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Introduction to Laws on Occupational Safety and Health in Myanmar

2020

ILO Liaison Office in Myanmar



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FOREWORD

This ILO Guide to laws relating to occupational safety and health (OSH) in Myanmar has been developed with funding support from the European Union under the Trade for Decent Work Project. Its purpose is to provide accessible information for human resource practitioners, academics, students, employers, trade unions and workers about this topic in Myanmar.

The legal framework referred to in this guide is up-to-date as of January 2021. This guide also covers orders and directives that apply to managing COVID-19 in workplaces in Myanmar. Most COVID-19 directives were issued in 2020 and continue to apply.

Addressing OSH in the workplace is of critical importance to employers and workers. In addition to keeping workers safe from harm, sound OSH management systems significantly benefits employers through increased productivity, lower absenteeism, lower staff turnover, as well as a healthy and safe workforce.

Myanmar's OSH laws continue to be piecemeal in nature, and therefore it is important to consider how gaps in the legal framework can be addressed. International labour standards on OSH provide an important benchmark on practices that can be implemented even when they have not been ratified. The ILO Myanmar's online e-campus <https://ecampus.ilo yangon.org/> also provides self-paced courses on aspects of OSH and COVID-19 that are freely available for people wishing to learn more about OSH in workplaces.

I hope that this guide will be useful for everyone who wants to understand and apply Myanmar's laws relating to OSH.

Donglin Li

ILO Liaison Officer

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1. INTRODUCTION

1.1 Context in Myanmar

This guide provides an overview of the legal framework relating to occupational safety and health (OSH) in Myanmar and refers to COVID-19 directives with a particular focus on factories.

Myanmar's OSH laws are characterized by a fragmented framework that has developed over a number of years that have generally focused on specific hazards or specific industrial sectors and as a result a number of provisions are outdated. In 2019, the Pyidaungsu Hluttaw (national parliament) passed a new Occupational Safety and Health Law which was intended to substantially modernize the legal framework and provided for a more promotional rather than prescriptive framework for OSH oversight. A number of fundamental and sectoral regulations would accompany this law to give effect to its provisions. However, as of December 2021, the OSH law has not been enacted and is not in force.

The primary law relating to OSH is contained in the Factories Act 1951, and to some extent in the Shops and Establishments Law 2016. Compensation for workplace injuries is governed by the Social Security Law 2012 and Workmen's Compensation Act 1924. Other laws also address OSH primarily at a sector level or in relation to specific hazards and include laws relating to mines, fisheries, chemicals, pesticides, fertilizers, boilers, atomic energy, electricity, fires, oilfields, and others which are not covered in this guide.

With the onset of the global COVID-19 pandemic, factories, establishments and shops are required to follow instructions issued by the Ministry of Health and Sport in 2020. During 2020, the instructions were updated and the most recent instruction from October 2020 is included in this guide.

1.2 International labour standards

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

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

Since the ILO was established, OSH has been a key area in the international labour standards framework. The ILO has adopted more than 40 standards specifically dealing with occupational safety and health, as well as over 40 Codes of Practice. Nearly half of ILO instruments deal directly or indirectly with occupational safety and health issues.

Key Occupational Safety and Health Conventions

1. Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
2. Occupational Safety and Health Convention, 1981 (No. 155)
3. Protocol of 2002 to the Occupational Safety and Health Convention, 1981
4. Occupational Safety and Health Recommendation, 1981 (No. 164)
5. Occupational Health Services Convention, 1985 (No. 161)
6. Occupational Health Services Recommendation, 1985 (No. 171)
7. Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197)
8. Protection of Workers' Health Recommendation, 1953 (No. 97)
9. Welfare Facilities Recommendation, 1956 (No. 102)
10. List of Occupational Diseases Recommendation, 2002 (No. 194)

To date, Myanmar has not ratified any of the above Conventions, but has ratified Conventions connected to workers compensation for occupational injuries and disease.¹ The ILO has published a guide to key OSH Conventions published in English and Burmese which is available on the ILO website www.ilo.org/yangon. Specific training modules on aspects of OSH is available on the ILO Myanmar e-campus website <https://ecampus.ilo yangon.org/>

¹ Workmen's Compensation (Accidents) Convention, 1925 (No. 17); Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18); Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42).

2. GENERAL OBLIGATIONS

Relevant laws

Social Security Law 2012

Employment and Skills Development Law 2013

Standard Employment Contract Template 2017

2.1 Social Security Law 2012

Coverage

Under the Social Security Law 2012, unless exempted by law, companies with five or more workers must register with the Social Security Township Office of the Social Security Board (SSB) within 30 days of the start of operating a business,² and must pay monthly contributions in order to protect workers in case of sickness, maternity or paternity leave, death or work injury. An employer is required to register a worker within 10 days of appointing them.³

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

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

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

2 Clause 40(b), Social Security Rules.

3 Clause 42(c) Social Security Rules.

Obligations

Section 53 of the Social Security Law sets out obligations relating to OSH including a requirement that employers and workers coordinate with the Social Security Board (SSB) or insurance agency relating to plans for safety and health to prevent occupational injuries, contracting occupational diseases and education.⁴ The costs of medical treatment for employment injuries from criminal acts or omissions by the employer, or a failure to keep OSH plans are to be met by the employer.⁵ An employer is obliged, without delay, to report immediately to the relevant township social security office if a serious occupational accident has occurred in relation to an insured worker.⁶

Further detail concerning employment injury insurance and payments is set out in chapter 4.

2.2 Employment and Skills Development Law 2013

Who does it cover?

The Employment and Skills Development law applies to government departments, government organizations, cooperatives and private and/or joint ventures and any organization or company employing more workers than stipulated,⁷ whether permanently or temporary. It covers all workers (including apprentices) employed for wages with a: government department, government organization, cooperative, private and/or joint venture or any organization or company.

Obligations

The Employment and Skills Development Law 2013 contains a general reference that an employment contract must contain provisions relating to medical treatment.⁸ The Employment Contract Template, promulgated pursuant to this law requires contracts to include measures for workers' sickness, workplace injuries, occupational diseases and workers' death in the workplace under the respective labour laws⁹ and for the employer to work cooperatively with workers in relation to OSH arrangements.¹⁰ While these requirements are general, this suggests there is an obligation that OSH arrangements are to be agreed in an employment contract.

4 Section 53(a).

5 Section 53(b).

6 Section 54(a).

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

8 Section 5(b)(11).

9 Clause 11(l).

10 Clause 11(t).

3. SECTOR SPECIFIC OSH REQUIREMENTS

Relevant laws

Shops and Establishments Law 2016

Shops and Establishments Rules

Factories Act 1951

3.1 Shops and Establishments Law 2016

Coverage

The Shops and Establishments Law 2016 covers a wide range of business activities and is considered to have a very wide application to businesses that are not covered by other laws. It includes:

- wholesale or retail sale shops¹¹
- commercial establishments¹²
- establishments for public entertainment.¹³

However, it does not cover cottage industries, roadside or temporary stalls, shops and establishments at a public exhibition held from time to time or a temporary shop or establishment for public entertainment. It also does not cover family members of an employer (parents, spouse or children,) who live with and are dependent on the employer.

Obligations

Chapter 7 of the Shops and Establishments Law refers to OSH obligations. Under s.24, employers have the following obligations:

- arrangements for cleaning, good ventilation, and health;
- fresh air and sufficient light;
- noise to not be louder than specified levels;¹⁴

11 Including hair dressing, beauty salons, fitness establishments, goldsmiths, radio, television or telephone repairing, book binding or photo printing, pawn shops, laundry, footwear repairing, photocopy establishments, wrapping and packing material, sawing, tailoring, computer and laptop businesses, publishing and repair of consumer electronic products.

12 Including insurance, joint stock, bank or broker, advertising, commission, forwarding or commercial agency, clerical department of a factory or of industrial or commercial business, employment agency, private education institution, private hospital and clinic, hotel, motel or inn, travel agency and toll fee collection gate.

13 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.

14 "Specified levels" are not defined.

- arrangements for the prevention of overheating [literal translation] and the prevention of fire hazards;
- sufficient first aid boxes and medicine for the employees according to [the provisions].¹⁵

However, there is no further detail relating to these requirements and no specific penalties in the law relating breaches of this provision. The Shops and Establishments Rules provides further requirements in addition to s.24 of the primary legislation. However, these requirements are relatively general and also have no penalty for breaches of the provision. Clause 16 requires an employer to:

- Ensure emergency access including stairs, entrances and exits as well as exit signs in shops or workplaces in high-rise buildings using elevators
- Supervise flammable substances with necessary precautionary measures to prevent fire.
- Not exceed specified noise limits
- Have adequate cleaning staff who are supervised to ensure cleanliness, odor-free sanitation in relation to floors, furniture, places for cooking, pots and pans in use, drinking water areas and toilets
- Ensure proper disposal of waste without harming the environment.
- Provide adequate personal protective equipment, for workers' health, in the workplaces with extreme weather and temperatures.
- Provide first aid kits and necessary medicines.

With respect to working hours, workers in shops or establishments:

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

The employment of children is restricted as follows:

- Children under the age of 14 are not permitted to work in a shop or establishment.
- A child between 14 and 16 years of age may be employed for up to four hours a day if a responsible registered doctor provides a fitness certificate.
- Children under the age of 16 are not permitted to work overtime exceeding the working hours in any shop or commercial establishment or establishment for public entertainment.
- A child under 18 years of age shall not be employed at a prescribed dangerous business or dangerous workplace.¹⁶ However, a person who is under 18 years of age but is over 16 years of age may be employed if: (a) he or she passed vocational training school for the work concerned; or (b) understands and follows the instructions on safety and health at work; or (c) if he or she is fit, may be permitted to work in a workplace with a fitness certificate from a registered doctor and the work does not damage his or her growth and morale.

¹⁵ "Provisions" are not defined further.

¹⁶ Section 14(d).

3.2 Factories Act 1951

Coverage

The Factories Act applies to manufacturing, processing,¹⁷ transporting oil and water, energy,¹⁸ publishing, printing, ship-building, motor vehicle repair, and government-controlled factories. It also specifies that it covers the following workers: persons employed for wages or not in the manufacturing process, maintenance workers, supervisors, accountants, clerks, security guards, drivers, cleaning workers, cooks, odd-job persons, gardeners and general workers (either related or not related to the 'manufacturing process') as well as workers in the construction, electrical and chemical sectors. It does not include a mine subject to the Myanmar Mines Law.

A factory is defined as:

- premises where five or more workers are working, or were working, on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power; and
- premises where 10 or more workers are working, or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power.

Employers' obligations

Cleanliness
Sanitation
Ventilation
Preventing overcrowding
Controlling noise
Lighting
Drinking facilities
Eating facilities
Restrooms
Safe operation of machinery
Fire prevention
Managing explosive substances
First aid
Building safety
Working hours and rest requirements
Notification of accidents and diseases
Training

General obligations

Chapters III - IV set out general obligations relating to the health, safety and welfare of workers. These requirements should also be read in light of COVID-19 Directives that are set out later in this guide. A number of these obligations also provide for exemptions. Rules or Directives may specify further criteria relating to their application. Oversight of the Act rests with the Factories and General Labour Inspection Department (FGLLID) of the Ministry of Labour. The Chief Inspector, under FGLLID, may also impose in some circumstances, directions¹⁹ or exemptions.²⁰

17 For example, altering, repairing, ornamenting, finishing, packing, cleaning, breaking up and testing of chemical substances.

18 For example, generating, transforming or transmission.

19 For example, in relation to dust and fumes under s.16.

20 For example, in relation to overcrowding under s.18.

Cleanliness and sanitation

- Every factory and the compound must be kept clean. Dirt and refuse must be removed daily and disposed of in a suitable manner.²¹ Effective measures must also be in place that do not impact the environment, for the disposal of other effluent, fumes and waste from the manufacturing process.²²
- The floor of work rooms must be washed at least once a week, using disinfectant where necessary, or using other effective methods.²³
- When there is a likelihood of water collecting on the floor in the course of any manufacturing process, an effective means of drainage must be in place.²⁴
- All inside walls and partitions, ceilings, passages and staircases shall either: (i) be kept whitewashed or colour-washed and such washing shall be repeated at least once in every 12 months; or (ii) where they are painted or varnished, be repainted or re-varnished at least once in every three years.
- Factories must provide facilities for washing for male and female workers that are accessible and shall be kept clean.
- Facilities for storing and drying clothing must be provided.
- Sufficient gender segregated toilets with adequate ventilation that are sanitary and clean must be provided²⁵ and additional requirements are prescribed for factories with more than 250 workers²⁶.
- A sufficient number of spitting bowls for betel must be in a convenient place and maintained in a clean and hygienic condition.

Ventilation

- Effective and suitable arrangements shall be made in every factory for adequate ventilation by the circulation of fresh air. Where the nature of the work carried on in the factory involves, or is likely to involve, the production of excessively high temperatures, adequate measures as are practicable shall be taken to protect the workers by separating the process which produces such temperatures.²⁷
- Effective measures shall be taken to prevent the inhalation and accumulation of dust.²⁸
- No stationary internal combustion engine shall be operated unless the exhaust is diffused into the open air outside, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent the accumulation of fumes.²⁹

21 Section 13.

22 Section 14.

23 Section 13(b).

24 Section 13(c).

25 Section 21(1)

26 Section 21(2)

27 Section 15.

28 Section 16(1).

29 Section 16(2)

- Where air humidity is artificially increased, rules may be established setting out additional standards of ventilation.³⁰
- Ventilation and temperature standards or requirements may be prescribed by FGLLID for any factory or class of factories.³¹

Workspaces

- Factories must prevent overcrowding. The amount of cubic space for every person employed in a room shall not be less than 500 cubic feet and no space more than 14 feet above the floor shall be taken into account for the purpose of calculating the cubic space.³²
- In every part of a factory where workers are working or passing, there must be sufficient and suitable lighting that is either natural or artificial. Measures must also prevent glare, or eyestrain due to darkness.³³
- Factories must ensure effective measures to avoid excessive noises in accordance with specifications (which are not described in the law but FGLLID may issue orders or directives).
- All floors, steps, stairs, passage and gangways must be of sound construction and properly maintained and, where it is necessary to secure safety such floors, steps, stairs, passages and gangways must be provided with substantial handrails.³⁴ In addition, pits, sumps and openings in floors which by reason of depth, situation, construction or contents, is likely to be a source of danger, must be either securely covered or fenced.³⁵

Drinking, eating facilities and rest rooms

- 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 metres] away from washing areas and toilets. Enterprises with more than 250 workers must provide cool water during hot weather.³⁶
- Suitable for seating arrangements shall be provided and maintained for all workers required to work in a standing position, in order that they may take advantage of any opportunity for rest during the course of their work.³⁷
- FGLLID may establish requirements that in any specified factory or class of factories where more than 250 workers are employed to have a canteen that is provided and maintained for them.

30 Section 17.

31 Section 15(2) and (3).

32 Section 18(2).

33 Section 19.

34 Section 34.

35 Section 35.

36 Section 20.

37 Section 46.

- In factories where more than 100 workers are employed, adequate and suitable rest rooms and an adequate and suitable dining room, with drinking water facilities, shall be provided. Such facilities must have shall be sufficiently lighted, ventilated and maintained as far as practicable in a cool and clean condition.³⁸ FGLLID may issue directives relating to the construction and other matters relating to restrooms. It may also by notification exempt any factory or class of factories from this requirement.

Machinery

- In every factory, machinery including prime movers, transmission machinery and other machinery shall be fenced by guards which must be maintained and kept in position while in use. Any examination of machinery covered by this section must be carried out by a trained adult male worker who is required to undertake such work according to specific requirements.³⁹
- In every factory suitable devices for cutting off power in emergencies shall be provided and maintained in every work room.⁴⁰ Specific requirements are also set out in relation to moving parts in s.26.
- Every hoist or lift shall be of good mechanical construction, sound material and strength and shall be properly maintained. Every hoist or lift shall be thoroughly examined by an authorized examiner at least once every six months and a register shall be kept containing the prescribed particulars of every such examination. The Act contains a number of specific provisions relating to the load and other requirements for this machinery in s.30.
- Cranes and other lifting and hoisting machinery must be of good construction, sound material and strength; properly maintained and shall be thoroughly examined by an authorized examiner at least once every 12 months. A register shall be kept containing the prescribed particulars of every such examination. Specific requirements also apply relating to the operation of such machinery in s.31.
- Revolving machinery is required to adhere to specific requirements relating to peripheral speed with required notices affixed near the machine relating to speed.⁴¹
- If any machinery or plant used in a manufacturing process is operated at a pressure above the atmospheric pressure, effective measures must be taken to ensure that safe working pressure of such part is not exceeded.⁴²

Fire prevention and explosive substances

- Confined spaces must comply with specific rules relating to access, or where dangerous fumes are present, including use of specialized breathing apparatus. All apparatus shall be examined at regular periods and certified by an authorized examiner to be fit for use, and a sufficient number of the persons in every factory shall be trained in the use of all such

38 Section 49.

39 Section 23.

40 Section 26.

41 Section 32.

42 Section 33.

apparatus. Similarly access to a boiler furnace, boiler flue, still, chamber, tank, vat, pipe, or other confined space is also subject to specific access requirements.⁴³

- Specific requirements apply to flammable dust and fumes under s.39 where they are likely to explode on ignition. All possible measures shall be taken to prevent any explosion by: (a) effective enclosure of the plant or machinery used in the manufacturing process; (b) removal or prevention of accumulation of dust, fumes or vapour; and (c) isolation or effective enclosure of all possible sources of ignition. Section 39 should be referred to in relation to measures factories should take to prevent explosions and vapours that are greater than atmospheric pressure.
- In all factories, exit doors from rooms shall not be locked or fastened so that they can be easily and immediately opened from the inside while any person is within the room, and all such doors, unless they are sliding doors, shall be constructed to open outwards.⁴⁴
- Doors providing a means of escape in case of fire, other than the means of exit in ordinary use, shall be distinctively marked in a language understood by the majority of workers.⁴⁵
- Factories must have apparatus to give a warning in the case of fire that is clearly audible to every person employed in the factory.⁴⁶
- All the workers must be familiar with the means of escape in case of fire and have been adequately trained in the procedures to be followed.⁴⁷

First aid

- A first-aid box or a cupboard equipped with the prescribed contents must be readily accessible during working hours for every hundred workers.⁴⁸
- A person must be responsible for the first aid supplies who has been trained in first-aid treatment and available during working hours.⁴⁹
- In every factories with more than 250 workers medical clinic must be provided under the supervision of a medical officer and nursing staff as may be prescribed.⁵⁰

Working Hours

Adult workers in factories:

- shall not be required to work more than eight hours per day or 44 hours per week
- should not work longer than five hours at a stretch without receiving a rest of at least 30 minutes

43 Section 38.

44 Section 40.

45 Section 40.

46 Section 40.

47 Section 40.

48 Section 47.

49 Section 47.

50 Section 47.

- shall have periods of work and rest periods that may not exceed a total of 10 hours in a workday.

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

Women and children

The Child Rights Law defines hazardous work as one of the worst forms of child labour and prohibits it for all children under 18 years.⁵¹ In 2020 Myanmar ratified the Minimum Age Convention, 1973 (No. 138) which includes prohibitions on hazardous work for children under the age of 18. Section 49(a) of the Child Rights Law provides that the relevant Ministry shall establish what types of work shall be considered hazardous, in consultation with relevant employers' and workers' organizations. The types of hazardous work to be covered by s.49(a) have not been promulgated at the time of publication. Section 75(a) of the Factories Act prohibits children under 16 from engaging in a hazardous situation, a situation that is harmful to his or her health or in a workplace where he or she would be exploited.⁵² However as noted below, there is a gap between the two laws.

The Factories Act defines children (as either 14 or 15 years of age), adolescents (as either 16 and 17 years of age) and adults (as 18 years of age and over). A child under the age of 14 is not permitted to work in a factory. Children and adolescents are permitted to work only if they have a certificate of fitness to work (which is valid for one year) from a certifying surgeon.⁵³ Adolescents aged 16 years and over may under s.77(2)(b) be given a certificate of fitness to work as an adult. In such a case, adolescents are deemed "adults" for the purposes of applying Part VII of the Factories Act relating to hours of work. Thus, the working hours that apply to adults would apply.

There are some prohibitions on the employment of children (and in some instances women) in hazardous work in factories, with restrictions on children (aged 14 or 15 years) and adolescents (aged 16 and 17) as follows:

- No woman or child is permitted to clean, lubricate or adjust any part of the machinery while part is in motion or to work between moving parts, or between fixed and moving parts of any machinery which is in motion.⁵⁴
- No young person (defined as a person under 18) shall work or be required to work at any machine as specified in Rules, unless they have received full instructions and sufficient training in using machines, or is under supervision of a person who has a thorough knowledge and experience of the machine.⁵⁵
- Women and children under 16 are prohibited from working in parts of a factory where a cotton opener is at work, and certain exceptions apply.⁵⁶

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

52 Section 75(a).

53 Section 77.

54 Section 24(2).

55 Section 25.

56 Section 29.

- No woman, adolescent or child shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause injury.⁵⁷

Given the differences between the Factories Act and Child Rights Law, and that hazardous work in the latter has not yet been defined, employers should consider carefully assessing work in factories to determine areas of work that are hazardous and consider restricting children under the age of 18 from engaging in such work. For example, under the ILO Minimum Age Recommendation, 1973 (No. 146) full account should be taken of relevant international labour standards, such as those concerning dangerous substances, agents or processes (including ionising radiations), the lifting of heavy weights and underground work.⁵⁸

In addition, the Factories Act has additional provisions specifically relating to women including the following:

- Necessary arrangements must be made for women who are menstruating who are not able to work due to their health⁵⁹
- Pregnant workers shall only be assigned to light work, and a woman who is more than 7 months pregnant is [not] permitted to work overtime or work at night⁶⁰
- In factories with more than 200 female workers, a day care centre must be provided for children under the age of six years.⁶¹

If the any operation carried on in a factory is likely to expose employees therein to risk of bodily injury, poisoning or disease, Rules can also be made to:

- declare a specified operation dangerous and prohibit or restrict the employment of women, adolescents or children in such operation;
- provide for periodic medical examinations of current and prospective employees and prohibit the employment of persons not certified as fit for such employment;
- provide for the protection of all employed persons in an operation;
- Prohibiting restricting or controlling the use of any specified materials, or process in connection with the operation.⁶²

Training

There is limited reference to training in the Factories Act, other than stating that employers as necessary shall send the health officer who is responsible for OSH, supervisors and workers to OSH training recognized by the Ministry.⁶³

57 Section 36.

58 Article 10(1).

59 Section 36(3).

60 Section 36(4).

61 Section 50 as amended.

62 Section 52.

63 Section 43(a) inserted by the Factories Amendment 2016.

Inspection

Chapter II of the Factories Act provides for the appointment of inspectors. The powers of inspectors are set out in s.11 to provide that inspectors may enter a factory and to inspect the premises, machinery, documents, prescribed registers, or receive any statement from a person for the purpose of carrying out functions under the Act. Inspectors may exercise such other powers as may be necessary for the purposes of the Act, but no person shall be compelled to answer any questions or give evidence tending to incriminate themselves. Section 56(1) provides that inspectors may also take samples of substances if it is believed there is a contravention of the Act or Rules, or likelihood to cause harm to workers in a factory.

In certain circumstances where it appears to an Inspector that any building or part of a building, machinery or plant in a factory is dangerous to human life or safety, he or she may serve on the factory an order in writing requiring plans or specifications to be submitted demonstrating it can be used safely, or conduct tests to confirm its safety.⁶⁴ An inspector may also serve a written order prohibiting such use until it has been repaired or altered.⁶⁵

The Chief Inspector may also, by order in writing serve on the manager of any factory a requirement to display notices or posters relating to the health, safety or welfare of the workers in the factory.⁶⁶

Notification of accidents and diseases

If an accident occurs which causes death, or causes any bodily injury preventing a person from working in the factory for a period of 48 hours or more immediately following the accident, the manager of the factory is required to submit notice to the Factories and General Labour Law Inspection Department (FGLLID), and in such form and within such time as may be prescribed.⁶⁷ If a worker contracts any occupational disease specified in Schedule III of the Workmen's Compensation Act, the employer is required to notify the Chief Inspector (FGLLID) in accordance with s.54. Under the Social Security Law, if an insured worker is injured in an accident, the employer must also report it to the township social security office.

Worker obligations

Additional obligations are set in the Act in relation to workers covering the following prohibitions:

- wilfully interfering with or misusing any appliance or other item provided in the factory for the purpose of securing the health safety or welfare of the worker.
- wilfully and without reasonable cause doing anything likely to endanger another person other
- wilfully neglecting to make use of any appliance or other thing provided in the factory for the purpose of securing the health or safety of the workers.⁶⁸

64 Section 41.

65 Section 42.

66 Section 99(3).

67 Section 53.

68 Section 104.

General offences and penalties

The Factories Act contains general provisions relating to contravention of the Act and any Rule or Order under it by the manager or occupier of a factory. Such offences are liable on conviction to imprisonment of up to three months or a fine, or both.⁶⁹ A person who has previously been convicted and is convicted a further time is liable to a longer term of imprisonment and a higher fine.⁷⁰

Section 87 also provides if any worker employed contravenes any provision of the Act or Rules, he or she is liable to imprisonment for a term which may extend to one month, a fine, or both. If a worker is punished under this section, the manager or occupier of the factory is deemed to be not guilty of an offence in with respect to the worker's contravention unless the employer fails to take all reasonable measures to prevent the worker's actions.

Other offences are also specifically covered elsewhere in the Act with specified penalties including, inter alia, obstruction of an inspector in performing their duties, fraud relating to certificates of fitness for workers and failure to submit specified notices.

69 Section 85.

70 Section 86.

4. SOCIAL SECURITY AND COMPENSATION FOR INJURY AND ILLNESS

Relevant laws

Factories Act 1951

Social Security Law 2012

Shops and Establishments Rules 2018

Workmen's Compensation Act 1923

4.1 Social security contributions by employers and workers

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

Table 1. Social security contributions

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

In calculating wages, wages are defined as all remuneration entitled to be received by a worker for the work carried out by him, which includes other remuneration which may be determined as overtime fees and income.”⁷¹

The calculation of wages does not include:⁷²

- 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.

4.2 Compensation for injury and illness

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

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

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

71 See s.2(j) Social Security Law.

72 See s.2, Payment of Wages Act.

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

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

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

4.3 Appealing decisions of the Social Security Board

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

4.4 Types of benefits for workers

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

Table 2. Benefits for workers registered with the SSB

Type	Qualification	Benefit	Duration
Medical care (ss. 22 - 23)	Medical exam (in case of voluntary registration) Worker registered at the SSB and regularly paying contributions.	Free medical care in nationwide Social Security clinics and hospitals, as well as contracted private hospitals and clinics in certain areas. Reimbursement of care in other public hospitals under referral. Reimbursement of care in either public or private hospitals or clinics in case of emergency.	Up to 26 weeks
Sickness (SSL ss.23)	6 months work 4 months contribution	Cash benefit at 60% of average wages over the previous four months,	Up to 26 weeks
Maternity (SSL ss.25 - 27)	12 months work 6 months contribution	Mother: Free medical care in permitted hospitals, clinics. Child: medical care in first year. Cash benefit for maternity leave at 70 percent of the average wage (over the previous 12 months). Additional bonus of 50 percent, 75 percent or 100 percent of the average wage at the time of delivery depending on the number of babies (1, 2 or 3).	Up to 14 weeks (six weeks before delivery of a child and 8 weeks after delivery of a child)
Paternity (SSL ss.28)	12 months work 6 months contribution	Cash benefit for leave at 70 percent of average wages (over the previous 12 months), plus maternity bonus for the uninsured spouse.	Up to 15 days
Funeral Grant (SSL s.30; SS Rules ss.129)	Being registered and regularly paying contributions at least 1 month prior to the claim.	Between one and five times the average monthly wage of the deceased over the past four months depending on the deceased's contribution period.	Lump sum
Work Injury -Temporary Disability (SSL ss.55 - 56)	Temporarily incapable of work caused by work accident/injury. At least 2 months of contribution.	Cash benefit at 70 percent of monthly average wage (previous four months).	Up to 12 months
Work injury -Permanent Disability (SSL ss.57 - 59)	Permanently incapable of work caused by work accident/injury. At least 2 months of contribution.	Cash benefit at 70 percent of monthly average wage (previous four months).	Varies by level of disability decided by the Medical Board. ⁷³
Work injury - Survivor's benefit (SSL s.62)	Death of the worker due to a work accident or disease. At least two months of contribution.	Between 30 and 80 times the average monthly wage of the deceased over the past four months depending on the deceased's contribution period.	Either lump sum or periodical payment

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

5. COVID-19 PREVENTION

Relevant orders and announcements

Guideline for prevention and control of Coronavirus Disease (COVID-19) in factories, workplaces and construction sites Version 1.0, 19 March 2020; Version 2.0, 30 March 2020; Version 3, 19 April 2020; Version 4, 26 June 2020; Version 4.1, August 2020, Version 5, 9 October 2020.

COVID-19 prevention guideline for food shops and hotel restaurants 24 March 2020

Guideline for commuters and public transportation during COVID-19, 11 May 2020

Guidelines for markets and shops in townships, wards and villages, 21 April 2020

COVID-19 hotel and motel instructions 3 June 2020

Updated standard operating procedures for restaurants version 1.1, 11 June 2020

5.1 Overview of orders and announcements

With the onset of the global COVID-19 pandemic in early 2020, Myanmar took measures to control and prevent the spread of the disease in workplaces and communities. This section provides an overview of the key measures relating to factories and workplaces that remain in place in 2021. Other guidance was also released as outlined in the box above. It is important to note that workplaces are required to also follow other existing labour laws.

Initial instructions for the prevention and control of COVID-19 were issued on 19 March 2020 and were subsequently updated a number of times. Workplace inspections began on 20 April 2020 after the first lockdown. The Ministry of Health and Sport developed a checklist for use during inspections to evaluate compliance with the prevention measures in factories (such as physical distancing, use of PPE and disinfection). A copy of the inspection checklist is in Annex 1.

The most recent Instructions for factories, workshops and establishments to prevent Coronavirus Disease 2019 (COVID-19) Version 5, 9 October 2020, sets out a number of requirements as provided below.

Working from home

Where workers are able to work at home, they should do so.

Distancing requirements in workplaces if workers cannot work from home

If it is impossible to work from home, factories, workshops and establishments must have proper ventilation, avoid face-to-face work as much as possible, and impose six feet of distancing between workers. Where face-to-face work is necessary, such exposure should be for no longer than 15 minutes.

Measures to be implemented if distancing requirements cannot be strictly followed in workplaces

If a factory is unable to follow the physical distancing guidelines relating to six feet of distancing, they are required to implement the following requirements:

- a. implement work in shifts; or
- b. require workers to wear a face shield, implement arrangements to avoid face-to-face work and install partitions; or
- c. rotate workers so that 50 percent of workers are assigned to work every other day and workers not required to attend work should stay in their dormitories or at home.

Arrangements for pregnant women and workers with health conditions

If possible, pregnant workers should work from home on the same rate of salary. A pregnant worker's health status should be checked at a health centre prior to returning to work. Pregnant women should be assigned to work in low-risk workplaces and in work where they are not required to do strenuous physical activity. They should be provided with at least four break times during working hours in a well-ventilated space.

Arrangements should be made for workers over 50 years of age and with pre-existing health conditions (such as hypertension, diabetes and workers who are immunosuppressed). Such workers are required to consult with a medical practitioner and receive approval prior to returning to work and be assigned to work in low-risk areas.

Travel to and from work

On transportation to and from work, physical distancing requirements must be followed, and hand sanitizers, disposable tissues and face masks provided. Disinfection should also be practiced. Health awareness information podcasts and announcements should also be broadcast.

Additional requirements

The following additional requirements in workplaces must be followed:

- Frequent handwashing with soap or hand sanitizers (with at least 60% alcohol).
- Employers must provide adequate hand washing facilities and adequate soap, water, hand sanitizer and tissue paper. Instructional posters on how to wash hands should be placed next to hand washing facilities.
- Workers must wear the necessary personal protective equipment, including masks that cover the mouth and nose.
- Workers' body temperature should be measured on arrival at the workplace. Workers with a high body temperature should not be permitted to work and arrangements should be made for medical treatment.

- In the dining room, arrangements should be made for workers to have their food and drink at a distance of six feet from each other, and if workers are face-to-face, separators must be installed.
- Arrangements should be made for frequent disinfection of contact areas (e.g. the surface of tables) and of equipment used by staff.

Positive COVID-19 cases in the workplace

The instructions issued in October 2020 provide that if there is a COVID-19 positive patient (or suspected positive case) in a factory, workshop or establishment:

- Places where the patient touched must be disinfected and the workplace⁷⁴ must be closed for a 24-hour period. During this period, doors and windows near the work area of the patient or suspected positive case must be opened for ventilation.
- While awaiting the results of a COVID-19 test, close contacts of the suspected case must not come to work.

74 It is not clear if it relates to the whole workplace, or the area in which the worker was working. In the context of the guidance, it appears to relate to the work area in which a worker was working.

ANNEX 1: MYANMAR FACTORY CHECKLIST

Name of Factory

Date of inspection

Address of Factory

Sr.	Compliance measures	Yes	No	
1.	Stay at Home			
	Is there any arrangement to work from home for employees who can work from home?			
2.	Physical Distancing			
*	Mark on floor to ensure 6 feet apart			
*	Arrange to wear face shield or plastic barrier or ensure not to have face to face situation if it is impossible to have 6 feet apart			
*	Do not change assignment of employees from each work shift			
	Arrange to have different working hour for employees from each work shift			
	Arrange to have different break time for employees from each work			
*3.	Instruct employees to wear surgical masks and gloves and provide enough surgical masks and gloves			
4.	Staff sickness			
	Arrange to get treatment at Health Department and not to enter workplace for employees who have symptoms of COVID 19 such as fever and cough and other health problems (if there is arrangement, describe how it is arranged in the remark)			
*	Clearly describe the information in the instruction of Ministry of Health and Sports not to enter workplace			
*	Arrangement to report to respective supervisor and in charge of factory and continue report to Health Department if employee or one of the family members of employee is sick			
5.	Transportation			
*	Arrange shuttle buses seats with name tags			
*	Provide hand sanitizer, tissues and surgical masks on ferries			
6.	Entrance/Exit			
*	Provide non-touch thermometer or thermal scanner at entrance/exit of workplace			

Sr.	Compliance measures	Yes	No	
	(3 non-touch thermometers for 500 employees, 5 non-touch thermometers for 1000 employees)			
	Provide personal protective equipment (mask, gloves, apron, face shield) for the staff who check temperature			
	Arrange not to be crowded at entrance/exit when staff arrives to work and leaves work and to go in and out 6 feet apart			
*	Assign supervisors to check attendance of employees without signing on paper in a crowd or using a fingerprint scanner			
*	Make a contact list with addresses and phone numbers of employees from factory/office			
7.	Hygiene			
*	Provide enough sinks that are 6 feet apart (1 sink per 50 people) (the one of which the tap can be used by pressing with legs)			
	(a) Entrance/exit of workplace			
	(b) Workplace			
	(c) Rest area and dining room			
	(d) Toilet			
*	Arrange necessary support to wash hands properly (soap, water, hand sanitizer, tissues)			
	Put posters of measures to wash hands properly, at every place where employees wash hands			
8.	Cleanliness and Disinfection			
	Provide enough trash bins, arrange proper garbage collection and disposal system and record			
	(a) Toilet			
	(b) Workplace			
	Arrange to dispose of one-used personal protective equipment systematically and record			
	Arrange to clean personal protective equipment which is not one-used and record (if there is an arrangement, describe how it is arranged in the remark)			
*	Is there enough 70% alcohol to sanitize equipment that is used daily by employees and metal surfaces that are touched by employees?			
*	Is there enough 0.1% hypochlorite solution or liquid soap and water to sanitize floors?			
	(Is there any knowledge about measures and usage instructions if 0.1% hypochlorite solution is used to sanitize?)			

Sr.	Compliance measures	Yes	No	
9.	Meals and Rest			
	Employees bring lunch boxes and water bottles by themselves			
	Factory arranges meals			
	(If yes, describe how personal hygiene of kitchen staffs and their health issues are arranged in the remark)			
	Arrange to eat or rest 6 feet apart in dining room and rest areas			
	Arrange to wash hands properly in dining room and rest areas			
10.	General			
	Arrange to have good ventilation at workplaces			
	If air conditioners are used, arrange to clean filters often and record			

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