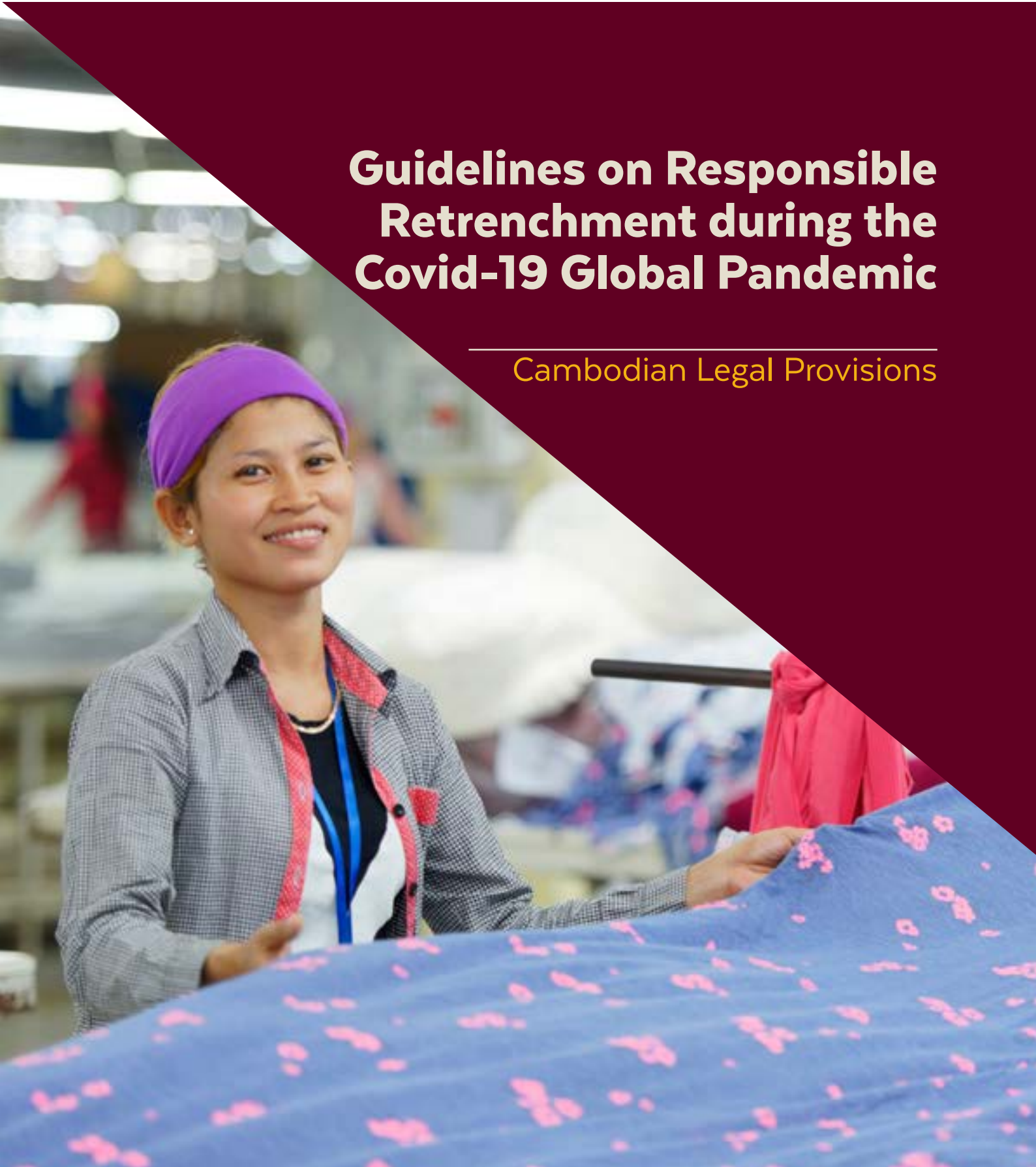




BetterFactories
Cambodia

Guidelines on Responsible Retrenchment during the Covid-19 Global Pandemic

Cambodian Legal Provisions



The Covid-19 pandemic has transformed into an economic and labour market shock. Beyond the urgent concern about the health of workers and their families, the virus is impacting the world of work, including both unemployment and underemployment. These Guidelines on Cambodian legal provisions relating to retrenchment are designed to help factories confronting these economic challenges to do so in line with applicable laws. Better Factories Cambodia took into account the comments/inputs from the Ministry of Labour and Vocational Training in the development of these Guidelines.

While these Guidelines set out the relevant Cambodian legal provisions related to retrenchment, the retrenchment of workers should be considered as a last resort. Some possible alternatives to job losses include the following:

- ◆ imposing a freeze on new hiring
- ◆ restricting overtime
- ◆ shifting away from sub-contracting
- ◆ spreading the workforce reduction out over time, to allow for a natural reduction of the workforce
- ◆ (re)training workers
- ◆ job sharing (e.g., two workers share a position formerly held by one)
- ◆ work sharing (e.g., workers' hours are reduced, while employers pay wages with governmental support)
- ◆ reduction in hours worked by existing workers
- ◆ internal transfers of workers within the enterprise
- ◆ transfer of workers to other entities, e.g., relocating some workers to a sister company or outplacing them to another local employer

For more detailed information on how to avoid retrenchments, manage them responsibly, and mitigate the impacts on workers, see Better Work's Managing Transitions and Retrenchment Guidelines, available at <https://betterwork.org/portfolio/managing-transitions-retrenchments/>

Cambodian Legal Provisions

Cambodian legislation requires employers to follow certain procedures when suspending operations, terminating workers (including during mass layoffs), and when closing the factory.

Cambodian Labour Law is referred to as LL
Arbitration Council Awards are referred to as AC

NOTE: Governmental measures put in place to address Covid-19 are described in Attachment 1.

1. Suspension of Work

Under Labour Law, Art. 71, factories may suspend their operations for up to two months due to serious economic, material, or other particularly unusual difficulties. The suspension shall not exceed two months and must be under control of the Labour Inspector.

According to the Ministry of Labour and Vocational Training Instruction #045/20 on Employment Contract Suspension and Suspension of NSSF Contribution Payment for Factories, Enterprises, Establishments in the Garment and Tourism Sectors Severely Affected by Covid-19, released on 17 April 2020, the duration of the employment contract suspension is 2 months maximum, and can be delayed further if necessary according to the actual situation.

Although not required under Cambodian law, where possible, consulting with worker representatives prior to a suspension is in line with good practice. Moreover, the Ministry of Labour and Vocational Training has required employers implementing COVID 19-related suspensions in the textile, garment, footwear, travel goods and bag sectors due to shortage of raw materials or any special difficulty to:

- ◆ discuss and explain to workers the reasons for applying to MOLVT for employment contract suspensions
- ◆ explain to workers the allowance to be paid during the suspension
- ◆ prepare an agreement in writing with worker representatives on procedures for paying the required allowance.

The amounts to be paid to workers for COVID-related suspensions were initially set at 40% of minimum wage (USD \$190) to be paid by employers, plus an additional 20% of minimum wage to be paid by the Government (USD 114 / month in total). However, on April 7, 2020, the Government issued a press release stating that for suspensions from April 10, 2020 onwards, the Government will provide 40 USD / month and employers should pay 30 USD, so suspended workers are paid a total of 70 USD/ month.

Prior Approval from Labour Inspector (LL Art. 71; AC 08/07, 82/06)

The employer must notify and seek approval from the Labour Inspector prior to suspending workers due to serious economic, material, or other difficulties, including when suspending only a section or group of workers (not the entire workforce) for a short period.

Payment during suspensions (LL Art. 72; AC 15/06, 31/07)

Workers do not have to work, and the employer is not required to pay them during a suspension, absent an agreement to the contrary.

If workers are required to report to work during a suspension, it is not considered a suspension, and workers should be paid full wages.

Please see Attachment 1 for details on the measures that have been put in place regarding suspensions due to Covid-19.

¹ Instruction No.014/20 on Employment Contract Suspension, Enrolment for Soft Skill Training and Suspension of NSSF Contribution Payment for the Textile, Garment, Footwear, Travel Goods and Bag sectors affected by Shortage of Raw Materials due to Covid-19

During a suspension (LL Arts. 71, 72; AC 01/07)

- ◆ employers must continue to provide housing if that was already being provided
- ◆ a trade union's mandate is not impacted
- ◆ Unless otherwise specified, time lost is included when calculating a worker's seniority.

Cambodian law also allows for suspension of a labour contract in cases of act of God preventing one of the parties from meeting their obligations, up to a maximum of three months. "Acts of God" are not expressly defined in the Labour Law, but are generally understood to include unforeseen, unpreventable, grave events, usually involving natural disasters. The Labour Law makes reference to catastrophes, such as flooding, earthquake, or war that cause material destruction and make it impossible to resume work for a long time. It is unclear whether a pandemic would be considered an act of God.

An employer can reinstate a suspended contract, provided that the reasons for the suspension have been remedied and s/he has given prior notice in accordance with the law.

2. Mass Layoff

Layoffs due to a factory's reduced activity or internal reorganization that are foreseen by the employer are subject to the following requirements.

Inform and consult worker representatives (LL Art. 95; Law on Trade Unions, Art. 41; Prakas 302/18)

The employer must inform worker representatives in writing, and consult with them in advance regarding plans to reduce the workforce.

Worker representatives can provide inputs on, e.g., measures to announce the layoffs and to minimize the effects on affected workers, among other issues.

Notify the Labour Inspector (LL Art. 95)

The employer must keep the Labour Inspector informed throughout the process.

Worker representatives can request the Labor Inspector to bring the parties together one or more times to examine the impact of the proposed layoffs and measures to minimize their effects.

In exceptional cases, the Minister of Labor can issue a Prakas to suspend the layoffs for up to 30 days in order to help the parties find a solution. This suspension may be repeated once through a second Prakas.

Selection Criteria (LL Art. 95)

The Labour Law provides that the employer decides the order of the layoffs in light of a worker's professional qualifications, seniority, and family responsibilities. Layoffs should follow this order:

- ◆ First, workers with the least professional qualifications
- ◆ Second, workers with the least seniority at the factory
 - ◆ Seniority is increased by one year for a married worker
 - ◆ Seniority is increased by an additional year for each dependent child.

Priority in Rehiring (LL Art. 95)

- ◆ Dismissed workers have priority if the employer rehires for the same job in the factory, for a period of two years.
- ◆ Workers who have priority in re-hiring must inform the employer of any change in address so they can be easily contacted.
- ◆ If there is a vacancy, the employer must inform the appropriate worker by sending a recorded delivery or a registered letter to the worker's last address. The worker must appear at the factory within one week after receiving the letter.

3. Factory Closure

Declaration (LL Art. 18; Prakas 288/01)

Employers must make a declaration to MOLVT within thirty days after closing the factory.

Impact on payment requirements (LL Arts. 87 (new), 95, 122 (new))

If the employer's death leads to factory closure, workers are entitled to payment in lieu of notice. However, the employer is not required to pay damages and compensation in lieu of prior notice if the factory was closed in accordance with all legal requirements, as set forth in the MOLVT Prakas.

Factory closures, except for acts of God, do not release the employer from notice and termination payment requirements. Bankruptcy and judicial liquidation are not considered acts of God. As mentioned above, "Acts of God" are not expressly defined in the Labour Law, so it is unclear whether a global pandemic would be considered an act of God.

Workers' wages, seniority indemnity and paid holidays have priority status in the event that the factory goes bankrupt or files for judicial liquidation.

Unfair labour practice (Law on Trade Unions, Art. 63 (j))

Failure on the part of an employer to comply with provisions relating to the closure of a factory is considered an unfair labour practice.

Change in legal status (LL Art. 87 (new))

If a change occurs in the legal status of the employer, through succession or inheritance, sale, merger or transfer of funds to form a company, all labour contracts in effect until the day of the change remain binding between the new employer and the workers of the former factory.

4. Termination Provisions

Notifying the Ministry of Labour and Vocational Training (LL Art. 21)

Employers are required to inform the labour ministry whenever they hire or dismiss a worker.

Invalid grounds for termination (Constitution, Art. 46; LL Arts. 12, 182, 333; Law on Trade Unions, Art. 62)

Invalid reasons for termination include (i) union membership or participation in union activities, including strikes; (ii) the worker's race, colour, sex, pregnancy, creed, religion, political opinion, birth or social origin; or (iii) absence from work during maternity leave.

Termination of worker representatives (LL Arts. 282, 293; 112/06; Law on Trade Unions, Arts. 43, 67, 68)

Employers must obtain prior permission from the Labor Inspector before terminating union leaders and shop stewards. If the Labour Inspector does not approve the request within a month, it is considered rejected. Decisions can be appealed to the Minister of Labour.

The following workers are protected in this way:

TRADE UNION	SHOP STEWARDS
Current leader, vice leader and secretary	Current shop stewards
Elected and unelected candidates for leadership/management (for 45 days after election)	Unelected candidates (for 3 months after election)

* In order to enjoy the protection, the union must provide the names of those protected to the employer through certified means, with a copy to the Ministry of Labour and Vocational Training.

Union leaders/ managers, and administrators who have been temporarily laid off due to economic or other reasons retain the right to access the factory. If the layoff is permanent, they have access to the factory for 60 days following termination, in order to perform their union duties (without affecting the factory's normal operations).

Notice of Termination (LL Arts. 73-75, 82, 85)

As with most terminations, the employer must give workers notice before terminating them. Probationary workers do not require notice.

The employer may be relieved of the requirement to provide notice in case of:

- ◆ Closure ordered by public authorities, or
- ◆ Catastrophe (flooding, earthquake, war) causing material destruction that makes it impossible to resume work for a long time.

Notice of Non-Renewal for Fixed Duration Contract (FDC) workers (LL Art. 73):

The employer must inform workers on FDCs that their contracts will not be renewed before they expire. If the employer does not provide prior notice, the contract shall be extended for a period of time equal to its initial duration, or deemed a contract of unspecified duration if its total length exceeds two years.

The amount of notice required depends on the length of the contract:

LENGTH OF FDC CONTRACT	NOTICE OF NON-RENEWAL
6 months or less	Current shop stewards
More than 6 months	10 days
More than 1 year	15 days

If the employer does not provide prior notice, the law requires the contract to be extended for a period of time equal to its initial duration, or deemed a contract of unspecified duration if its total length

exceeds two years.

Notice for unspecified duration contract (UDC) workers (LL Arts. 73-75):

The notice period for workers on UDCs depends on the length of their employment. If a UDC replaces a FDC when the FDC expires, the employment seniority of the worker includes the periods of the both/all contracts.

Under an Administrative letter dated 21 Feb 2020 from the Department of Labour Inspection to CAMFEBA, the notice period for workers on UDCs depends on the length of their employment, which includes the worker's current UDC, as well as any previous fixed duration contracts for which the severance pay (5%) was not provided upon renewal.

LENGTH OF EMPLOYMENT	NOTICE PRIOR TO TERMINATION
Less than 6 months	7 days
6 months to 2 years	15 days
More than 2 years up to 5 years	1 month
More than 5 years up to 10 years	2 months
More than 10 years	3 months

Payment in lieu of notice for UDC workers (LL Arts. 77, 85, 110):

Rather than providing notice, the employer may pay workers the wages and benefits they would have earned during the notice period.

This payment is calculated based on a worker's average daily earnings during the twelve months preceding the termination (not based only on minimum wage).

Paid time off for workers to look for a job (LL Art. 79)

During the notice period, workers are entitled to take two days paid leave per week to look for a new job, and they may stop work early if they find work elsewhere.

5. Termination Payments

As with any termination, workers are entitled to compensation, which varies depending on the type of contract and the duration of employment.

Fixed Term Contract Workers (LL Art. 73) – Non-renewal upon expiration

- ◆ Wages for unused annual leave (LL Art. 167)
- ◆ All workers must be paid for their unused annual leave if any
- ◆ Outstanding wages owed, if any
- ◆ Severance Pay
- ◆ FDC workers must be paid severance pay equal to at least 5% of the wages paid during the length of the contract (including overtime and bonuses). If a collective agreement specifies a higher severance pay than that required by law, this higher amount must be paid.

Fixed Term Contract Workers (LL Art. 73) – Termination prior to end date

- ◆ Wages for unused annual leave (LL Art. 167)
- ◆ All workers must be paid for their unused annual leave if any
- ◆ Outstanding wages owed, if any
- ◆ Severance Pay
- ◆ (Same as above for non-renewals upon expiration)
- ◆ Damages (LL Art. 73)
- ◆ If FDC workers are terminated before the end of their contracts, they also are entitled to damages equal to the pay that they would have received up through the expiration of their contracts. These damages can be avoided if both parties agree in writing to the termination, and this is witnessed by a Labor Inspector. Absent such an agreement, an FCD can be cancelled before its expiration only in cases of serious misconduct or acts of God.

Unspecified Duration Contract Workers (LL Arts. 89 (new), 110)

- ◆ Payment in lieu of notice (if applicable)
- ◆ Wages for unused annual leave (LL Art. 167)
- ◆ All workers must be paid for their unused annual leave if any
- ◆ Outstanding wages owed, if any
- ◆ Seniority Indemnity
- ◆ UDC workers must be paid a seniority indemnity, which is calculated based on their average earnings over one to six months prior to termination. The seniority indemnity is not required if the worker resigns or was terminated for serious misconduct, but it is required for all other terminations, including for retrenchment, illness, etc.

The amount of compensation depends on length of employment:

LENGTH OF EMPLOYMENT**NOTICE PRIOR TO TERMINATION**

1 month to < 6 months	7 days wages and benefits
Full 6 months	7.5 days wages and benefits (1/2 the indemnity for 1 year)

If a collective agreement specifies a higher seniority indemnity than that required by law, this higher amount must be paid.

- ◆ **Damages (if applicable) (LL Arts. 91, 94, as amended)**

If the employer terminates a UDC worker without a valid reason, the worker is entitled to damages. The amount of damages is determined in court, but a worker can avoid having to prove damages, and instead claim damages in an amount equal to the indemnity payment directly from the employer.

Valid reasons for termination (LL Art. 74):

- ◆ the worker's aptitude or behavior, or
- ◆ the operational requirements of the factory (including, e.g., layoffs due to reduced production)

or internal reorganization)

Timing of Payments (LL Art. 116)

Workers must be paid all outstanding wages and indemnities within 48 hours of termination.

Relocation of the factory (AC 153/08)

If the employer relocates the factory and a worker chooses not to work in the new location, whether the employer may be considered to have terminated the worker may be determined based on pre-existing agreements between the employer and workers on the issue of relocation. If there are no such agreements, workers may be required to relocate if there is 1) no reduction in wages (2) no change in shift (3) no substantial change in required skills, (4) not a significant distance between workplaces. If any of these factors are present, the employer can be considered to have terminated workers' contracts, and is responsible for all relevant termination payments.

Employment Cards (LL Arts. 37, 93)

Workers can demand a certificate of employment from the employer that contains the starting and ending dates of employment, type of job/ jobs held, and dates during which different jobs were held.

6. Grievances and Disputes

Unless the employer and workers or their representatives have agreed to a different system of dispute resolution, disputes are resolved in the following ways, depending on whether the dispute is collective or individual:

- ◆ negotiation
- ◆ conciliation
- ◆ arbitration
- ◆ strike/lockout and
- ◆ court action

The process for resolving disputes depend on whether the dispute is collective or individual.

Individual disputes (LL Art. 300; AC 10/03)

Individual disputes involve an employer and one or more workers as individuals, and relate to the interpretation or enforcement of an employment contract, collective agreement, or laws and regulations.

Collective disputes (LL Art. 302)

A collective labor dispute is one that may jeopardize the effective operation of the enterprise or social peace, and that arises between one or more employers and a certain number of their workers over

- ◆ working conditions,
- ◆ the exercise of recognized rights of professional organizations,
- ◆ the recognition of professional organizations within the factory, and/or
- ◆ issues regarding relations between employers and workers.

Grievance Procedures

Many employers set up workplace level grievance procedures in consultation with their workers so that disputes can be resolved quickly and fairly. If the parties do not reach agreement, they may be required to notify the Labour Inspector for further conciliation.

Voluntary Conciliation of Individual Disputes (LL Arts. 300-301; Prakas 318/01)

Conciliation of individual disputes is voluntary: either the employer or the worker may file a complaint with the Labour Inspector for conciliation of their dispute before going to court. However, if one party requests conciliation of an individual dispute, the other party must also go to the conciliation meeting. If the defendant fails to appear, the complaint is decided in favor of the plaintiff.

If the conciliation results in an agreement, the employer and the worker must implement the agreement.

If the conciliation is not successful, either party may file a complaint in court within two months of the failed conciliation.

Compulsory Conciliation of Collective Disputes (LL Arts. 302-308; Prakas 317/01)

Unless the parties to a collective labour dispute have agreed on a different dispute resolution procedure, they are required to notify the Labour Inspector of their dispute. The Ministry of Labour must attempt to conciliate collective labour disputes.

No Strike or Lockout during Conciliation (LL Art. 306)

During conciliation, workers may not go on strike and the employer may not conduct a lockout.

Conciliation Agreement and Arbitration Decision (LL Arts. 307, 314, 315)

Reports on conciliation agreements or arbitral decisions, which have not been appealed, shall be binding and posted in the workplace of the enterprise involved in the dispute and in the office the relevant provincial and municipal labour inspectorate.

Arbitration (LL Arts. 309-317; Prakas 099/04)

If conciliation of a collective dispute does not lead to an agreement, the Ministry of Labour will refer the dispute to the Arbitration Council.

No strike or Lockout during Arbitration (LL Art. 320; Prakas 099/04; AC 04/04, 18/04, 227/12, 228/12)

During arbitration, workers may not go on strike and the employer may not conduct a lockout. If there is a strike, the Arbitration Council will issue an Interim To-Work Order requesting the union to put off the strike. The Arbitration Council has refused to hear cases until the parties cease strikes and lockouts.

Requirement to Cooperate with Arbitration Council (LL Arts. 314, 315; Prakas 099/04; AC 22/04, 201/12)

The parties to a dispute that is being heard by the Arbitration Council must attend all meetings they are called to, and must also provide all documents and other information that the arbitrators request.

Arbitral Awards (LL Arts. 313-315; Prakas 099/04; AC 209/12(1))

Decisions of the Arbitration Council are called Arbitral Awards.

Arbitral Awards must be implemented unless one of the parties to a dispute objects to the award

within 8 calendar days of being notified of it. In this case, the award is cancelled.

If there is no objection, the parties have to comply and the Award must be posted in the workplace and in the office of the local Labour Inspectorate.

For more information, see The Arbitration Council and the Process for Labour Dispute Resolution in Cambodia (CLEC/ILO, 2nd ed., 2004).

Strikes & Lockouts (LL Arts. 318-337; Prakas 338/02; Circular 005/00; Notice 20/00)

A strike is a concerted work stoppage by a group of workers that takes place within a factory in order to satisfy their demands as a condition of their return to work.

A lockout is a total or partial closing of a factory by the employer during a labor dispute

The rights to strike and lockout are guaranteed under the Labour Law.

When Workers can go on Strike (LL Arts. 319, 320; AC 29/03, 204/12(12))

Workers can go on strike to defend their rights and interests, but only after all other methods of dispute resolution have failed. In most cases, workers will need to try the following forms of dispute resolution before going on strike:

- ◆ negotiation;
- ◆ conciliation; and
- ◆ Arbitration.

When Workers cannot go on Strike (LL Art. 321)

The right to strike cannot be exercised for the purpose of revising a collective agreement or reversing an arbitral decision accepted by the parties, when the agreement or the decision has not yet expired.

Legal Procedures for Calling a Strike (LL Arts. 323-329, 336, 337)

After attempting to settle the dispute using all other dispute resolution processes, before going on strike, workers must follow the procedures set out in the union's statute and the Labour Law. These include the following requirements:

Secret Ballot (LL Art. 323)

The union's statute must provide that a decision to strike is made by secret ballot. Prior to declaring a strike, the union must vote to do so by secret ballot.

Prior Notice (LL Arts. 324, 325)

A strike is not lawful unless the union gives 7 working days' notice of the strike to the employer and to the Ministry of Labour. The union(s) must inform the employer's organization prior to strikes at the sectoral level.

Illegal Strike (LL Arts. 336, 337)

Strikes that do not comply with the procedures set out in the Labour Law are illegal. Non-peaceful strikes are also illegal. Only the courts can declare a strike illegal.

Non-Violence (LL Arts. 330, 336; AC 16/11(1))

Violent acts committed during a strike by either party are considered serious misconduct. An employer may discipline or dismiss a worker for committing violent acts during a strike.

Freedom of Non-Strikers (LL Art. 331)

Non strikers shall be protected against all forms coercion or threat.

Any person uses any means to coerce a worker into striking or to prevent a non-striker from working, shall be punished with a written warning. Failure to comply with this warning may be subject to a fine not exceeding five million Riels.

No Punishment for Strikers (LL Arts. 332-333, 337; AC 04/03, 18/04, 22/04, 49/05, 17/10, 22/11(1 & 2), 169/09(1), 204/12(12); Notice 230/12)

The employer is prohibited from imposing any sanction on a worker because of their participation in a strike. Unless the employer can prove that strikers have committed acts of misconduct, the employer must allow them to return to work without punishment once the strike is over.

Participating in an illegal strike is not, by itself, serious misconduct. However, failure to return to work, without valid reason, within 48 hours of a court order to do so is serious misconduct.

The Arbitration Council has interpreted the prohibition on punishment after a strike to mean that the employer cannot deduct more than the proportional amount of the monthly attendance bonus for the days not worked during the strike from workers who participate in a legal strike.

Payment of Wages during a Strike (LL Art. 332; AC 204/12 (12))

Workers are not entitled to pay when they go on strike. This rule applies to both legal and illegal strikes. Sometimes management and unions do agree for striking workers to be paid as part of the settlement of the dispute.

No Recruitment during Strike (LL Art. 334; AC 04/03, 08/04, 15/04, 178/12 (12 & 3), 197/12 (10))

Employers may not recruit new workers to replace striking workers. The Arbitration Council has found that transferring raw materials to another factory in order to perform the work of striking workers is equivalent to hiring new workers during a strike.

If an employer does hire replacement workers, the employer has to pay the salaries of the striking workers for the duration of the strike. The Arbitration Council has found that the strikers are only entitled to pay under Art. 334 if they followed the legal procedures for calling a strike.

Lockouts (LL Arts. 318, 319, 322, 335, 369; Law on Trade Unions, Art. 93)

Employers may also lock out their workers as part of a labour dispute. The right to lockout is subject to the same rules and restrictions as the right to strike.

If an employer conducts an illegal lockout, they must pay the workers' wages during the lockout and penalties also apply.

An illegal lockout is one that continues after the Labour Court has declared it illegal, and is subject to written warning. Failure to comply with this warning may be subject to a fine not exceeding 5 million Riels.

Attachment 1

Measures to tackle Covid-19 in Garment, Footwear and Bags Sector and Industry Suspension

1. Dealing with Covid-19

Labour Ministry issued Instruction No.004/20 on Preventive Measures against Covid-19 at Factories, Enterprises and Establishments. The Ministry asked the factories to carry out 11 points.

The points relevant to the garment sector include:

1. Any employer, worker/employee having a condition such as fever, cough, sneeze, flue, runny nose or sore throat must be sent to seek medical treatment in timely manner or call 115.
2. Avoid touching any patient having a condition such as fever, cough and sneeze or flue and stay more than a meter away from anyone having these symptoms.
3. Avoid spitting in the workplace, compound of the enterprise/establishment and public locations.
4. Avoid touching your eyes, nose, and mouth after touching animals and animal products, sick animals, substandard meats, animal droppings, animal body fluids and materials used in markets or materials of respiratory patients.
5. Wash hands regularly and frequently with soap and clean water or rubbing alcohol after touching anyone having a condition such as fever, cough and sneeze or flue or other materials that can be the virus source or when your hands are dirty or stained or after touching animals and clean your hands immediately with soap and clean water or rubbing alcohol after coughing or sneezing. Clean your hands immediately after touching mucus or respiratory fluid.
6. Adhere to hygiene, food safety by eating only well-cooked food, especially meats and eggs. Cooks must use separate cutting boards and knives for raw food and cooked food and must clean their hands between touching raw food and cooked food.

United Nations in Cambodia

Health education message on prevention of COVID -19. This is an educational video on Covid-19. It is in Khmer. It is accessible through Facebook Channel: <https://www.facebook.com/OneUNCambodia/videos/225745121916899/>

Materials stored on google drive

It contains poster, radio, and video spot. <https://drive.google.com/drive/folders/1waFqUzHR9CC9K-wB1rXJO6cPoMtOSXOnP?usp=sharing>

2. Dealing with Employment Contract Suspension (ECS) in the Industry

MoLVT issued an instruction² on the Employment Contract Suspension (ECS), Enrollment for Soft Skill Training and Suspension of NSSF Contribution Payment for the Textile, Garment, Footwear, Travel Goods and Bags Sectors affected by Shortage of Raw Materials due to Covid-19. The Instruction offers information on (a) application for employment contract suspension; (b) enrollment for soft skills training; (c) application for suspension of payment of contribution and continued provision of NSSF benefits and (d) dissemination of the achievement of BFC.

Instruction #14/20 on Employment Contract Suspension, Enrolment for Soft Skill Training and Suspension of NSSF Contribution Payment for the Textile, Garment, Footwear, Travel Goods and Bag sectors affected by Shortage of Raw Materials due to Covid-19.

Factory owners facing a COVID-related shortage of raw materials or other special difficulty leading to suspension of any production activity must:

- ◆ Submit application form for ECS to Labour Inspection Department (MoLVT) or provincial DoLVT;
- ◆ Explain to workers the reasons for applying for ECS and allowances to be paid during ECS;
- ◆ Prepare agreement with workers' representatives on procedures of paying allowance of 40% of US\$190 (which is the minimum wage for 2020);
- ◆ Prepare a list of workers whose employment contracts need to be suspended
- ◆ Send a notice letter on suspension of paying NSSF contribution for the suspension of payment of contribution and continued provision of NSSF benefits;
- ◆ Cooperate and help notify workers whose employment contracts are suspended to enroll for soft skill training to receive extra allowance from the Government in the amount of 20% of US\$190 (2020 minimum wage);
- ◆ Facilitate and make it easy for workers to enroll for the training with officers of the National Employment Agency (NEA); and
- ◆ Provide places for training at the factories.

The workers/employees:

- ◆ Workers will continue to receive NSSF health care benefits and allowance when giving birth from the Government of 400,000 KHR per one child, 800,000 KHR for twins, and 1.2 million KHR for triples;
- ◆ Enroll for soft skill training in order to receive extra allowance from the Government of 20% of 2020 minimum wage (US\$190); and
- ◆ Regularly attend the training as per the training schedule.

Labour Inspection Department and National Employment Agency (NEA), MoLVT

- ◆ Set up special intervention teams;
- ◆ Visit factories to explain and facilitate it for relevant parties with regard to the procedures for employment contract suspension within 24 hours after receiving the application for ECS from the factory owners;
- ◆ Issue a permit for ECS within 24 hours after workers and factory owners have followed all pro-

cedures and have agreement;

- ◆ Make a copy of permit for ECS to NSSF, NEA, MoC, Ministry of Industry and Handicraft, MoEF, and local authorities;
- ◆ Coordinate with factories in preparing and organizing training courses;
- ◆ Notifying workers of the training schedule and programme;
- ◆ Provide effective and quality training;
- ◆ Prepare and manage the daily attendance list of workers who attended the training;
- ◆ Labour Advisory Committee (LAC) Secretariat cooperate with BFC and stakeholders of BFC to disseminate subsequent positive progress, labour rights and FOA in Cambodia to workers, national and international media and development partners; and
- ◆ LAC Secretariat cooperate with media outlets to produce photos, video clips and leaflets about workers' remarks who consume products from Cambodia with regards to better working conditions.

3. Ministry of Labour and Vocational Training Notification #012/2020 on the Postponement of Khmer New Year 2020, released on April 7, 2020.

The Ministry of Labour and Vocational Training informed all owners or directors of enterprises/establishments and workers/employees covered by labour law that the public holidays (4 days) for Khmer New Year on 13, 14, 15 and 16 April 2020 shall be postponed.

The Royal Government has set 5 days of compensation to compensate workers/employees for this Khmer New Year postponement at any appropriate time. The Ministry will issue a new notification on the compensatory holidays for the Khmer New Year holidays postponement after receiving specific dates from the Royal Government.

In this regard, all owners or directors of the enterprises/establishments and workers/employees are informed to continue to work normally during the Khmer New Year holiday.

4. Ministry of Labour and Vocational Training Instruction #045/20 on Employment Contract Suspension and Suspension of NSSF Contribution Payment for Factories, Enterprises, Establishments in the Garment and Tourism Sectors Severely Affected by Covid-19, released on 17 April 2020.

The Ministry of Labour and Vocational Training instructed:

1. owners or director of factories, enterprises, establishment in the garment sector (including textile, garment and footwear and travel goods and bag factories) and tourism sector in Phnom Penh, Siem Reap, Preah Sihanouk, Kep and Kampot provinces (including hotels, guesthouses, restaurants and travel agencies) facing a shortage of raw materials or having no orders or no

² Instruction No.014/20 on Employment Contract Suspension, Enrolment for Soft Skill Training and Suspension of NSSF Contribution Payment for the Textile, Garment, Footwear, Travel Goods and Bag sectors affected by Shortage of Raw Materials due to Covid-19.

export markets or no customers for services or facing any particular difficulty leading to suspension of production activity or business temporarily and

2. workers/employees working in those factories, enterprises, establishments to jointly fulfil the procedures of employment contract suspension and application for suspension of paying contribution to the National Social Security Fund (NSSF) as follows:

A- Application for Employment Contract Suspension

A1- Owners or directors of factories, enterprises, establishments in the garment and tourism sectors that have not provided an update to the Ministry of Labour and Vocational Training in late March 2020, must:

- ◆ Submit an application for employment contract suspension to the Minister of Labour and Vocational Training through the Labour Inspection Department for factories, enterprises, establishments in Phnom Penh and through Provincial Department of Labour and Vocational Training for factories, enterprises, establishments in provinces as per the format in Annex 1 and 2 of this instruction, which can be downloaded on the website of the Ministry www.mlv.gov.kh. The duration of the employment contract suspension is 2 months maximum and can be delayed further if necessary and according to the actual situation.
- ◆ Openly and widely disseminate and give notice to workers/employees whose employment contracts will be suspended to provide 1) Cambodian identity card number 2) personal phone number (or relative's phone number) to the Ministry so that the Ministry takes it as a basis for transferring the allowance of US\$40 per month via Wing Specialized Bank.
- ◆ Prepare a name list of workers/employees whose employment contract will be suspended duly as per the format attached in Annex 3 of this instruction by requiring workers/employees to thumbprint on their name to confirm that the Cambodia identity card number and phone number prepared by the factory, enterprise, establishment is correct.
- ◆ Any owner or director of factory, enterprise, establishment who fails to disseminate the above requirements to workers/employees or fails to ask workers/employees to thumbprint to recognize their Cambodian identity card number and phone number must be responsible for paying workers/employees the Royal Government's allowance of US\$40 per month.
- ◆ Attach three copies of each document 1) list of last month's wage before the employment contract suspension with the stamp of the factory, enterprise, establishment on all pages 2) business certificate 3) tourism license (for tourism sector) 4) patent 5) certificate of registration of enterprise, establishment with NSSF (if any) and 6) bank account of the factory, enterprise, establishment.
- ◆ After receiving the application for employment contract suspension with complete documents, the labour inspector will conduct an inspection and verification visit to the factory, enterprise, establishment within 2 working days.

A2- Owners or directors of factories, enterprises, establishment in the garment and tourism sectors that already provided an update to the Ministry of Labour and Vocational Training or through Provincial Departments of Labour and Vocational Training in late March 2020, must:

- ◆ Follow the procedure stipulated in Point A1 above completely but do it via automation system <https://suspension.mlv.gov.kh> with an instruction on how to use this system in Annex 4 of

this instruction.

A3- Other obligations of owners or directors of factories, enterprises, establishments in the garment and tourism sectors:

- ◆ Factories, enterprises, establishments in the garment sector must provide an allowance of US\$30 for each worker/employee per month, in which:
 - ◆ US\$10 is provided for the duration of employment contract suspension from 7 days to 10 days.
 - ◆ US\$20 is provided for the duration of employment contract suspension from 11 days to 20 days.
 - ◆ US\$30 is provided for the duration of employment contract suspension from 21 days to 1 month.
- ◆ Enterprises, establishments in the tourism sector must provide an allowance for workers/employees according to their ability and on a voluntary basis during the employment contract suspension and set a procedure for paying this allowance.
- ◆ Must implement the employment contract suspension as per the date and duration set in the Ministry's permit for the employment contract suspension. In case of ending the employment contract suspension (return to work) before the due date set in the permit for the employment contract suspension, a notice letter must be made to the Minister of Labour and Vocational Training through the Labour Inspection Department or Provincial Department of Labour and Vocational Training at least 2 days (of working days) before returning to work as per the format in Annex 5 and 6 of this instruction.
- ◆ Be responsible before the law for any conspiracy and false information provided to the Ministry of Labour and Vocational Training and repay the Royal Government.

A4- Workers/employees must:

- ◆ Provide their Cambodian identity card number and personal phone number that is contactable to the owner or director of factory, enterprise, establishment in the garment and tourism sectors in order to be compiled as a list and sent to the Ministry to prepare the payment of the Royal Government's allowance of US\$40 per month via Wing Specialized Bank to workers/employees.

In case of no personal phone number, provide the phone number of their spouse, child, parent or sibling and do not change the phone number.

- ◆ Receive the allowance from the Royal Government via Wing Agent as follows:
 - ◆ US\$ 15 for the duration of employment contract suspension from 7 days to 10 days
 - ◆ US\$ 30 for the duration of employment contract suspension from 11 days to 20 days
 - ◆ US\$ 40 for the duration of employment contract suspension from 21 days to 1 month.
- ◆ After 10 days of employment contract suspension, workers/employees will receive a phone message from Wing Specialized Bank about the amount of the allowance.
- ◆ After receiving the phone message, workers/employees must bring their Cambodian identity card and the phone that receives the message to any Wing Agent nearest to their house to collect the allowance of the Royal Government. The Wing Specialized Bank will refund the

allowance to the Royal Government if any worker/employee fails to go to collect the allowance within 10 days after the Wing Specialized Bank has sent the phone message to workers/employees.

The Ministry would like to remind workers/employees to cooperate in providing Cambodian identity card number and contactable phone number to the factory, enterprise, establishment and properly check the Cambodian identity card number and phone number in the name list of workers/employees whose employment contracts are suspended before thumb printing it to confirm it.

If a worker/employee fails to provide Cambodian identity card number and phone number to the factory, enterprise, establishment, it means the worker/employee has agreed to not receive the allowance of US\$40 per month from the Royal Government.

A5- The Ministry of Labour and Vocational Training

- ◆ Must make a copy of the employment contract suspension permit as per the format as in Annex 7 and 8 of this instruction to the Ministry of Commerce, Ministry of Tourism (for tourism sector), Ministry of Industry, Science, Technology and Innovation, Ministry of Mines and Energy, National Bank of Cambodia, Ministry of Economy and Finance, General Department of Taxation of the Ministry of Economy and Finance, National Social Security Fund and relevant municipal and provincial halls.

B- Application for contribution payment suspension and continuation of NSSF benefits

- ◆ Owners or directors of factories, enterprises, establishments who are members of NSSF must make a notice letter on suspension of NSSF contribution payment as per the format in Annex 9 of this instruction, which can be downloaded on the website of the Ministry www.mlvt.gov.kh.
- ◆ During the employment contract suspension, workers/employees will continue to receive health care benefits from the NSSF.
- ◆ Workers/employees still continue to receive an allowance for giving birth from the Royal Government (400,000 Riels for one child, 800,000 Riels for twins and 1,200,000 Riels for triplets and 5 million Riels from Samdech Techo Prime Minister and Samdech Kittipritbandit).

5. Ministry of Labour and Vocational Training Instruction #046/20 on the Quarantine Measures for Workers Employees in Factories, Enterprises and Establishments who went home during Khmer New Year 2020, released on 17 April 2020

The Ministry of Labour and Vocational Training instructed all owners, directors and workers who took leave during Khmer New Year and returned to work as below:

1. Owners or Directors of factories in Phnom Penh should:

- ◆ Prepare isolated rooms in proper location to record the attendance of workers who return to work.
- ◆ Assign administrator to prepare name list of workers who return to work after taking leave for providing to inspector officers daily at 2pm.
- ◆ Instruct workers to get health checked at Health Center advised by labour inspectors such as:
 - ◇ Workers who have been checked and suspected to have symptoms shall be sent to quarantine center level 2 for continued diagnosing.

- ◊ Workers who have been diagnosed without suspected symptoms should be quarantined for 14 days at their home per the quarantine measures of the Ministry of Health, and report to factory administration by phone about the health situation daily for factory administrator to report to medical doctor group of Ministry of Labour and Vocational Training.
- ◊ Workers who do not have rooms due to any reasons, such as rental house owner or roommates do not allow the worker to stay, should inform to medical doctor group of Ministry of Labour and Vocational Training to send to any quarantine center level 1.
- ◆ No obligation to give wage to workers who took leave by themselves without permission during this quarantine period.
- ◆ It is obligatory to give wage for 7 days to workers who took leave with permission during quarantine period. However, workers who were absent with permission by employers due to special leave, such as wife delivered baby, parents, grand -parents, spouses or child passed away shall be given full 14 days payment as normal.
- ◆ Continue follow up checking health, providing masks, and workers who just finished the quarantine and return to work, must wear masks.

2. Workers/ employees who work at factory in Phnom Penh:

- ◆ Show up in the factory and report necessary information required by the Ministry of Labour and Vocational Training for factory administrator to take attendance, and cooperate implementing the quarantine measure of the Ministry.
- ◆ Go to get checked at health center advised by the factory administrator according to labour inspector.
- ◆ Implement the quarantine measure at identified center or individual room for 14 days assigned by medical doctor group or authority.
- ◆ Keep and show individual health certification issued by medical doctor to show to factory administrator and rental house owners.
- ◆ Report to factory administrator by phone about individual health situation every day at 8am for factory administrator to report to medical doctor of Ministry of Labour and Vocational Training.
- ◆ Contact the Ministry of Health by 115 or 012 825 424/012 958 179 if you have suspected symptoms during the quarantine period at your place during these 14 days.
- ◆ Must wear masks at working place after finishing the 14-day home quarantine.

If any worker/ employee does not implement these 7 obligations, he/she shall be terminated without paying any benefit from employer.

3. Owners or directors and workers/ employees at factories in provinces and also owners or directors and workers of enterprises, establishments in other sectors should coordinate the home quarantine for 14 days by:

- ◆ Workers who took leave by themselves without permission shall not receive any payment during the quarantine.
- ◆ Workers who took leave with permission from employer shall receive 7 days payment during the quarantine. However, worker who was absent with permission from employer due to special

leave, such as wife delivered baby, parents, grand parents, spouses or child passed away shall be given full 14 days payment.

- ◆ Follow up health check together and for workers who just finished the quarantine and return to work must wear masks.
- ◆ Any worker who does not cooperate with the quarantine implementation or the above measures, and creates terror to other workers shall be forced to stop working without receiving any benefit from em



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