



International
Labour
Organization

Myanmar labour laws and COVID-19

FAQ

Key provisions in Myanmar's labour laws, directives, notifications and other guidance relating to COVID-19

Version 1.0, September 2021

This information note provides a compilation of answers to frequently asked questions related to Myanmar Labour Laws and COVID-19. It does not provide a comprehensive review of possible legal and policy measures.

This information note provides indicative information, is not a substitute for legal advice and cannot be relied upon as legal advice from the International Labour Office.

This information note was produced with funding support from the European Union.

Overview

This information note provides a summary of the legal responsibilities of employers and workers that are relevant to consider when dealing with COVID-19. This document is based English language translations of Myanmar labour laws and directives.

With the widespread transmission of COVID-19 in 2021 including more transmittable strains, more than ever, workplaces need practice measures to eliminate the risk of spread and harm to people in workplaces.

The minimum requirements in a range of subject areas are set out in this document. There are differences in the coverage of each law and therefore, the laws referred to in this document should not be interpreted as being generally applicable to all employers and workers. The table in Annex 1 sets out the coverage of each law and should be read together with each provision.

If workers and employers have negotiated more favourable terms and conditions in a contract, then those provisions would apply.

There may be situations that employers and workers will encounter that are not referred to in Myanmar's labour laws when dealing with COVID-19. Employers are encouraged to work closely with workers organizations and workers discuss issues arising in dealing with COVID-19 and develop workplace solutions together through social dialogue.

Topic	Public holidays, earned leave and sick leave
What are employers' general obligations relating to providing public holidays?	<ul style="list-style-type: none">• An employer shall pay a paid day off with full wages on a public holiday (see s.3(1))• As public holidays are a minimum right under the Act, they cannot be "withdrawn" by the employer.• Any agreement or contract between an employer and employee to less favourable public holidays where it reduces the liability of the employer is null and void (s.9)• <i>Source: Leave and Holidays Act 1951 and Rules 2018</i>
What are workers' general entitlements to earned leave?	<ul style="list-style-type: none">• Ten days earned leave shall provided after 12 months of continuous service¹ (see s.4(1) and (2))• A worker who has less than 12 months service can take proportional leave based on their length of service (see Rule 34)• As this is a minimum right in labour law, an employer cannot suspend or withdraw an employees' right to earned leave. Any agreement or

¹ Provided the employee has worked at least 20 days in every month and forfeits one day of leave for every month in which 20 days are not worked.

Topic	Public holidays, earned leave and sick leave
	<p>contract between an employer and employee to less favourable leave where it reduces the liability of the employer is null and void (s.9)</p> <ul style="list-style-type: none"> • <i>Source: Leave and Holidays Act 1951 and Rules 2018</i>
<p>Can an employer “require” an employee to take all their earned leave and not come to work because of COVID-19?</p>	<ul style="list-style-type: none"> • It appears an employer cannot “require” an employee to take accumulated leave during the COVID-19 outbreak except if it is within the scope of s.4(3) below. • An employer can fix the time earned leave can be taken by an employee within three months of an employee’s 12 month anniversary (s.4(3)). • However, despite the above, an employer and employee can mutually agree that leave is taken at any time during a period of up to three years (s.4(3)). • <i>Source: Leave and Holidays Act 1951 and Rules 2018</i>
<p>Can an employee take leave to care for children at home if schools are closed?</p>	<ul style="list-style-type: none"> • Currently there is no specific leave available for the care of children or other dependents. If a worker needs to stay at home to care for children, they would need to apply for casual leave (a maximum of six days per year)² or negotiate with their employer to use their earned annual leave. • However, employer and employee can negotiate flexible working arrangements or teleworking from home, if the nature of the job permits this kind of work.
<p>What are an employee’s general sick leave entitlements?</p>	<ul style="list-style-type: none"> • An employee with at least six months service, on the production of a medical certificate is entitled to 30 days paid sick leave per year paid for by the employer. • A worker with less than six months service, without Social Security Board insurance, has the right to ask for medical leave without pay (Rule 43). • Any agreement or contract between an employer and employee to less favourable sick leave where it reduces the liability of the employer is null and void (s.9). • <i>Source: Leave and Holidays Act 1951 and Rules 2018</i>
<p>Will a worker be entitled to paid sick leave if they are quarantined?</p>	<ul style="list-style-type: none"> • In 2020 factories and establishments that <u>were registered</u> with the Social Security Board, insured workers who were kept in quarantine for

² See Standard Employment Contract Template (2017)

Topic	Public holidays, earned leave and sick leave
	14 days could apply for 14 days sick leave with cash benefits at 60 percent of their income. ³
<p>What are an employee's leave entitlements if an employee is made redundant or the workplace is permanently or temporarily shut down?</p>	<ul style="list-style-type: none"> • If a workplace is permanently or temporarily⁴ shut down, an employer must pay the employee any earned leave (Rule 50(f)). • If an employee dies, resigns or is discharged by the employer, the employer must pay the employee any earned leave accumulated based on the employee's daily average pay or wages⁵ (see s.4(5) and Rule 41). • Any agreement or contract between an employer and employee to less favourable leave entitlements where it reduces the liability of the employer is null and void (s.9). • <i>Source: Leave and Holidays Act 1951 and Rules 2018</i>

Topic	Payment of wages
<p>What are an employer's obligations relating to the payment of minimum wages during the pandemic?</p>	<ul style="list-style-type: none"> • Employers (with 10 or more workers) who are covered by the Minimum Wage Law 2013⁶ are required to pay a minimum wage 600 Myanmar Kyat per hour or 4,800 Kyat per day.⁷ • Employers and workers can agree to the payment of wages higher than the minimum wage (see s.12(b)) • Any written or oral agreement between an employer and employee that provides for a payment that is less than the minimum wage, is void (see s.28). • <i>Source Minimum Wage Law 2013; Minimum Wage Notification No.1/2018</i>
<p>When are wages to be paid?</p>	<ul style="list-style-type: none"> • An employer is required to pay wages at least monthly for workers in permanent work as follows:

³ See SSB Directive 7/2020 *Instructions to be followed by factories, workplaces and establishments regarding Coronavirus Disease (Covid-19)*.

⁴ There is no definition of what constitutes a temporary shutdown.

⁵ The calculation is based on the daily average of the wages or pay for the days on which he or she had been working in the previous 30 days before the worker was discharged.

⁶ See Annex 1 for coverage of the law. Also note that in Special Economic Zones (SEZs), the management committee formed under the Myanmar Special Economic Zones Law 2014, to manage, administer and supervise the relevant SEZ shall determine the minimum wages for employees (see s.70(d)).

⁷ Notification on Minimum Wage No.2/2018 effective May 14, 2018.

	<ul style="list-style-type: none"> (i) for work places with less than 100 workers, payment shall be made within a day of the expiry of the last wage-period in respect of which wages are payable; (ii) for workplaces with more than 100 workers, the payment of wages shall be made within five days after the expiry of the last day of the wage period in respect of which wages are payable (see s.4(c) Payment of Wages Law 2016) <ul style="list-style-type: none"> • Employers should note there is some difference in the Shops and Establishments Law 2016 which provides that employers shall pay wages to a worker within 7 days after the wage period (see s. 16). • <i>Source: Payment of Wages Law 2016; Shops and Establishments Law 2016)</i>
<p>Can an employer delay the payment of wages due to COVID-19?</p>	<ul style="list-style-type: none"> • If an employer, due to an unexpected extraordinary situation, including a natural disaster, has difficulty in making the payment of wages within the prescribed period under s.4(c), he or she shall seek mutual agreement with the workers concerned and request approval from the Factories and General Labour Laws Inspection Department (FGLLID) of the revised payment date (see s.5). On receiving a proposal from the employer, FGLLID may allow the employer to postpone the day in which wages are paid (see s.6). • If an employer intends to apply under s.5, they must within 7 days before the payment of wages, submit to FGLLID, Form 1, seeking approval for delaying the payment of wages, after negotiating with workers (see Rule 3). • An employer must submit to FGLLID, at the same time as the above, Form 2, to show there is agreement between the employer and workers; relevant Conciliation Committee; or Labour Organization to delay the specified payment time (see Rule 4). • <i>Source: Payment of Wages Law 2016; Payment of Wages Rules, Notification No. 193/2018.</i>

Topic	Termination of employment and redundancy
<p>Can an employer dismiss a worker for refusing to quarantine?</p>	<ul style="list-style-type: none"> • According to the Standard Employment Contract Template (2017), employees are required to comply with instructions from employers concerning occupational safety and health in the enterprise (see s.17(b)(1))

	<ul style="list-style-type: none"> • If a worker refuses to comply with an instruction of the employer that is pursuant to the law (including government directives concerning quarantine) a worker may be liable to dismissal in accordance with procedures under the Standard Employment Contract Template (2017).
<p>What are valid reasons for dismissal?</p>	<ul style="list-style-type: none"> • An employee can be dismissed, or a contract can be terminated, based on a sound reason: <ul style="list-style-type: none"> – relating to the performance of a worker, and following the procedures set out in the Standard Employment Contract Template 2017; or – relating to: the winding up of a factory, workshop, establishment, company or enterprise; suspension of business due to an unforeseeable event; or when an employee dies. • No employer shall dismiss a worker because of his or her membership in a labour organization or for exercising organizational activities or participating a in strike that is in accordance with labour law (see s.44(d) Labour Organization Law 2012).
<p>If an employer is considering laying off or terminating workers for economic reasons, what should an employer do?</p>	<ul style="list-style-type: none"> • If an employer is considering laying off or terminating workers' employment should be carried out in coordination/consultation with the Basic Labour Organization or, if this does not exist in the workplace, then with the Workplace Coordinating Committee. • If a Basic Labour Organization exists, the representative of the Basic Labour Organization and the representative of the Workplace Coordinating Committee must jointly coordinate with the employer with respect to the workforce reductions or employment terminations. • <i>Source: Standard Employment Contract Template (2017)</i>
<p>What are the notice periods that apply if an employer terminates an employee's employment?</p>	<ul style="list-style-type: none"> • If an employer terminates a worker's employment (including redundancy), 30 days' notice is required with a sound reason. See the Standard Employment Contract template (s. 15(b)(3) 2017). • <i>Source: Employment and Skill Development Law 2013; Standard Employment Contract Template (2017)</i>
<p>What are the requirements relating to the payment of wages when an employee is terminated?</p>	<ul style="list-style-type: none"> • When the employment of a worker is terminated, the wages earned by him or her shall be paid within two working days from the date on which his or her employment is terminated (s.4(d)). • <i>Source: Payment of Wages Law 2016</i>

<p>Is an employer required to pay compensation or severance pay if an employee is laid off?</p>	<ul style="list-style-type: none"> If a worker is terminated from employment, the employer must pay severance pay⁸ based of his or her last salary (without overtime premium) as follows: <table border="1" data-bbox="513 331 1370 853"> <thead> <tr> <th colspan="2">Duration of employment</th> <th>Rate of payment (in months' salary based on the last salary)</th> </tr> </thead> <tbody> <tr> <td>From 6 months</td> <td>To 1 year</td> <td>1/2</td> </tr> <tr> <td>From 1 year</td> <td>To 2 years</td> <td>1</td> </tr> <tr> <td>From 2 years</td> <td>To 3 years</td> <td>1.5</td> </tr> <tr> <td>From 3 years</td> <td>To 4 years</td> <td>3</td> </tr> <tr> <td>From 4 years</td> <td>To 6 years</td> <td>4</td> </tr> <tr> <td>From 6 years</td> <td>To 8 years</td> <td>5</td> </tr> <tr> <td>From 8 years</td> <td>To 10 years</td> <td>6</td> </tr> <tr> <td>From 10 years</td> <td>To 20 years</td> <td>8</td> </tr> <tr> <td>From 20 years</td> <td>To 25 years</td> <td>10</td> </tr> <tr> <td>25 years and over</td> <td>-</td> <td>13</td> </tr> </tbody> </table> Source: <i>Employment and Skill Development Law 2013; Notification No. 84/2015</i> 	Duration of employment		Rate of payment (in months' salary based on the last salary)	From 6 months	To 1 year	1/2	From 1 year	To 2 years	1	From 2 years	To 3 years	1.5	From 3 years	To 4 years	3	From 4 years	To 6 years	4	From 6 years	To 8 years	5	From 8 years	To 10 years	6	From 10 years	To 20 years	8	From 20 years	To 25 years	10	25 years and over	-	13
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<p>Can employees access any payments or other social security benefits if a business closes?</p>	<p>Benefits are available in relation to establishments that are registered under the Social Security Law 2012 if they have closed down permanently or temporarily. Workers who are dismissed in these circumstances are entitled to social security benefits in accordance with Directive 01/2020 in accordance with the Social Security Law and Rules (2012).</p>																																	

Topic	Employer notification requirements on the closure of a business
<p>Is an employer required to notify the authorities on the closure of a business?</p>	<ul style="list-style-type: none"> Employers covered by the Factories Act 1951, who intend to close down either temporarily or indefinitely, are required to send a notice of the reasons at least one month before the closure. If this is not possible, such notification should be sent as soon as possible provided that it relates to some unforeseen circumstance (see s.8(6)) Employers covered by the Shops and Establishments Act 2016 are required to submit a report, on the closing of a business, within 10

⁸ An employer does not have to pay severance pay if a worker is dismissed for reasons set out in s.20 of the Employment and Skill Development Law. This includes, but is not limited to, where an employee has committed theft; intentionally destroying a factory or establishment's property; bribery; gambling in the workplace; being absent consecutively for three days; intoxication; fighting; abuse in the workplace; and bringing arms or explosives to the workplace without permission.

	<p>days, by submitting this information in a prescribed form to a labour inspector of FGLLID (see s. 20)</p> <ul style="list-style-type: none"> • <i>Source: Factories Act 1951; Shops and Establishments Act 2016</i>
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Topic	Other COVID-19 guidance
Can an employer prevent a worker from coming to the workplace if they have COVID-19, symptoms of COVID-19, or are living in the same house as a suspected case of COVID-19?	<ul style="list-style-type: none"> • In 2020, Guidance from the Ministry of Health and Sport provided that employers must ensure workers with one or more of the following conditions do not come to the workplace: <ul style="list-style-type: none"> – Signs and symptoms of COVID-19 infection such as fever (38 degrees C/ 100.4 F and above), cough, breathing difficulties and fatigue – Pregnancy – Living in the same house as a person suspected of having COVID-19⁹ • Workers shall not attend the workplace if they have any signs or symptoms suggestive of COVID-19¹⁰ • Workers who have a fever recorded by a temperature check at the entry gate to a workplace¹¹ shall not be permitted to enter, and shall be sent to a health centre¹²
What happens if a worker cannot get to work due to no public transport?	<p>According to Guidance released in 2020:</p> <ul style="list-style-type: none"> • Employers are obliged to provide transport between work and home. • Workers are obliged to use transport services provided by the employer and avoid using public transport as much as possible. • <i>Source: Ministry of Health and Sport Guideline (March 2020)</i>¹³
Can an employer disclose a worker's identity to other workers if that person has COVID-19 or is	<ul style="list-style-type: none"> • There are no specific legal provisions safe guarding employees' privacy if they have COVID-19. Employers will need disclose the identity of a worker who has COVID-19 to the authorities and other workers in contact with the patient for the purpose of taking measures to prevent the spread of the COVID-19 in the workplace.

⁹ *Guideline for the Prevention and Control of Coronavirus Disease 2019 (COVID-19) in Factories, Workplaces and Construction Sites (Version 2.0) 30 March 2020.*

¹⁰ *Guideline for the Prevention and Control of Coronavirus Disease 2019 (COVID-19) in Factories, Workplaces and Construction Sites (Version 2.0) 30 March 2020.*

¹¹ Applies to factories and establishments registered with the Social Security Board.

¹² See SSB Directive 7/2020 *Instructions to be followed by factories, workplaces and establishments regarding Coronavirus Disease (Covid-19).*

¹³ *Guideline for the Prevention and Control of Coronavirus Disease 2019 (COVID-19) in Factories, Workplaces and Construction Sites (Version 2.0) 30 March 2020.*

suspected of COVID-19?	<ul style="list-style-type: none"> As a matter of good practice, employers should avoid wide disclosure of a person’s identity to the media and wider public, if such disclosure is unnecessary for the purposes of containing the disease.
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Annex 1: Coverage of labour laws

Law and administering authority	Employers or industries covered	Workers covered
<p>Employment and Skills Development Law (2013)</p> <p>Department of Labour, Ministry of Labour</p>	<p>Covers:</p> <ul style="list-style-type: none"> Government departments Government organizations Cooperatives Private and/or joint venture Any organization/company employing more workers than stipulated,¹⁴ whether permanently or temporary. 	<p>Covers all workers (including apprentices) employed for wages with a:</p> <ul style="list-style-type: none"> Government department Government organization Cooperative Private and/or joint venture Any organization or company
<p>Factories Act (1951)</p> <p>Factories and General Labour Law and Inspection Department, Ministry of Labour</p>	<p>Covers:</p> <ul style="list-style-type: none"> Manufacturing Processing (e.g. altering, repairing, ornamenting, finishing, packing, cleaning, breaking up, testing of chemical substances) Transporting oil and water Energy (e.g. generating, transforming, transmitting) Publishing/Printing Ship-building services Motor vehicle repair and painting Government-controlled factories 	<p>Covers:</p> <ul style="list-style-type: none"> Workers (whether employed for wages or not) in the ‘manufacturing process’ Maintenance workers (and related tasks to the ‘manufacturing process’) Supervisor, accountant, clerk, security guard, driver, cleaning worker, cook, odd-job man/woman, gardener and general worker (either related or not related to the ‘manufacturing process’). Workers in the construction, electrical and chemical sectors.

¹⁴At the time of publication, it was not possible to identify what is exactly stipulated.

Law and administering authority	Employers or industries covered	Workers covered
<p>Leave and Holidays Act (1951)</p> <p>Factories and General Labour Law and Inspection Department, Ministry of Labour</p>	<p>Covers:</p> <ul style="list-style-type: none"> • Factories • Railways • Ports • Oilfields • Mines • Shops and establishments • Government-controlled factories. 	<p>Does not cover:</p> <ul style="list-style-type: none"> • Family members (parents, spouse, children, and siblings brother/sister) in family enterprises • Domestic workers • Government workers not working in factories or railways
<p>Minimum Wage Law 2013</p> <p>Department of Labour, Ministry of Labour.</p>	<p>Covers:</p> <ul style="list-style-type: none"> • Employers who employ ten¹⁵ or more workers in commerce, production business and service, agricultural and livestock breeding business. <p>Does not cover:</p> <ul style="list-style-type: none"> • Family owned businesses • Businesses' (including family owned businesses) employing less than ten workers. 	<p>Covers:</p> <ul style="list-style-type: none"> • A person who earns a living by earning a wage from permanent or temporary work in any commerce, production business and service, agricultural and livestock breeding business. <p>The above expression includes:</p> <ul style="list-style-type: none"> • Apprentices and trainees, • Clerks and staff • Outside workers • Domestic workers and home drivers • Security guards • Sanitation workers. • Decoration workers <p>Does not cover:</p> <ul style="list-style-type: none"> • Civil service personnel • Seafarers • An employer's close relatives and dependents
<p>Payment of Wages Law (2016)</p>	<p>Covers:</p> <ul style="list-style-type: none"> • Commercial • Production 	<p>Covers:</p> <ul style="list-style-type: none"> • Permanent, temporary or piece-rate workers including:

¹⁵ See Notification No. 1/2018 *Announcement of proposed minimum wage.*

Law and administering authority	Employers or industries covered	Workers covered
Factories and General Labour Law and Inspection Department, Ministry of Labour.	<ul style="list-style-type: none"> • Services • Agriculture • Livestock breeding 	<ul style="list-style-type: none"> • Apprentices and trainees, • Clerks and staff • Outside workers • House-maids • Drivers • Security men • Sanitary workers • Decoration workers • Cooks • Peons • Gardeners • General workers
<p>Shops and Establishments Law 2016</p> <p>Factories and General Labour Law and Inspection Department, Ministry of Labour.</p>	<p>Covers:</p> <ul style="list-style-type: none"> • Wholesale or retail sale shops (including 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) • Commercial establishment (including insurance, joint stock, bank or broker, advertising, commission, forwarding or commercial agency, clerical department of factory or of industrial or commercial business, employment agency, private education institution, private hospital and clinic, hotel and motel and Inn, travel 	<p>Does not cover:</p> <ul style="list-style-type: none"> • Family members of an employer (parents, spouse or children,) who live with and are dependent on the employer.

Law and administering authority	Employers or industries covered	Workers covered
	<p>agency, toll fee collection gate</p> <ul style="list-style-type: none"> • Establishment for public entertainment (including cinemas or theatres or any hall for entertainment, video houses, karaoke lounges, game stations with computer and electronic equipment, amusement parks, public gardens and parks, health fitness centres, children’s playgrounds. <p>Does not cover:</p> <ul style="list-style-type: none"> • Cottage industries • Roadside or temporary stalls • Shops and establishments at a public exhibition held from time-to-time • A temporary shop or establishment for public entertainment 	

Annex 2: List of 2020 Directives, Notifications and Guidance Concerning Covid-19

- Directive 1/2020 *Instructions to workers and employers regarding the closures of establishments due to COVID-19;*
- Notification 63/2020 *Adjustments in accordance with Article 100 of the 2012 Social Security law to enable operations of establishments in the era of COVID-19;*
- Notification 64/2020 *Extension of social security benefits period in accordance with Article 100 of the Social Security Law (2012) for insured workers who have become unemployed due to COVID-19.*
- Directive 7/2020 *Instructions to be followed by factories, workplaces and establishments regarding Coronavirus Disease (COVID-19)*
- Directive 8/2020 *The process to follow in issuance of medical certificates regarding COVID-19 acute respiratory disease*
- Directive 9/2020 *The process to follow in issuance of a medical certificate to pregnant women regarding COVID-19 acute respiratory disease.*