must inform workers of the minimum wage for the sector and post a notice of wage rates, pay days, and processes for fines and deductions in the workplace.

Government inspection officers have the right to enter and inspect any workplace covered by the Minimum Wage Law in order to determine that it complies with the law. Inspectors have the right to review and copy all payroll, lists of workers, schedules and other wage documents relating to workers at the workplace, including outside contract workers from other employers.

Inspectors must report their wage findings to the relevant Ministry department, and the department must share the findings with the relevant Wage Committee. Employers face imprisonment of up to one year and/or fines if convicted of making false records or deceitful reports in their payroll documents.

### 3.5 Deductions and Fines (MW Sec.'s 5-8, 10-11; PWA Sec.'s 7-11)

Employers may not make deductions from workers' pay, with the following exceptions:

- Dues paid to labour organizations;
- Social security contributions (see rate table in Chapter 7);
- Absences from work (without leave);
- Fines;
- Damage or loss of material or money through neglect or fault of the worker (to be liable workers must have direct responsibility for lost money or materials, and must be given an opportunity to defend themselves against the charge);
- Housing and other services provided by employer or government (deductions cannot be higher than values determined by the government);
- Income taxes to be paid by workers;
- Court-ordered deductions;
- Repayment of advances from Provident Fund;
- Government-approved saving schemes with written authorization of individual workers.

The total deductions from a pay period (not including deductions for absence from work) may not be more than 50% of the worker's earned wages. Deductions may not be made for tools or materials necessary for work.

Employers may not fine workers under the provisions of workplace rules until they have had the opportunity to defend themselves against the fine. Employers may not fine workers under 16 years old.

Fines may not be collected in installments. Fines cannot be collected more than 60 days after the fine was imposed. Fines will be registered by the employer and must be spent in ways that benefit workers, with approval by the FGLLID.

### 3.6 Deductions for Absence from Work (PWA Sec.'s 7-11)

Deductions of wages should not be made for absences covered by leave to which the worker is entitled and for which s/he has been authorized (e.g., annual leave, sick leave, or other entitlements).

Deductions for absence from work shall not exceed 50% of the worker's monthly salary, except for the deductions due to the worker's default to carry out his/her duty.

Deductions may be made as fines for the worker's performance or default in the cases of:

- willful negligence, lack of due diligence, dishonest performance or default of the worker which causes direct loss of money and damage or loss of something which the employer openly entrusted to the worker;
- breach of workplace regulations by the worker, which is subject to fines as specified by the provisions in the employment contract.

Such deductions shall only be made after the employer obtains permission from the Factories and General Labour Laws Inspection Department of the MOLIP. 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.

Employer 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.

### 3.7 Objections to Deductions and Fines (PWA Sec.'s 12-13)

Disputes over deductions or late payment of wages are to be handled through the dispute resolution process provided in the Settlement of Labour Disputes Law: parties may first take their complaint to the WCC within 6 months, and if the WCC cannot resolve the issue, then may bring their complaints to the Labour Inspector. The Labour Inspector may scrutinize the case brought before him and may issue an order. If either party is not satisfied with the order of the Labour Inspector, he/she may appeal to the Chief Inspector within 30 days. The order issued by the Chief Inspector is the final.

Myanmar law permits workers to seek recovery of wages from the "responsible person" – the manager, supervisor, or clerk responsible for payment of wages in the establishment or factory – before seeking legal action against the owner of the establishment, if they are different people. This is a practical consideration; often, the owner of the establishment or factory may not be on the premises or even reside in the country. Therefore, liability for payment falls first to the person who has been designate as the agent of the owner/ employer and is responsible for the payment of wages. Only if the worker is unable to recover their wages from the responsible person may the worker seek recovery from the owner/employer.

## 4. WORKING HOURS AND OVERTIME

### 4.1 Working Hours

(FA Sec.'s 59-66; ShE Sec.'s 11-17)

Adult workers in factories shall not be required to work more than 8 hours per day or 44 hours per week. Adult workers in shops/establishments shall not be required to work for more than 8 hours per day or 48 hours per week. Rest period are unpaid. Periods of work within a workday must be established and arranged so that workers do not work longer than five hours at a stretch without receiving a rest of at least 30 minutes. However it is arranged, the workday composed of periods of work and intervals for rest may not exceed a total of 10 hours.

Adult male 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.<sup>23</sup>

Regarding working hours for young workers between 14 and 18 years old, please see Chapter 14 on Child Labour and Young Workers.

### 4.2 Weekly Rest Days

(FA Sec.'s 59-67; ShE Sec.'s 15; LHA Sec. 3)

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 must observe the weekly day of rest on Sundays. Enterprises covered by the Shops and Establishments Act may select which day of the week on which they will observe a rest day. For

workers working after midnight, the full day of rest begins at the end of the last shift.

Before requiring work on a Sunday, the employer must notify both the Labour Inspectorate and its workers of its intention to impose a workday, and of the day which it will replace the lost rest day with.

After establishing a day of rest, employers must notify the government and all workers of changes to the rest day at least 24 hours in advance.

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

Workers who work on rest days are allowed to take the same number of days off within two months.

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.

### 4.3 Overtime Work

(FA Sec. 64, 73; ShE Sec.'s 11, 17)

Workers in shops and establishments shall not work more than 12 hours for any one week. However, if there are special matters which require overtime work, such overtime work should not exceed 16 hours for any one week. Moreover, overtime work shall not extend beyond midnight.<sup>24</sup>

<sup>23</sup> "[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.

<sup>24</sup> Section 17 (a) provides that wages for overtime shall be calculated according to the rates prescribed in the ShE Law. However, the law does not provide for such overtime rates.

Overtime hours for workers in factories are regulated under a Directive<sup>25</sup>: for workers who do not engage in continuous work, overtime hours shall not exceed 20 hour per week: i.e. 15 hours from Monday to Friday (3 hours x 5 days) and 5 hours for Saturday. Workers who work more than 8 hours per day or 44 hours per week must be paid at twice the ordinary wage rate (not including allowances) for overtime hours. Adult male workers in factories engaged in continuous work begin accruing overtime at twice the ordinary wage rate after working more than 48 hours in a week.

Piece-rate workers who work overtime are paid twice their average earnings. These averages are set by the Chief Inspector in consultation with the employer and worker representatives.

### Formulation of Overtime Wage Rates under the Factories Act

(Directive under the Factories Rules 1935)

#### For salary workers

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

#### For daily wage workers

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

#### For piece rate workers

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

Regarding overtime work for young workers between 14 and 18 years old, please see Chapter 14 on Child Labour and Young Workers.

<sup>25</sup> Directive No.615/2/a la ya- law 2/12 (1584), dated December 11, 2012

## 5. PUBLIC HOLIDAYS AND LEAVE

Type of paid leave	Days/year
Public/Gazette Holidays <sup>26</sup>	Changes yearly but around 15 days
Earned (Annual)	10
Casual (Funeral)	6
Medical	30

### 5.1 Public Holidays (LHA Sec. 3)

The Leave and Holidays Act covers any employee, 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).

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.

### 5.2 Earned Annual Leave (LHA Sec. 4)

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.

They must be paid their average wages or average pay for leave days before they take leave. In calculating average wages, it must be noted that section 2(a)(2) of the amended Payment of Wages Act 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. 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. (See Chapter 14 – Child Labour for child worker leave).

Under the Leave and Holiday Act, workers forfeit one day of earned leave for every month in which they do not work at least 24 days, with the illness, injury, authorized absences, etc inclusions outlined above continuing to count as worked days. Employers and employees are free to modify this policy in their Employment Contracts or collective bargaining agreements, but may not increase the number beyond 24 days per month.

<sup>26</sup> By virtue of the Notification No.138, dated 28 December 1964 of the Revolution Government. Public holidays are announced by the Government every year in the Government Gazette.

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. Payment for unused leave must be made to workers within two days.

### 5.3 Casual and Other Leave (LHA Sec.'s 5-6; MW Sec. 14)

Workers are given six days of paid casual leave per year. Workers may use up to three days of casual leave at one time, but cannot combine casual leave with other kinds of leave (such as earned annual leave). Unused casual leave is lost at the end of the year.

Casual leave can be 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.<sup>27</sup>

### 5.4 Medical Leave (LHA Sec.'s 6, 8; MW Sec. 14)

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 6 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 6 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.

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.

### 5.5 Maternity and Paternity Leave (LHA Amendment Sec. 7, SSL Sec.'s 25-28; SS Rules 115-121)

Pregnant mothers are provided 6 weeks of prenatal leave and 8 weeks of postnatal leave, for a total of 14 weeks of maternity leave, and may take maternity leave and medical leave continuously as long as the requirements for medical leave are met.

Fathers are entitled to 15 days of paternity leave.

Payment for such leave under the Leave and Holidays Act is the responsibility of the Employer unless the worker contributes to the social security board scheme.

For more details about maternity/paternity benefits, see Chapter 7.

<sup>27</sup> Clarification given to the ILO by FGLLID on 4 July 2016.

## 6. OCCUPATIONAL SAFETY AND HEALTH<sup>28</sup>

### 6.1 Preventative Measures

(FA Sec.'s 12, 37, 106; SSL Sec's 2, 53)

Both employers and workers have important roles and responsibilities to ensure safety and health in the workplace. The employer must provide protective equipment and other facilities required under the Factories Act at no cost to workers.

Employers and workers shall coordinate with the Social Security Board to develop safety and health plans and worker education in order to prevent occupational injury and illness.

Workers have the right to stop work and remove themselves when they believe that a work situation puts them in danger, and this is not considered a strike.

### 6.2 Fire and Building Safety

(FA Sec.'s 34, 39-42)

All floors, steps, stairs, passageways and gangways must be well-constructed and properly maintained, and must have substantial handrails where needed.

Every enterprise must also have a fire warning system that can be heard clearly by every person in the enterprise.

There must be a safe means of exit in every place where any person is at any time required to work. Workers must be able to immediately open from the inside the exit doors in every room.

Every enterprise must provide means of escape in case of fire. All exit doors must open outwards

or slide to the side. Every window, door or other emergency exit shall be clearly and distinctly marked in a language understood by the majority of workers and in red letters or by some other effective means.

Exit paths for workers must be kept clear in every room of the enterprise. Every employer must ensure that all workers are familiar with the emergency exit procedures and have been adequately trained in the procedure to be followed in emergencies.

Employers must also take all possible measures to prevent explosions by removing dust, fumes, and vapours from the enterprise, and enclosing all possible sources of fire. Repairs or alterations to machines or containers with explosive or flammable materials must be authorized by an Inspector.

Inspectors who determine that an enterprise is not structurally safe or fire-safe may give the employer a written order that lists the changes required to bring the enterprise into compliance with the law and a deadline.

Inspectors who determine that the use of any building or part of a building, passage way, machinery, or plant in a factory presents imminent danger to human life or safety may issue a written order to the manager of the enterprise that prohibits its use until it has been properly repaired or altered.

### 6.3 Workspaces

(FA Sec.'s 18, 46)

Every worker must have at least 500 cubic feet (5.85 square meters, up to 4.25 meters high) of space to work in to prevent overcrowding. The government's Chief Inspector can require the

<sup>28</sup> At the time of publication, a new Occupational Safety and Health Law was being drafted. The proposed Law is expected to improve and integrate the existing occupational safety and health standards which are provided in separate laws such as the Factories Act and the Shops and Establishments Act.

employer to post in each area the maximum number of workers allowed in that area, and may exempt employers from some workspace provisions if worker health and safety is not affected.

Every enterprise must provide suitable arrangements for sitting for all workers required to work in a standing position so that they may rest during the course of their work.

#### 6.4 Air and Heat

(FA Sec.'s 15, 18, 38; ShE Sec.24)

In shops and establishments, no excessive temperature shall be maintained, and fire prevention procedures shall be established. Ventilation shall be well kept.

Under the Factories Act, enterprises and every workroom must have adequate ventilation and air circulation to ensure the comfort and health of workers.

Processes that produce heat, fumes or dust must be in separate work areas with adequate insulation and/or ventilation.

No one may work in a chamber, tank or confined space unless an Inspector certifies in writing that the space is free from dangerous fumes and fit for use by people.

Some examples of standards the Director General, Factories and General Labour Law Inspection Department can set for any enterprise or types of enterprises in order to improve conditions are<sup>29</sup>:

- Adequate ventilation standards;
- Maximum temperatures (and placement of thermostats);
- Whitewashing, spraying, or insulating walls and roofs;

- Raising and/or insulating roof;
- Exhaust systems to carry fumes from machines directly outside.

#### 6.5 Lighting

(FA Sec. 19; ShE Sec.25)

Employers must provide sufficient and suitable lighting (natural or artificial) in all working areas to reduce eyestrain and risk of accidents in the workplace from darkness or glare.

#### 6.6 Sanitation

(FA Sec.'s 13-14, 21, 44; ShE Sec.24)

Shops and establishments shall be kept clean, free from any odor and waste.

The Factories Act provides more detailed regulations: every enterprise and its compound must be kept clean. Dirt and refuse must be removed daily and production areas must be washed and disinfected at least once per week.

Walls, partitions and ceilings must be cleaned and/or whitewashed every 12 months or repainted every 3 years.

Waste and effluent from manufacturing processes must be disposed of as required by law. Drainage systems must be well-maintained.

Employers must also provide sufficient toilets and washing facilities that are convenient for workers and accessible at all times. Separate toilets and washing areas must be marked for Men or Women and must be well-lighted, ventilated, and clean and sanitary at all times. Toilets must be separated from work areas by an open space or ventilated passageway.

<sup>29</sup> At the time of publication, no official standards had been developed by the FGLLID. It is likely that they will be propagated at a future date. In the meantime, business that are concerned about meeting adequate conditions may ask the FGLLID directly for guidance.

### 6.7 Drinking Water, Eating (FA Sec.'s 20, 48-49)

Employers must provide clean drinking water for workers in stations that are convenient for workers. These stations must be marked "drinking water" and must be at least 20 feet [6 meters] away from washing areas and toilets. Enterprises with more than 250 workers shall provide cool water during hot weather.

Employers with more than 100 workers must provide an eating area and rest area with drinking water facilities. The government may require factories with more than 250 workers to provide a canteen to be overseen by a committee that includes workers' representatives.

### 6.8 Machinery and Dangerous Substances (FA Sec.'s 23, 25, 28, 30-36, 39-40, 104)

Workers may not wilfully interfere with, misuse, or neglect machinery or do anything likely to endanger themselves or others.

Machines in enterprises must be securely fenced, including engines and motors, generators, transmission machinery, and dangerous moving parts such as wheels or spindles on these or any other machines must be encased and marked showing the maximum speed/power at which they can be operated.

Lift enclosures or cages must be constructed so that a person or thing cannot be trapped between the lift and another object. Lifts must also have the maximum allowable weight posted, a gate, and fail-safe features.

Hoists and lifts must be inspected at least once every six months. Other lifting machinery and cranes must be inspected at least once every 12 months and maximum allowable weights must be posted and enforced by the employer.

Any plant, tank or vessel which contains, or has contained, any explosive or inflammable substance shall not be subjected in any factory to any welding, brazing, soldering or cutting operation involving the application of heat unless adequate measures have been taken to remove such substance and fumes arising there from, or to render such substance and fumes non-explosive or non-inflammable, and unless a competent examiner has conducted a test and issued a written certificate certifying that the plant, tank, or vessel is free from explosive or inflammable vapour.

### 6.9 Infirmary and First Aid (FA Sec. 47; ShE Sec.24)

All shops and establishments shall have first aid kit containing adequate medicines.

Under the Factories Act, every factory with more than 250 workers must provide a first aid room or dispensary supervised by a medical officer and nursing staff.

Every factory must provide and maintain boxes with first aid materials. Factories with 150 - 250 workers will provide two boxes, and an additional first aid box for every additional 100 workers will be provided in larger enterprises. The boxes must be overseen during working hours by a trained first-aid worker. Every factory employing more than 250 workers shall provide and maintain a clinic.

### 6.10 Special Safeguards against Dangerous Operations (FA Sec.52)

Where the Director General of FGLID is of the opinion that any operation carried on in a factory is likely to expose employees therein to risk of bodily injury, poisoning or disease, the DG may make rules, among others, to:

- Specify such operation and declare it to be dangerous;
- Prohibit or restrict the employment of women, adolescents or children in such operation;
- Provide for periodical medical examination of employees, current and prospective, and prohibit the employment of persons not certified as fit for such employment;
- Provide for the protection of all employed persons in such operation or in its vice.

#### 6.11 Women Workers' Health and Maternity Protection (FA Sec.'s 24, 29, 36, 50)

Women may not be assigned tasks that require them to clean, lubricate, or adjust any moving part of machinery while it is in motion, or to work between moving parts or moving and fixed parts of any machine that is in motion.

Women may not be assigned to work in the same area as a cotton opener, unless the feed end of the machinery is separated from the delivery end by a partition.

Women are not permitted to lift, carry, or move any load heavy enough to cause injury. No specific upper limit on this requirement has been set.

Women workers who are unable to work during their menstruation may notify their employers to that effect, with medical certificate issued by a registered doctor, and the employers shall make necessary arrangements for them.

The pregnant women 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.

#### 6.12 Reporting and Investigation of Workplace Accidents and Diseases (FA Sec.'s 53-56; SSL Sec.'s 53-54)

Employers must report deaths from workplace accidents or injuries that prevent workers from working for 48 hours or more to the Office of the Director General of FGLLID. Where a worker contracts certain diseases as specified in the Workmen's Compensation Act,<sup>30</sup> the manager of the factory shall submit notice thereof to the Chief Inspector and to the certifying surgeon.

The employer must also immediately report any occupational accident involving insured workers to the Social Security Township office.

The President may appoint a competent person to investigate causes of accidents or diseases among workers, and he/she shall have all the powers of a Civil Court under the Code of Civil Procedures as well as an Inspector under the FA.

An inspector/director of investigation may take samples and investigate any substance used in the factory. The Inspector will leave part of the sample with the employer and keep all analysis of the sample confidential.

The officials will report their findings to the relevant Social Security Township office.

Compensation for injury and sickness is provided in detail in the next Chapter.

<sup>30</sup> Such as anthrax, lead poisoning and several other types of poisoning, epitheliomatous cancer or ulceration, etc. See SCHEDULE III of the WCA for more information.

## 7. SOCIAL SECURITY AND COMPENSATION FOR INJURY AND ILLNESS

### 7.1 Social Security Coverage for Workers and Employers

(SSL Sec.'s 11-12, 49, 89)

All companies with five workers or more must register with the Social Security Township Office of the Social Security Board within 30 days of the start of business, and must pay regular contributions in order to protect workers in case of sickness, maternity, death or work injury. Additionally, the law provides for other guarantees – i.e. unemployment and pension - that have not yet been implemented at the time of publication.

Workers who are employed permanently or temporary and apprentices must be mandatorily registered. All sectors are required to participate in the Social Security programme with the exception of the following sectors, which can participate voluntarily:

- Government departments and organizations (non-business)
- International organizations, embassies or consulates of foreign governments
- Seasonal farming and fishery
- Establishments which carry out business only for a period of less than 3 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 (SSL Sec.'s 2, 15, 17-18)

Where enterprise must or has registered with the social security board, both the employer and the workers make mandatory contributions to the Social Security Fund.

Employers must withhold workers' contributions from workers' pay.

Benefit name	Contribution level
<ul style="list-style-type: none"> <li>• Medical care</li> <li>• Funeral grant</li> <li>• Sickness cash benefit</li> <li>• Maternity cash benefit</li> <li>• Paternity cash benefit</li> </ul>	<p>“Health and Social Care Fund”</p> <ul style="list-style-type: none"> <li>• If the insured person is less than 60 years old at registration: Worker: 2%. Employer: 2%.</li> <li>• If the insured person is 60 years old or older at registration: Worker: 2.5%. Employer: 2.5%.</li> </ul>
Work injury	<p>“Employment injury Fund”</p> <p>Employer: 1%.</p> <p>Can go up to 1.5% as a sanction in case of repeated work injuries (threshold defined in the rules, art. 58).</p>

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” (SSL, Sec.2(j)).:

A wage calculation does not include (PWA Sec.2)<sup>31</sup>:

<sup>31</sup> The FGLLID has confirmed to the ILO that the meaning of the wages in the Payment of Wages Act, Minimum Wages Act and the Social Security Law are the same.

- 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.

### 7.3 Compensation for Injury and Illness (SSL Sec's 53-54; WCA Sec.3, 11)

Compensation for workplace injury and illness is regulated under the Social Security Law and the Workmen's Compensation Act. The SSL applies to all companies with five workers or more, and employers shall pay for medical treatment for workplace injuries caused by employers' failure to keep occupational safety plans and protections, omissions of the employer, or criminal action.

In order to be compensated, the injured worker, or his/her family in case of death of the worker, can submit his case to the township committee on workmen compensation (under the MOLIP). The committee reviews the case, investigates the injury and establishes the amount the employer must pay in compensation of the work injury or illness.

Workers insured under the SSL are also entitled to several types of cash benefits during the 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 (1923). In case of accidents, employers shall offer free medical examination to workers. Employers are also liable to pay

compensation to workers for personal 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 having been under the influence of drink or drugs, or worker's wilful disobedience of the safety rules and orders of the employer, or worker's wilful removal or disregard of safety guard or other device which he/she knew to have been provided for the purpose of securing his/her safety. In order to be compensated, the injured worker, or his/her family in case of death of the worker, can submit his case to the Commissioner for Workmen's Compensation appointed by the President in localities, and the Commissioner reviews the case and decides the amount the employer must pay in compensation of the work injury or illness. In the case of death of a worker, for instance, compensation shall be a sum equal to 36 times the worker's monthly wages.

### 7.4 Appealing Decisions of the Social Security Board (SSL Sec.'s 89-91)

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 Social Security Board.

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 Social Security Board, including summaries of qualification periods, benefit formulas, and duration of benefits. The table is not comprehensive and readers should consult Social Security Township offices and regulations for details. The Social Security Law (2012) includes other schemes, i.e. unemployment and pension that are not yet active (as of June 2016).

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 Social Security clinics and hospitals. Reimbursement of care in other public hospitals under referral.	Up to 26 weeks
Sickness	6 months work 4 months contribution	Cash benefit at 60% of wages. (previous 4 months average)	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 66.67% of the average wage (over the previous 12 months). Additional bonus of 50%, 75% or 100% of the average wage at the time of delivery depending on the number of babies (1, 2 or 3).	Up to 14 weeks
Paternity (SSL Sec. 28)	12 months work 6 months contribution	Cash benefit for leave at 66.67% 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.	Funeral allowance benefit = average monthly wages or income in the past 4 months x (number of contributed months/18)+1.	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 66.67% of monthly average wage (previous 4 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 66.67% of monthly average wage (previous 4 months).	Varies by level of disability decided by the Medical Board
Work injury – Survivor's benefit (SSL Sec.62)	Death of the worker due to a work accident / disease. At least 2 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.	Lump sum

### 7.6 Maternity benefits and child care (LHA amendment Sec.7; SSL Sec.'s 25-77; FA Sec.50)

Under the Leave and Holiday 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 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 SS 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.

Note: Paid maternity leave in the above contexts is calculated on the basis of 66.67% (or 70%) of the average monthly wages earned over the past 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:

- 70% of one year's average wages during maternity leave
- a lump sum bonus equivalent to 50% (for a single child), 75% (for twins), or 100% (triplets or more) of the average monthly wage upon delivery.

Males registered under social security are granted 15 days of leave for infant care at 70% of their average wages 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 6 years old, the Ministry concerned must provide a day-care center with the assistance of the employers. 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. The Labour Minister may prescribe detailed rules for such day-care centers, including the methods of accommodation, furniture and other equipment, suitable provision of facilities for washing and changing the clothing of children, provision of free milk or refreshment or both for the children or provision of facilities for the mothers to feed their children at necessary intervals.

## 8. TERMINATION OF EMPLOYMENT

### 8.1 Advance notice and reason for termination (ESD Sec.5 and ESD Rule 14 [Rule not in force])

An employment contract must include provisions on resigning and termination of service as well as termination of agreement. If an employee desires to resign from the job, he or she shall inform the employer 30 days in advance with sound reason. If an employer desires to terminate the employment, he or she shall inform the employee 30 days in advance with sound reason. If an agreement is made between an employer and a worker on the termination of their employment, they shall inform the relevant employment and labour exchange office 30 days in advance.

### 8.2 Prohibited reasons for termination (LOL Sec.44)

As provided above, termination of employment requires a sound reason. Moreover, it is prohibited for an employer to dismiss a worker for the following reasons:

- for opposing an illegal lock-out<sup>32</sup>;
- for membership in a labour organization for the exercise of organizational activities or participating in a strike in accordance with the law.

### 8.3 Severance pay (ESD Sec.5; ESD Notification No.84/2015<sup>33</sup>)

When a worker is terminated from employment, the employer must pay severance on the basis of his or her last salary (without overtime premium) as follows:

Duration of continuous employment		Severance payment rate
From at least (years, unless specified)	To less than (in years)	(in months' salary, based on last salary)
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

### 8.4 Summary dismissals and disciplinary dismissals (ESD Rules sec's 20 – 22 [Rules not in force]; SLDL Rules sec's 2, 26)

Employer has the right to dismiss an employee without having to pay severance if the employee is convicted of the following crimes:

- Theft
- Intentionally destroying the properties of the employer
- Bringing arms and explosive materials to the workplace without permission
- Intoxicating, unruliness, fighting or seriously harming or physically abusing someone in the workplace
- Moral infringement
- Bribery

<sup>32</sup> "Lock-out" 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 (LOL Sec.2(f)).

<sup>33</sup> Notification No.84/2015 dated July 3, 2015.

- Violation of the regulations concerning the explosive areas of the worksites
- Gambling in the workplace
- Being absent for three consecutive days without taking leave

Employer also has the right to dismiss an employee in cases where an employee is found, in accordance with the workplace disciplinary procedures, to have violated the workplace regulations which have been known to him/her. For the first violation, the employer can make the verbal warrant and keep a record of it. If the worker violates the regulations for the second time, then the employer can issue a written warrant. For the third violation, the employer can issue a severer warrant 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.<sup>34</sup>

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.

## 8.5 Unlawful termination

(ESD Rules sec.23 [Rules not in force])

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.

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<sup>34</sup> It is not clear from section 22 whether the worker should violate the same regulation four times to be dismissed, or whether the worker violates any regulations for four times.

## 9. LABOUR INSPECTION

### 9.1 Registering and Licensing Enterprises

(FA Sec.'s 6, 8)

Enterprises must be registered and licensed by the Ministry of Labour, Immigration and Population (MOLIP).

At least 15 days before beginning operations, employers must submit the following information to the Chief Inspector:

- Name and address in full of the employer, business, or company;
- Communications address (phone number, fax number and e-mail address);
- Nature of the business or manufacturing process;
- Kind of trade, load power of electricity and machine power to be used;
- Name of the relevant manager;
- Number of workers likely to be employed in the factory;
- Notice of period of work (referred to as the NPW), which must then be displayed in a highly visible area in the workplace;
- Notice of the occupier (or owner), if different from manager.

Enterprises that operate for less than 180 days per year must notify the Chief Inspector at least 30 days before work begins.

Enterprise owners must submit plans for enterprise sites, construction, and expansion to the Chief Inspector for approval. If the Ministry does not respond to plans within three months, the plans are approved. Rejection by the Chief Inspector of plans may be appealed to the MOLIP within 60 days.

Enterprises that intend to close or suspend operations must notify the Chief Inspector one month before work stops, or as early as possible. Another 15-day notice must be submitted before resuming operations.

### 9.2 Inspection Powers

(FA Sec.'s 10-11)

Inspectors have the power to enter and examine the premises, machinery, and documents of any enterprise, including the records concerning wages, overtime, payroll, deductions, and may at any time inspect for signs of illegal child labour. Inspectors may take and record statements, though no one may be compelled provide information that may incriminate him/herself.

### 9.3 Enforcing Health and Safety Standards

(FA Sec.'s 15, 18, 38-42, 52-56, 99)

Listed here are some of the powers belonging to government inspectors under the Factories Act for protecting and improving worker health and safety:

- Prohibit the use of enterprises or parts of enterprises if danger to human safety is imminent;
- Require employers to make plans, carry out safety tests, and/or make changes on a deadline if any part of an enterprise creates a danger to human life or safety;
- Prohibit work in a chamber, tank, or confined space until certified as free from dangerous fumes and is fit for use by people;
- Restrict the use of any specified materials or processes;
- Prohibit or restrict the employment of young women and young workers in enterprises or classes of enterprises determined to be dangerous;
- Certify repairs or alterations to machines or containers with explosive or flammable materials;
- Require employers to display additional information for workers relating to their health, safety, and welfare including the maximum number of workers allowed in each area;
- Require periodic medical examination of workers involved in dangerous work;

- Investigate causes of accidents or diseases among workers, and take samples of any substance used in the factory, keeping results confidential;
- Report findings to the relevant Social Security township office.

#### 9.4 Enforcing Wage and Compensation Standards

Listed here are some of the powers belonging to government inspectors under the Minimum Wage Law (2013) for enforcing wage and compensation standards:

- Enter and inspect any workplace in order to determine that it complies with the law;
- Review and copy all payroll, lists of workers, schedules and other wage documents relating to workers at the workplace;
- Review and copy all payroll, lists of workers, schedules and other wage documents relating to outside contract workers from other employers;
- Require employers to post an easy-to-see notice showing wage rates for workers in the enterprise, pay days, and processes for fines against workers and deductions from pay;
- Set averages, in consultation with employer and worker representatives, for piece-rate workers in order to calculate their overtime pay.

Inspectors must report their wage findings to the relevant Ministry department, and the department shares the findings with the relevant Wage Committee.

Employers face imprisonment of up to one year and/or fines if convicted of making false records or deceitful reports in their payroll documents.

## 10. WORKER AND EMPLOYER ORGANIZATION

### 10.1 Right to Join Labour Organizations (LOL Preamble, Sec.'s 2-3, 49)

The purpose of the Labour Organization Law is to:

- Protect the rights of workers;
- Promote good relations among workers and between the employer and workers;
- Enable workers to form and administer labour organizations systematically and independently.

The law applies to workers in these sectors and enterprises, both private and state-owned:

- 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 armed organizations under 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 to normal, lawful efforts to convince workers as part of an organizing campaign.

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

### 10.2 Right to Form Labour Organizations and Employer Organizations (Constitution 354, LOL Sec.'s 4-6, 8)

The 2008 Constitution affirms the right of every citizen to form associations and organizations.

Basic Labour Organizations may be formed by a minimum of 30 workers in a workplace (factory, workshop, establishment, construction business, transportation business, service business, or other vocation work).

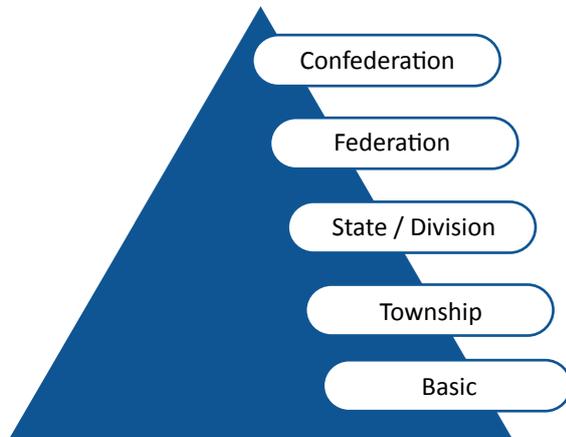
If there are less than 30 workers in a particular workplace as listed above, workers may form a basic labour organization together with workers from another workplace within that sector and region. In such a case, 10% of all of the workers in workplaces seeking to form a basic labour organization together 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 Basic Labour Organizations 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 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.

### 10.3 Rights and Responsibilities of Labour Organizations

(LOL Sec.'s 17-23, 30; SLDL Sec. 2(l-m))

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<sup>35</sup> 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;<sup>36</sup>
- 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;
- Send representatives to the Conciliation Body and Tribunals in disputes between employers and the workers.

<sup>35</sup> Collective Bargaining means the negotiation and conclusion of collective agreements by employers or employer organizations and Labour Organizations. The written collective agreement between the two parties can determine terms and conditions of employment, recognition of Labour Organizations, labour relations, measures for preventing and settling disputes, and protections for workers against social risks.

<sup>36</sup> There are no further provisions in the laws for dismissal, re-appointment procedures nor payments.

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.

#### 10.4 Responsibilities of Employers (LOL Sec.'s 29, 31)

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 agreed otherwise between the parties.

The Government may also assist Labour Organization but the right of Labour Organizations to carry out their legal activities shall be respected.

#### 10.5 Executive Committees (LOL Sec.'s 7, 16, 50)

No one may interfere with or obstruct the legal activities of Labour Organization Executive Committees.

Executive Committees shall have odd numbers of members, and they shall be elected. Basic Organizations shall have 5 or more (but always an odd number) members; Townships, Region/State, 7 - 15 members; and Labour Confederations, 15 - 35 members.

The Executive Committee's duties include:

- Representing the workers;
- Protecting the rights and interests of the workers;
- Understanding the functions and duties of the workers;
- Providing skill training to improve productivity;
- Support members on housing, welfare, cooperatives and other issues.

#### 10.6 Labour Organization Membership Dues and Use of Funds (LOL Sec.'s 14, 24-28)

Monthly membership dues paid by workers to a Labour Organization cannot be more than two percent (2%) of the member's monthly wages. Basic Labour Organizations 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.<sup>37</sup> In practice, union membership dues are often fixed and do not fluctuate according to monthly wages.

<sup>37</sup> 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."

Labour Organizations may create their own funds for admission fees, monthly membership dues, income from Labour Organization cultural or sport activities, donations from employers, grants from the Government.

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 show 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).

### 10.7 Registration of Labour Organizations (LOL Sec.'s 10-12, 15, 32)

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;

- 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/State Labour Organizations must submit constitutions and letters from founding members (Basic) 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 split apart again) if their rules permit it and a majority of their Executive Committees approves. Labour Organizations must apply to the Township Registrar when merging or separating.

Labour Organizations should be registered, or provided with precise reasons for which their registrations were rejected, within 60 days from receipt of the original application.

### 10.8 Powers and Duties of Registrars (LOL Sec.'s 32, 36)

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 Labour Organizations' 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 ten percent (10%) of the Labour Organization.

### 10.9 Non-registration and De-registration Decisions (LOL Sec.'s 33-35)

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.

## **11. WORKPLACE COORDINATING COMMITTEES (SLDL Sec.'s 3-5, 8)**

Employers with 30 or more workers must form a Workplace Coordinating Committee (WCC), which is intended to promote the 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.

If the workers have formed a Labour Organization or Organizations, each workplace Labour Organization may appoint two representatives, and the employer chooses an equal number of representatives. (e.g. Two Labour Organizations choose four representatives total, and the employer chooses four representatives).

If there is no Labour Organization, workers independently elect two representatives to the WCC and the employer chooses two 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 one year and each side fills vacancies if members leave the Committee.

## 12. DISPUTE RESOLUTION

### 12.1 Purpose of the Labour Dispute Law and System

The Labour Dispute Law aims to safeguard the rights of workers through good relationships between employers and workers, and to make workplaces peaceful by settling disputes between employers and worker justly.

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

- Factories, workshops, establishments and their production businesses;
- Agriculture;
- Construction and renovation;
- Industries;
- Services and vocational works (which include domestic work);
- Government departments and government organizations.

Workers include daily wage earners, temporary workers, apprentices, agricultural workers, domestic workers, and government employees as well as workers dismissed or terminated during disputes.

However, military and Defence Services personnel as well as members of the Myanmar Police Force are not included.

### 12.2 Types of Labour Disputes (SLDL Sec. 2)

**Labour disputes** are disagreements between workers or Labour Organizations and one or more employers or their organizations concerning workplace issues such as employment, working, termination(s), all forms of compensation and benefits, health and safety issues, injuries, accidents or deaths as well as leave and holiday issues.

**Labour disputes** can take the form of either **collective disputes** or **individual disputes**. **Labour disputes** can be over **rights** or **interests**.

**Individual disputes** occur between an individual worker and his or her employer. These are generally considered **rights disputes** because they arise from existing entitlements (or “**rights**”) enshrined in laws or regulations, a collective agreement, or through an employment contract.

**Collective disputes** are disputes between an employer (or employers’ organizations) and workers or Labour Organization(s) over issues such as working conditions, recognition of their organizations within the workplace, the exercise of the recognized rights of their organizations, or relations between employer and workers. These disputes can include **rights disputes**, or, they can be **interest disputes**, which centre around rights and obligations that have not yet been agreed. This could take the form of an impasse in negotiations over a new collective agreement or new terms in employment contracts.

### 12.3 Workplace Grievances (SLDL Sec.’s 6-7)



(Dispute settlement procedures for individual disputes)



(Dispute settlement procedures for collective disputes)

Workplace grievances by workers, Labour Organizations or employers can be submitted to the WCCs and must be settled within five days. Alternatively, grievance procedures may be developed through collective bargaining.

Grievances in workplaces with less than 30 workers are submitted to the employer to be settled within five days.

In both cases, reports on grievances are sent to the relevant Conciliation Body.

#### 12.4 Conciliation Bodies and Process (SLDL Sec.'s 9-11, 14-15, 23-26)

Collective and individual disputes that cannot be settled at the workplace may be sent by workers or employers to the relevant Conciliation Body. Individual disputes and rights disputes from workers or employers can be appealed to the Conciliation Body.

Township Conciliation Bodies (created by Regional/State governments) have eleven members who serve for two years:

- One chairperson, assigned by the Department of General Administrations from the Ministry of Internal Affairs;
- Three employer representatives;
- Three worker or labour organization representatives;
- One Township official (typically, this position is filled by the FGLLID; however, in regions where a Department of Labour Relations office is present, the position is filled by the DLR representative);
- Two representatives acceptable to both labour organizations and employer organizations
- One Ministry official (assigned by the department of labour);

Employers and Labour Organizations name their representative to the Conciliation Body. Workers elect the representatives where there is no Labour Organization. Each side fills vacancies if members leave.

Special Conciliation Bodies for SEZs are created in the same way.

The Conciliation Body endeavors to bring the parties to agreement in both individual and collective disputes. Individual disputes that cannot be resolved can be appealed to the appropriate court.

In the case of collective disputes, the Conciliation Body has three days to seek an agreement between the parties. If an agreement cannot be concluded within three days (time limits for all conciliation and arbitration processed do not include official holidays), then the Conciliation Body gives the case file and a detailed report on unresolved issues to the relevant Arbitration Body within two days.

#### 12.5 Arbitration Bodies and Processes (SLDL Sec.'s 16-22)

**Regional or State Arbitration Bodies** (created by the MOL) also have 11 members who serve for two years:

- Three nominees from employer organizations;
- Three nominees from Labour Organizations;
- Two accepted by both employers and Labour Organizations;
- Three Regional or State and Ministry officials.

Each side fills vacancies if members leave.

When disputes are brought to the Arbitration Body, the branch-bodies shall be formed consisting of three members including a person selected from the nomination list submitted by the employers' organizations, and a person selected from the nomination list submitted by the workers' organizations.

The Arbitration Body must rule on collective disputes within seven days of receiving the case and the ruling must be delivered to the parties within two more days.

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 ruling, except for a ruling in respect of essential services, it can carry out a lock-out or strike in accord with the law, or the parties can appeal the ruling to the national Arbitration Council within seven days.

The **Arbitration Council** includes 15 members who are legal experts and labour affairs experts, and serve for two years:

- Five selected by the Ministry;
- Five from a list submitted by employer organizations
- Five from a list submitted by Labour Organizations.

The Arbitration Council has a duty to be independent and impartial and to make decisions based on the principles of social justice, decent work, and equity. The Council also establishes working methods, procedures and programmes for all arbitration bodies. No charges shall be collected from the parties in respect of the processes of negotiation, conciliation and arbitration of the dispute.

When disputes are brought to the Arbitration Council, a 3-member Arbitral Tribunal is selected from the Council: the employer makes one selection, the labour organization makes one selection, and those two arbitrators select a third. This panel hears the dispute and must rule on the dispute within 14 days (seven days for disputes concerning essential services) and deliver its ruling to the parties within two more days.

Arbitration Tribunals rulings are effective from the day of the decision.

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).

The parties can agree together to amend the terms of the arbitration ruling after three months. If the parties do not agree, they may appeal to the Supreme Court for a writ of cert so they may take their dispute to court, which must be issued within two years.

## 12.6 Responsibilities and Limits During Disputes (SLDL Sec.'s 38-48, 51-57)

During disputes employers must:

- Negotiate on the issue in dispute within the time limit required by the law (unless there is sufficient cause to refuse negotiation);
- Not make changes to the conditions of employment for workers involved in the dispute.

During disputes both parties may not:

- Conduct a lock-out or strike without following the dispute settlement resolutions process (negotiation, conciliation, and the first arbitration by the regional/state Arbitration Body)
- Conduct a lock-out or strike to change the terms of an existing arbitration ruling or collective agreement while they remain in force;
- Prevent workers from working if they do not join a strike;
- Interfere with the right of workers to participate in a strike;
- Violate the terms of a conciliation agreement for collective or individual disputes;
- Refuse access for Arbitration Body or Tribunal members who wish to examine the enterprise(s) or documents involved in the dispute. (This includes confidential documents or property);
- Refuse to appear as an arbitration witness (or send a legal representative) when called.

Parties convicted of violating these requirements can be punished with fines.

During conciliation and arbitration, either party can take the dispute to court.

A strike suspends temporarily the employment contract, and employers are not required to pay wages and allowances to workers during the period of a strike.

## 13. STRIKES AND LOCK-OUTS

### 13.1 Strikes and Lock-Outs

(LOL Sec.'s 2, 44; SLDL Sec.'s 2, 28, 40-42, 54)

**Strikes** are collective actions taken by decision of some or all workers to suspend work, refuse to continue to work, or slow down their work or limit production when the employers and workers are engaged in a dispute over social or occupational issues.

Workers have the right to stop work and remove themselves when they believe that a work situation puts them in danger, and this is not considered to be a strike.

**Lock-outs** are temporary closings 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.

Employers may not dismiss workers who oppose an illegal lock-out or workers who participate in organizing activities or legal strikes.

### 13.2 Responsibilities and Limits During Strikes and Lock-Outs

(LOL Sec.'s. 37-43, 45-47, 50; SLDL Sec.'s 42, 54)

Labour Organizations may not strike and employers may not lock out workers during the three steps in the dispute settlement process: Grievance, Conciliation, and presence before the Arbitration Body. Strikes or lock-outs may occur only after the Arbitration Body has issued its decision.

Labour Organizations must notify the employer and Conciliation Body at least three days before a planned strike, mentioning the date, place, number of participants, manner and the time of strike. A strike requires the permission of the Labour Organization's Federation, and the Federation must respond to the Labour Organization's request in time.<sup>38</sup>

No person shall prohibit the right to work independently of the workers who are not desirous to participate in the strike nor impede the right of a worker to strike.

A strike suspends temporarily the employment contract, and employers are not required to pay wages and allowances to workers during the period of a strike.

Employers that plan to lock out workers must notify the Township Labour Organization and Conciliation Body at least 14 days before the planned lock-out. The employer's application to lock out must include the planned starting date and the length of the lock-out. The Conciliation Body will reply in time to the employer to grant or refuse permission to lock out workers.

Lock-outs and strikes are illegal if they are **not**:

- Announced in advance as required by the law;
- Related to wages, welfare, working hours, or other work issues;
- Permitted by the Conciliation Body (lock-outs) or Labour Federation (strikes);
- Conducted according to the plan (date, place, time, length, number of participants).

<sup>38</sup> In relation to this clause in the Law, the ILO Committee of Experts on the Application of Conventions and Recommendations has stated, "The Committee further observes with concern that section 40(b) appears to enable the exercise of strike action only following the approval from "the relevant labour federation". The Committee considers that the right to strike should not be subjected to legislative restrictions which would place the authority to permit strike action with higher-level workers' organizations regardless of the rules of the organizations concerned or the affiliation of the lower-level organization."

### 13.3 Strikes and Lock-Outs in Public Utility Services (LOL Sec.'s 2, 37-43)

**Strikes in public utility services** need the support of a majority of a Labour Organization's members, and the Labour Organization must notify the employer and the Conciliation Body of the strike at least 7 days before the planned strike. The strike notification must include date, time, place, number of participants, and the manner of the planned strike.

Public utility services mean the following businesses and services:

- Transportation;
- Port and port cargo handling;
- Postal, and information and communication technology;
- Petroleum and petroleum products distribution;
- Sanitation;
- Production, transmission and distribution of electricity or fuel energy to the public;
- Public financial services.

Labour Organizations and employers must negotiate and decide on the minimum level of service from workers including which posts need to be filled during strikes in public utility services. The minimum level of service should meet the basic needs of the public and protect the right of the workers to strike. If Labour Organizations and employers fail to reach agreement, the court will decide on the minimum level of service.

Employers in public utilities that plan to lock out workers must notify the Township Labour Organization and Conciliation Body at least 14 days before the planned lock-out. The employer's application to lock out must include the planned starting date and the length of the lock-out. The Conciliation Body will reply in time to the employer to grant or refuse permission to lock out workers

### 13.4 Lock-outs or strikes in essential services

Lock-outs or strikes in essential services are illegal and are prohibited. These services include water, electricity, fire, health, and telecommunications. However, labour disputes in essential services are subject to binding arbitration by the Arbitration Council, should either party request.

### 13.5 Conduct of demonstrations

Demonstrations cannot be within 500 yards of hospitals, schools, religious buildings, airports, railways, bus terminals, ports, diplomatic missions, police stations, or military bases. Anyone committing violence against others, causing damage to property, or infringing seriously on the rights of others will be punished under the relevant law.

The provisions of the Peaceful Assembly and Peaceful Protest Law do not apply to labour disputes.

## 14. CHILD LABOUR AND YOUNG WORKERS

### 14.1 Age Restrictions

(Child Law Sec. 24; ShE Sec. 13; FA Sec.'s 75-78)

The Child Law states that children have the right to engage voluntarily in work allowed by law, including the special rights provided in respect of hours of employment, rest, and leisure.

However, no one under 14 years old may be employed, and all workers under 18 years old ('young workers' or 'young people') may only work if a certificate of fitness for work is granted by a certifying surgeon/medical practitioner and if the certificate is kept in the custody of the manager of the factory.

All young workers must carry a token certifying his/her fitness for work while working.

Employers must keep a register of all young workers (under 18 years old) in the enterprise that includes:

- Name of worker and names of parents;
- Type of work and group;
- Shift;
- Number of his/her certificate of fitness.

### 14.2 Medical Requirements

(FA Sec.'s 68, 77, 81; ShE Sec.14)

Young people (under 18 years old) who wish to work must be examined by a certifying surgeon. The doctor may issue a certificate of fitness if she/he is satisfied that the young person is at least 14 years old and is capable of production/factory work.

The certificate is valid for 12 months and the doctor can limit the types of work the young person may do. A medical doctor who refuses to issue (or reissue) a certificate of fitness must state in writing the reasons for refusal. Fees for a certificate of fitness are paid by the employer, not the worker or parents.

### 14.3 Limits and Prohibitions on Work Done by Children

(FA Sec.'s 24-25, 29, 59-60, 75; ShE Sec.'s.13-14, 18; LHA Sec. 4; PWA Sec.'s.7-10)

Wages of children shall not be deducted just like adult workers, except for the unearned or unauthorized absence from work (e.g. annual leave, sick leave, or other entitlements). Additionally, wages of children under 16 years shall not be deducted as fines.

Workers under fifteen years old are entitled to 14 days of consecutive earned annual leave as opposed to 10 days for older workers.

In factories, no children 14-15 years of age may work more than four hours in any day (five hours maximum if breaks are included). They may not work between 6 p.m. and 6 a.m.

No child shall be required to work in the worst forms of labour including in hazardous conditions, conditions harmful to his/her health, conditions deterring his/her education and in such a way his/her moral and dignity would be affected. They shall not be assigned to work in the same area as a cotton opener, unless the feed end of the machinery is separated from the delivery end by a partition.

Workers under 18 years old may not use dangerous machinery unless they have received sufficient training or are supervised by experts. They may not lift, carry, or move any load heavy enough to cause injury.

In shops and establishments, working hours for children aged 14 and 15 years of age shall be no more than four hours (five hours maximum if breaks are included). They are not allowed to work between 6 p.m. and 6 a.m. They shall not work overtime hours.

Among the persons aged 16 and 17 years of age, those who have completed the relevant vocational trainings, who know and abide by the directives relating to the occupational safety

and health, and those who are certified by the registered medical practitioner, shall be allowed to work in the trades which are safe and which do not affect the development and moral of such persons. Workers under 18 years old shall not be required or allowed to perform the prescribed dangerous work or in the dangerous workplace.

## 15. FORCED LABOUR<sup>39</sup>

The 2008 Constitution states that forced labour is prohibited except hard labour as a punishment for persons convicted of crimes or labour required in 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.

### 15.1 Violations of Forced Labour Laws (Penal Code Sec. 374; Ward and Village Tract Administration Law, Sec. 27; Anti-Trafficking in Persons Law, Sec. 3)

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/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.

### 15.2 Forms of Forced Labour

Common forms of forced labour in practice in Myanmar relate to both the public and private sectors. These include, but are not limited to:

- 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 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.

<sup>39</sup> As Myanmar is a member of the ILO and a signatory of Convention 29, it is obliged to ensure that its legal framework is in line with ILO labour standards in outlawing the use 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, the ILO was moved to take extraordinary measures to ensure Myanmar came back in line with its obligations. In 1997 a commission of inquiry led to ILO enforcing Article 33 of its Constitution in 2000 to call for sanctions on investments in Myanmar that could lead to the use of forced labour. In 2002, an agreement (The Understanding) 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 practices. Subsequent joint efforts ensured that the government brought its legal framework in line with ILO standards, 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.

### 15.3 Forced Overtime as Forced Labour (FA Sec.'s 59-60, 64; ShE Sec.11)

Total work hours are 44 - 48 per week (see Chapter 4.1 in this guide).

Mandatory overtime is not forced labour as long as 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 violate protections against forced labour.<sup>40</sup>

In addition, the ILO Committee of Experts on the Application of Conventions and Recommendations says this about overtime work: "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."<sup>41</sup>

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<sup>40</sup> 40 General Survey concerning the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), 2007, para 132.

<sup>41</sup> *Ibid.*

## 16. FOREIGNERS WORKING IN MYANMAR

### 16.1 General Rules

In principle, the employment and working conditions of foreign workers who are employed in Myanmar are governed under the general labour laws of Myanmar, except for those workers to whom special laws may apply, including diplomatic and consular officers and United Nations personnel. In the case where a foreign company sends its employees to work in its child company established in Myanmar under the employment contract concluded between them in the home country, they may be bound by the contract laws of the home country, unless regulated otherwise. It is recommended that foreign employers and their workers check the laws of their home countries in this regard.

At the time of publication of this Guide, the Alien Workers Bill was being drafted, and it might have some implications on the employment and working conditions of foreign workers

### 16.2 Permits for Foreign Workers (FIL Sec. 24-25; FIR Sec's 87-88)

Foreign employees of enterprises covered by the Foreign Investment Law (FIL) must apply to the MOLIP with a recommendation of the Myanmar Investment Commission (MIC) for work permits<sup>42</sup> and apply to the MIC for local residence permits. Permits for foreign workers working in SEZs are governed under the SEZ Law. See the next Chapter.

### 16.3 Limits on Foreign Workers (FIL Sec. 24)

In the enterprises covered under the FIL, citizens must be at least 25% of skilled workers, technicians, and staff during the first two years of operations. This percentage of citizens must increase to at least 50% in year 2-4, and at least 75% in years 4-6. The Myanmar Investment Commission can extend the timeframes for knowledge-based work.

Skilled Myanmar citizens must be paid at the same level as foreign experts.

### 16.4 ASEAN Economic Community

In 2015, ASEAN<sup>43</sup> Economic Community (ASEAN EC) was established, aimed at deepening the regional economic integration of Southeast Asian countries. ASEAN EC facilitates movement of skilled labour and business visitors through conclusion of Mutual Recognition Arrangements (MRAs).<sup>44</sup> MRAs allow practitioners in the eight professions - doctors, dentists, nurses, engineers, architects, accountants, surveyors and the tourism industry<sup>45</sup> - to practice in other ASEAN Member States, through mutual recognition of their qualifications.<sup>46</sup> It must be noted that MRAs are not expected to override laws of the host country,<sup>47</sup> and therefore the practitioners in these eight professions are still required to obtain work permits and stay permits, and the terms and conditions of their employment are governed under the Myanmar labour laws.

<sup>42</sup> "...according to the Foreign Labor Law" (FIR, Section 87). However, as of June 2016, there was no such Law and the Work Permit system was not operational.

<sup>43</sup> Association of Southeast Asian Nations (ASEAN) consisting of 10 countries in Southeast Asia, namely: Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Philippines, Thailand and Viet Nam.

<sup>44</sup> MRAs enable the qualifications of services suppliers, recognized by the authorities in their home country, to be mutually recognized by other AMS who are signatories to the MRAs.

<sup>45</sup> At the time of publication, MRAs have been concluded in 7 professions other than surveyors.

<sup>46</sup> ...and, where appropriate, through the implementation of the ASEAN Qualifications Reference Framework (AQR), for which referencing by the ASEAN Member States is voluntary, to support lifelong learning and enhance recognition and the ASEAN Agreement on Movement of Natural Persons (MNP)." ASEAN Secretariat, "ASEAN Economic Community Blueprint 2025", Jakarta, November 2015, para.19. Accessed at: <http://www.asean.org/storage/images/2015/November/aec-page/AEC-Blueprint-2025-FINAL.pdf>.

<sup>47</sup> ASEAN Secretariat, "Mutual Recognition Arrangements in Services", Accessed at: <http://www.asean.org/storage/images/2015/October/outreach-document/Edited%20MRA%20Services-2.pdf>.

## 17. SPECIAL ECONOMIC ZONES (SEZs)

Employers and workers in SEZs are equally governed under the general labour laws as we have seen in the previous Chapters in this Guide. However, some exceptions may apply as stipulated in the Special Economic Zones Law (SEZL), and such exceptions are detailed in this Chapter.

### 17.1 Management Committee (SEZL Sec. 70)

In each SEZ, a Management Committee shall be established, and the Committee has the following roles and responsibilities concerning labour matters:

- Supervise the conclusion of employment contracts
- Coordinate the work of determining the rights and duties of the employers and employees and the terms and conditions of employment contained in the employment contracts, so that employees can enjoy the benefits contained in the existing labour laws
- Inspect and supervise so as to preserve the rights of the employees, technicians and staff
- Determine minimum wages
- Negotiate and mediate the labour disputes, as the first step in the overall dispute settlement procedures.

### 17.2 Employment contracts (SEZL Sec.70)

The investor shall, when employing skilled citizen workers, technicians and staff, send to the employees, the employment agreement which has been mutually concluded between the parties in accordance with the existing labour laws and rules.

### 17.3 Minimum wages (SEZL Sec.70; MWA Sec.9(a))

The SEZ Management Committee may determine the minimum wages of employees and staff

according to the nature of the enterprise (i.e., processing raw materials, providing warehousing for goods, importing/exporting, etc.) and must submit their proposals to the National Minimum Wage Committee. The National Committee may then approve or disapprove the proposed minimum wage for that industry or enterprise within the SEZ.

### 17.4 Skills training (SEZL Sec.73)

The investor shall provide necessary trainings in order to improve the skills of the citizen employees and staff, which should be tailored to the types of work for which they are employed.

### 17.5 Dispute settlement (SEZL Sec.76)

The SEZ Management Committees shall negotiate and mediate in the disputes arising between the employer and the employees, technicians or staff. If no settlement is reached, disputes will then be handled by the Conciliation or Arbitration Bodies under the labour laws.

### 17.6 Permits for Foreign Workers (SEZL Sec. 77)

In SEZs, work permits are issued by the labour department representative office at the SEZ's one-stop service department.

### 17.7 Limits on foreign workers (SEZL Sec.75)

Citizens must be at least 25% of skilled workers, technicians, and staff during the first two years of operations. This percentage of citizens must increase to at least 50% in year 2-4, and at least 75% in years 4-6. However, employers may hire a larger percentage of foreign employees for technology and management work with the approval of the SEZ's management committee.

For work which does not require expertise, only citizens shall be employed.

## 17.8 Inspection (SEZL Sec.70)

The SEZ Law requires the Management Committees to inspect and supervise so as to preserve the rights of the employees, technicians and staff. However, this does not mean it replaces the public labour inspection, and labour inspection shall be conducted in SEZs in accordance with the labour laws.

## APPENDIX 1

Most labour legislation referred to in this guide covers all or most workers. However, where a law covers (or excludes) specific types or employers or workers, it is noted in the table below.

Legislation	Covered employers/industries	Covered workers
Employment and Skills Development Law (ESDL)	All businesses owned by the State, cooperative, private or joint venture employing more workers than stipulated <sup>48</sup> , whether permanently or temporary.	All workers employed for wages in the government, government organizations, cooperatives, private or joint venture organizations or companies or in other occupations. Apprentices are also included.
Factories Act (FA)	<ul style="list-style-type: none"> <li>• Manufacturing</li> <li>• Processing (e.g. altering, repairing, ornamenting, finishing, packing, cleaning, breaking up, testing of chemical substances)</li> <li>• Transporting oil and water</li> <li>• Energy (generate, transform, transmit)</li> <li>• Publishing/Printing</li> <li>• Ship-building services</li> <li>• Government-controlled factories</li> </ul>	<ul style="list-style-type: none"> <li>• Manufacturing workers</li> <li>• Maintenance workers (and related tasks)</li> <li>• Supervisor, accountant, clerk, security guard, driver, cleaning worker, cook, odd-job man, gardener and general worker</li> </ul>
Leave and Holidays Act (LHA)	<ul style="list-style-type: none"> <li>• Factories</li> <li>• Railways</li> <li>• Ports</li> <li>• Oilfields</li> <li>• Mines</li> <li>• Shops and establishments</li> <li>• Government-controlled factories.</li> </ul>	<p>Not included:</p> <ul style="list-style-type: none"> <li>• Family members (parents, husband, wife, children, brother/sister) in family enterprises</li> <li>• Domestic workers</li> <li>• Government workers not working in factories (or railways)</li> </ul>
Labour Organization Law (LOL)	<ul style="list-style-type: none"> <li>• Factories and workshops</li> <li>• Establishments and their production businesses</li> <li>• Construction and renovation</li> <li>• Transportation</li> <li>• Services</li> <li>• Government departments and organizations</li> <li>• Other vocational work</li> </ul>	<ul style="list-style-type: none"> <li>• Daily wage earners</li> <li>• Temporary workers,</li> <li>• Agricultural workers</li> <li>• Domestic workers</li> <li>• Government employees</li> <li>• Apprentices</li> <li>• Migrant workers</li> </ul> <p>Not included:</p> <ul style="list-style-type: none"> <li>• Military and Defence Services personnel</li> <li>• Members of Myanmar Police Force</li> </ul>

<sup>48</sup> At the time of publication, it was not possible to identify what is exactly stipulated.

Legislation	Covered employers/industries	Covered workers
Minimum Wages Act (MWA)	<ul style="list-style-type: none"> <li>• Commercial</li> <li>• Production</li> <li>• Services</li> <li>• Agriculture</li> </ul> <p>Minimum wages determined by the National Committee for Minimum Wage shall not apply to small and family-run business employing less than 15 workers.<sup>49</sup></p>	<ul style="list-style-type: none"> <li>• Permanent and temporary workers</li> <li>• Apprentices and trainees,</li> <li>• Clerks and staff</li> <li>• Outsourced workers</li> <li>• House-maids</li> <li>• Drivers, security men and guards</li> <li>• Sanitation workers.</li> </ul> <p>Not included:</p> <ul style="list-style-type: none"> <li>• Civil service personnel</li> <li>• Seafarers</li> <li>• Employers' close relatives and dependents</li> </ul>
Payment of Wages Act (PWA)	<ul style="list-style-type: none"> <li>• Commercial</li> <li>• Production</li> <li>• Services</li> <li>• Agriculture</li> <li>• Livestock breeding</li> </ul>	<ul style="list-style-type: none"> <li>• Permanent, temporary or piece-rate workers</li> <li>• Apprentices and trainees,</li> <li>• Clerks and staff</li> <li>• Outside workers</li> <li>• House-maids</li> <li>• Drivers</li> <li>• Security men</li> <li>• Sanitary workers</li> <li>• Decoration workers</li> <li>• Cooks</li> <li>• Peons</li> <li>• Gardeners</li> <li>• General workers</li> </ul>
Shops and Establishments Act (SHE)	<ul style="list-style-type: none"> <li>• Wholesale or retail sale shops (incl hair dressing, beauty salon, body fitness, goldsmith, radio or television or telephone repairing, book binding or photo printing, pawn, laundry, footwear repairing, photo copy, wrapping and packing material, sawing, tailor, computer and laptop, publishing, consumer electronic products repairing)</li> <li>• Commercial establishment (incl insurance, joint stock, bank or broker, advertising, commission, forwarding or commercial agency, clerical department of factory or of industrial or commercial business,</li> <li>• employment agency, private education institution, private hospital and clinic, hotel and motel and Inn, travel agency, toll fee collection gate</li> <li>• Establishment for public entertainment (incl cinema or theatre or any hall for entertainment, video house, karaoke lounge, game stations with computer and electronic equipment, amusement parks, public garden and park, health fitness center, child playground</li> </ul> <p>Not included:</p> <ul style="list-style-type: none"> <li>• Cottage industry</li> </ul>	<p>Not included:</p> <ul style="list-style-type: none"> <li>• Family members of employer (husband, wife, child, father, mother, brother/sister) who lives with/are dependent</li> </ul>

<sup>49</sup> The Republic of Union of Myanmar National Committee for Minimum Wage Notification no: 2/2015, 28th August 2015.

Legislation	Covered employers/industries	Covered workers
Settlement of Labour Disputes Law (SLDL)	<p>All businesses owned by the State, cooperative, private or joint venture involved in:</p> <ul style="list-style-type: none"> <li>• Trade</li> <li>• Construction</li> <li>• Industry and production</li> <li>• Agriculture</li> <li>• Services</li> <li>• Vocational works</li> </ul>	<ul style="list-style-type: none"> <li>• Daily wage earners</li> <li>• Temporary workers,</li> <li>• Agricultural workers</li> <li>• Domestic workers</li> <li>• Government employees</li> <li>• Apprentices</li> <li>• Workers terminated or dismissed from work during a dispute</li> </ul> <p>Not included:</p> <ul style="list-style-type: none"> <li>• Personnel or armed organizations of the Defence Services</li> <li>• Members of the Myanmar Police Force</li> </ul>
Social Security Law (SSL, 2012)	<p>Mandatory for employers with five or more workers</p> <p>Voluntary for:</p> <ul style="list-style-type: none"> <li>• Government departments and organizations (non-business)</li> <li>• International organizations</li> <li>• Seasonal farming and fisheries</li> <li>• Construction</li> <li>• Non-profit organizations</li> <li>• Domestic work</li> </ul>	<ul style="list-style-type: none"> <li>• Workers in workplaces with five or more employees</li> <li>• Temporary workers and apprentices (paid or unpaid)</li> </ul> <p>Not included:</p> <ul style="list-style-type: none"> <li>• Dependent family members of the employer</li> </ul>
Workmen's Compensation Act (WCA)	<ul style="list-style-type: none"> <li>• All businesses and trades</li> <li>• Owner of any vehicle or vessel, to be used for the purpose of plying for hire</li> </ul>	<ul style="list-style-type: none"> <li>• Any workers who have entered into or work under a contract of service or apprenticeship, verbal or in writing.</li> <li>• Persons engaged in plying for hire with any vehicle or vessel</li> </ul> <p>Not included:</p> <ul style="list-style-type: none"> <li>• Non-manual workers whose monthly wages exceed certain amount</li> <li>• Agricultural workers employed to cultivate crops other than cinchona, rubber, coffee or tea which are grown in specific estates</li> <li>• Casual workers whose employment is unrelated to the employer's trade or business</li> <li>• Members of the naval military or air forces of the Union of Burma</li> <li>• Members of police force</li> <li>• Outworkers</li> <li>• Family members dwelling in the employer's house.</li> </ul>





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