

Rules of employment termination and monies on separation in Myanmar

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Introduction

Objective

To identify employee's rights and employer's liabilities in relation to employment termination in Myanmar according to regulatory frameworks enacted as of December 2020

Limitation

We focus on:

- Individual dismissal but not collective dismissal
- General rules on resignation, dismissal and related compensations but not termination involved in a dispute settlement process

Regulatory framework on employment, termination and compensation

Topic	Enacted regulation	Remarks
Employment and skills development	Law 29/2013	Repealed Employment and Training Act, 1950
Standard employment contract	Notification 140/2017	Repealed Notification 1/2015
Statutory severance pay	Notification 84/2015	-
Leave and holidays	Law 58/1951	-
	Law 30/2014	Partially amended Law 58/1951
	Rule 69/2018	Enforcing Law 58/1951
Payment of wages	Law 17/2016	Repealed Payment of Wages Act, 1936
	Rule 193/2018	Enforcing Law 17/2016
Social security	Law 15/2012	-
	Rule 41/2014	-

► Employment

▶ Registration of employment (1)

Two general steps

- Signing employment contracts with individual workers within 30 days after employment relationship starts.
- Submitting copies of contracts to the authority for endorsement.

▶ Registration of employment (2)

- The contents of employment contract including 21 items are regulated by ESDL.
- MOLIP Notification issued a standard employment contract template in 2017.
- Employers submit copies of employment contracts to Township Labour Exchange Offices (TLEO) or District Labour Exchange Offices (DLEO).
- TLEO or DLEO assess and approve them.

▶ Registration of employment (3)

Contents of employment contract

1. Title of Job
2. Probation period
3. Wages/Salary
4. Place of work
5. Duration of the Contract
6. Working Hours
7. Rest days, Holidays and Leave
8. Overtime work
9. Arrangements for meals during the period of work
10. Accommodation
11. Medical Treatment
12. Ferry service and travel
13. Rules to be followed by employee
14. Agreement by worker regarding the duration he shall work after attending any training course arranged by the employer
15. Resigning and being discharged.
16. Termination of Contract
17. Responsibilities according to rules in the Contract
18. Amendment of the Contract by mutual agreement of employer and worker
19. Other matters
20. Adding, changing or amending the rules of the Contract
21. Miscellaneous

Registration of employment (4)

Mandatory registration and exemption

	Category of workers	Reference
Inclusion	All workers	ESDL article 5 (a) (1)
Exclusion	Permanent employees in the public sector	ESDL article 5 (a) (1)
	Workers in apprenticeship	ESDL article 5 (a) (2)
	Workers in probation	ESDL article 5 (a) (2)
	Workers employed by establishment with less than five workers	MOLIP Notification Number 140/2017

▶ Registration of employment (5)

Violation and punishment

Employers would be punished with:

- Imprisonment of up to three years or a fine or both if they undertake recruitment for employment without the permission of the MOLIP
- Imprisonment of up to one year or a fine or both if they provide LEOs with false information
- Imprisonment of up to six months, or with a fine or both if they fail to include required information in the employment contract

▶ Registration of employment (6)

Interpretation

We understand that:

- Permanent employees in the public sector, workers in apprenticeship or probation, and workers employed by establishment with less than five workers may not have employment contracts in a written form.
- The employment contract template can be amended upon mutual agreement between employer and employee. However, employers often use the standard employment contract template because the LEOs may reject the approval of template different from the standard one.

Types of employment agreement (1)

Law and regulation

- There is no Law or Rule to govern the term of employment agreement.
- MOLIP Notification (ECT-2017) assumes a contract to be a fixed-term.
- Fixed-term employment is a common form of employment in Myanmar.

'Permanent' employment

- MOLIP Notification (ECT-2017) indicates the possibility of permanent employment contract.
- The terminology 'permanent employee' appears to be used against employee in a probationary period or apprenticeship.

Types of employment agreement (2)

Practice

- ECT-2015 used to set the maximum duration of employment contract at 2 years.
- ECT-2017 removed the ceiling.
- TLEOs in Yangon continued to reject the approval of employment contract over 2 years (Thean-ngarm et al 2020).

Types of employment agreement (3)

Probation and apprenticeship

- Any employment contracts can set a probationary period or apprenticeship for 3 months or less.

Extension of fixed-term contract

- The template requires employers to guarantee an extension of contract unless the employee breaches any provision of employment contract; and the employer is not allowed to refuse the extension of the term without valid reasons. There is no provision to define the valid reasons.

▶ Termination

▶ Voluntary termination

Resignation

- Employees have the right to resign from the job by informing the employer 30 days in advance.
- The employer must then permit the resignation.

▶ Involuntary termination (1)

General

- Employers are allowed to terminate employment relationship only for prescribed reasons by informing employees 30 days in advance with an official notice with signature.

Prescribed reasons for lawful termination

- Ordinary or grave misconduct committed by employee
- Liquidation of the employer's business or factory closure
- Suspension of business due to unforeseeable events
- Death of employee

▶ Involuntary termination (2)

Ordinary or grave misconduct

- The employment contract should be accompanied by employment rules that specify in its appendix ordinary misconduct, grave misconduct and levels of disciplinary action for each category of misconduct.
- The employment rules are prescribed upon mutual agreement between the employer and employee.

Interpretation

- There is no clarification about misconduct in detail.
- We understand that employers and employees can define misconduct by mutual agreement.

► Involuntary termination (3)

Termination due to ordinary misconduct

- 1st and 2nd violation: An employee shall be given a written warning.
- 3rd violation: The employee shall sign an undertaking for committing to abide by the employment rule.
- 4th violation: The employer can terminate the employment contract.
- Without violation for 12 months after the third violation, all previously committed violations shall be cancelled.

Termination due to grave misconduct

- There is no provision about the consequences of grave misconduct.
- We understood an immediate termination is permitted (with advanced written notice?).

▶ Involuntary termination (4)

Termination due to liquidation or suspension of business, and death of employee

- The general rule is applied to these cases (30-day advanced written notice).

► Involuntary termination (5)

Unlawful termination

- Opposing an illegal lockout
- Membership in a labour organization
- Taking maternity leave
- Taking medical leave
- Any other involuntary termination

▶ Involuntary termination (6)

End of fixed-term contract

- Employers are not allowed to refuse the extension of fixed-term contract without any valid reasons.
- No other specific regulation has been enacted.

Cancellation with mutual agreement

- ECT-2017 stipulates possibility for the cancellation of employment contract by mutual agreement.

Summary

Reason for termination	Legality	Category	Advance notice	Reference
Resignation	Lawful	Voluntary	Required	ECT-2017, Clause 15 (a) (3)
Ordinary misconduct after third warning	Lawful	Involuntary	Not required	ECT-2017 Clause 15(b) (2)
Grave misconduct	Lawful	Involuntary	Required	ECT-2017 Clause 15(b) (3)
Liquidation of business	Lawful	Involuntary	Required	ECT-2017, Clause 15 (b) (3)), 16 (a)
Suspension of business due to unforeseeable events	Lawful	Involuntary	Required	ECT-2017, Clause 15 (b) (3), 16 (b)
Death of employee	Lawful	Involuntary	n.a.	ECT-2017 Clause 16 (c)
Opposing an illegal lockout	Unlawful	Involuntary	n.a.	LOL Article 44 (c)
Membership in a labour organisation	Unlawful	Involuntary	n.a.	LOL Article 44 (d)
Taking maternity leave	Unlawful	Involuntary	n.a.	LHR Rule 50 (g)
Taking medical leave	Unlawful	Involuntary	n.a.	LHR Rule 50 (g)
Any other involuntary termination	Unlawful	Involuntary	n.a.	n.a.

► Monies on separation

Severance pay (1)

Legal framework

- ESL established severance pay.
- MOLIP Notification Number 84 of 2015 defined its formula.
- ECT-2017 specified when employers are liable to pay severance.

Severance pay (2)

Determinants of entitlement

- Severance pay is an employers' liability in case of liquidation of the business, suspension of business due to unforeseeable events and death of employee.
- Severance pay is not due in case of resignation or dismissal for misconduct.
- We understand that the entitlement depends on the agreement in case of cancellation of employment contract by mutual agreement. No regulation explicitly stipulates the case.

Severance pay (3)

Formula

Entitled months based on consecutive months of service x the latest monthly salary excluding overtime payment

Duration of employment prior to termination	Entitled months
6 months and longer but shorter than 12 months	0.5 months
12 months and longer but shorter than 24 months	1.0 month
24 months and longer but shorter than 36 months	1.5 months
36 months and longer but shorter than 48 months	3.0 months
48 months and longer but shorter than 72 months	4.0 months
72 months and longer but shorter than 96 months	5.0 months
96 months and longer but shorter than 120 months	6.0 months
120 months and longer but shorter than 240 months	8.0 months
240 months and longer but shorter than 300 months	10.0 months
300 months and longer	13.0 months

▶ Severance pay (4)

Salary for calculating severance pay

- It is not literally clear whether the payment of bonus or other remunerations are considered as part of the salary in case if an employer paid in the last month prior to employment termination.
- We understand that the salary here means a basic component of monthly wage payment. In fact, ECT-2017 has a dedicated clause for defining daily wage, piece-rate and monthly salary.

► Compensation for paid leave entitlement (1)

Types of paid leave entitlement

- Public holiday (LHA): 14-days in total for public holidays decided annually by Gazette
- Weekly day off (LHA amendment): At least a day in a week as holiday on full wage
- Earned leave (LHA): A consecutive year of service grants 10 days for over age 15, 14 days under age 15, with possible carry over up to 3 years upon employer-employee agreement. A shorter contractor is given proportionately.
- Casual leave (LHA): 6 days per year for unexpected event like funeral
- Medical leave (LHA): 30 days per year after 6 consecutive months of service
- Maternity leave (LHA amendment): 6 weeks before and 8 weeks after the delivery

► Compensation for paid leave entitlement (2)

Reason for termination	Unpaid salary	Used paid leaves*	Unused earned leave	Severance pay	Reference
Resignation	O	O	O	X	ECT-2017, Clause 15 (a) (3)
Ordinary misconduct after third warning	O	O	O	X	ECT-2017 Clause 15(b) (2)
Grave misconduct	O	O	O	X	ECT-2017 Clause 15(b) (2)
Liquidation of business	O	O	O	O	ECT-2017 Clause 15 (b) (3), 16 (a)
Suspension of business due to unforeseeable events	O	O	O	O	ECT-2017 Clause 15 (b) (3), 16 (b)
Death of employee	O	O	O	O	ECT-2017 Clause 15 (b) (3), 16 (c)
Cancellation with mutual agreement	O	O	M	M	ECT-2017 Clause 18

Note: 'Used paid leaves' here includes the compensation for public holidays, weekly off, earned leave, casual leave, medical leave and maternity leave that employees have already enjoyed but have not been paid by the time of separation, and pay in lieu of notice when employers dismiss workers without giving the required period of advanced notice. O: Yes; X: No; M: Subject to mutual agreement

Source: Authors' abstract from national legislation

▶ Outstanding wage (1)

Payment schedule

- PWL regulates payment schedules.
- Upon employment termination, employers must pay all outstanding wages on working days that the workers have performed.

Reasons for termination	Due date of wage payment
Resignation	At the end of the payroll cycle
Dismissal	Within two working days from the date of termination
Death	Within two working days from the date of decease

▶ Outstanding wage (2)

Pay in lieu of notice

- It is not explicitly stipulated whether employees have the right to receive pay in lieu of notice in case when employers dismiss them without the prescribed advanced notice.
- In such case, we understand that the employees have the right to receive pay in lieu of notice to receive the amount of wages that they would have earned through working during the contracted period.

► Compensation for employment termination during probation or apprenticeship (1)

Termination during probation or apprenticeship

- No laws or regulation governs such termination and related compensation.
- We understand that the general rules for termination are applied to employees in these periods, unless mutual agreement is made.

► Compensation for employment termination during probation or apprenticeship (2)

Reason for termination	Unpaid salary	Used leaves* paid	Unused earned leave	Severance pay	Reference
Resignation	O	O	-	-	ECT-2017 Clause 15 (a) (3), LHR Rule 24
Ordinary misconduct after third warning	O	O	-	-	ECT-2017 Clause 15(b) (2), LHR Rule 24
Grave misconduct	O	O	-	-	ECT-2017 Clause 15(b) (2), LHR Rule 24
Liquidation of business	O	O	-	-	ECT-2017 Clause 15 (b) (3), 16 (a), LHR Rule 24
Suspension of business due to unforeseeable events	O	O	-	-	ECT-2017 Clause 15 (b) (3), 16 (b), LHR Rule 24
Death of employee	O	O	-	-	ECT-2017 Clause 15 (b) (3), 16 (c), LHR Rule 24
Cancellation with mutual agreement	O	O	-	-	ECT-2017 Clause 18, LHR Rule 24

Note: O: Yes; X: No

Source: Authors' abstract from national legislation

Relation with unemployment benefits

Monies on separation	When SSB pays unemployment benefits
Unpaid salary	Cannot be reduced
Compensation for used paid leaves	Cannot be reduced
Severance pay	Can be reduced
Compensation for unused earned leave	Cannot be reduced
Pay in lieu of notice	Cannot be reduced

▶ **THANK YOU**

This presentation has been prepared by Ippei Tsuruga. Please contact Ippei Tsuruga (tsuruga@ilo.org) for more details.

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