

CAMBODIAN LABOR AND EMPLOYMENT LAW

*KONG Phallack**

I. Introduction

This article will give an overview and understanding of Cambodian labor law; including its sources and historical development. It will also discuss issues related to labor discrimination and dispute resolution systems; individual employment; collective bargaining; representation by entities other than trade unions; redundancy and transfers of undertakings; wages, hours and leaves; anti-discrimination; occupational safety and health, worker's compensation, pensions and benefits, and employment of foreign workers.

II. Historical Background of Cambodian Law

Cambodian Labor law has evolved through five main stages, namely the pre-independence era, the post-independence eras of 1953 to 1970, 1970 to 1975, 1979 to 1992, and 1993 to the present.¹ The pre-independence era includes the periods before and during the French colonization, from the First Century A.D. to 1953. During this period, there was no written labor law. Legal measures governing the relationship between employers and workers were first established under the 1920 Civil Code, then by a 1927 Sub-decree which set forth a 10 hour workday and other labor regulations established during the French colonial period.² The Ministry of Labor and Social Affairs was first established in 1951 by Royal Decree No 651 NS of December 1951.³ During the post independence era to 1970, the

* Dr. KONG Phallack is Dean and Professor of Law of Faculty of Law and Public Affairs, Paññāsāstra University of Cambodia (PUC); Managing Director and Attorney at Law of KhmerLex Legal Solutions, a locally established law firm; Chief arbitrator of the Arbitration Council. He has handled 380 cases among 900 cases registered at the Arbitration Council. Dr. KONG Phallack has been selected to serve as a chairman of the Board of Director of the Arbitration Council Foundation; a member of Arbitration Panel of Kuala Lumpur Regional Centre for Arbitration (KLRCA), and a member of Inter Pacific Bar Association (IPBA).

1 According to the statement of October 25, 1998 written by H.E SUY Sem, then Secretary of State, Ministry of Social Affairs, Labor and Veteran Affairs (See Labor Law Publication by World Bank, IBRD-IDF No.TF 2411, Rule of Law Development, Labor Law Education of Women and Children), p.1

2 *Id.* p.1

3 *Id.* p.2

significant events were the transfer of French administration to the Cambodian government and the establishment of various other laws to broaden the scope of the existing labor law.⁴ From 1970 to 1975, the Khmer Republic amended the existing Cambodian Labor law, drafted a new labor law, and joined the International Labor Organization⁵. From 1979 to 1992, the Ministry of Social Affairs and Disable Veterans was established by Decree No. 19 Kr. Ch of March 5, 1985 and the new labor law was promulgated by Decree No.99 Kr of October 13, 1992.⁶ From 1993 to the present, a number of labor laws and regulations such as the 1997 Labor Law⁷, and the 2002 Law on Social Security have been created, and conventions of the International Labor Organization have been ratified to meet the demands of Cambodia's market economy.

III. General Sources of Labor Law

The main source of labor and employment law in Cambodia is the 1997 Labor Law and its first amendment in 2007, and the 2002 Law on Social Security. Furthermore, there are also a number of governmental regulations such as royal decrees, sub-decrees, prakas, decisions, circulars, and notice⁸ issued by the Royal Government of Cambodia, and particularly by the Ministry of Labor and Vocational Training. Additionally, there are labor arbitral awards and other related laws in force such as Decree 38 on Contract and Other Liabilities which provides general rules of contract.

The Labor Law regulates the labor relationship between employees and employers and the socio-legal rights and obligations resulting from a labor relationship. All Cambodian citizens and foreign nationals working in Cambodia are subject to the regulations of the Labor Code. The Labor Law specifically provides regulations on enterprise establishment, apprenticeships, labor contracts, collective labor agreements, general working conditions, specific working conditions for agricultural work, health and safety of workers, work related accidents, placement and recruitment of workers, trade union freedom and worker representation in the enterprise, settlement of labor disputes, strikes and lockouts, labor administration, and the labor advisory committee. The Law on Social Security provides a system of protection regarding work related accidents for workers under the scope of the labor law. Labor arbitral awards of the Arbitration Council are considered a source of

⁴ *Id.* p.2

⁵ *Id.* p.3 Cambodia ratified its membership of the ILO through Decree No. 467/71CE of April, 1971

⁶ *Id.* p.3

⁷ *Id.* p.4 The 1997 Labor Law promulgated by Decree No. CS/RKM/0397/01 of March 1997 with the kind assistance of the ILO, the French Ministry of Labor, and AAFLI, the labor law was made based on the 1992 Labor Law, and 1993 constitution

⁸ See, Dr. KONG Phallack, Overview Of Cambodian Legal And Judicial System And Recent Effort For Legal And Judicial Reform, 2. Sources of Laws in Cambodia, pp.2-5

the labor law because the council has developed a consistent jurisprudence to fill in the gaps and ambiguities of the labor law⁹.

In the realm of international legal standards of employment and labor, Cambodia has ratified 13 ILO conventions, which have legal effect within Cambodia, including 8 fundamental ILO conventions¹⁰.

IV. Labor Administration

According to the Labor Law, the Ministry of Labor and Vocational Training and its Labor Departments at the capital, provincial and municipal levels bear the primary responsibility for the administration of labor.¹¹ Labor inspections are assumed by the Labor Inspectors and Labor Controllers.¹² Labor medical inspection is under the labor medical inspectors and they work closely with the labor inspectors.¹³ Under the Labor Law, the Ministry of Labor and Vocational Training is required to establish a Labor Advisory Committee whose primary mission is to study problems related to labor, the employment of workers, wages, vocational training, the mobility of the labor force in the country, migrations, the improvement of the material and moral conditions of workers and matters of labor health and safety. The Labor Advisory Committee consists of the Minister in Charge of Labor, or his representative, who is the Chairperson; representatives from relevant ministries; and an equal number of representatives from the workers' unions that are the most representative at the national level, and of representatives from the employers' organizations that are the most representative at the national level¹⁴. Participation of the Kingdom of Cambodia in activities of the International Labor Organization shall be in consultation with representatives of employers and workers who are members of the Labor Advisory Committee¹⁵.

9 Source, Arbitration Council: <http://www.arbitrationcouncil.org>

10 Source, International Labor Organization: <http://www.ilo.org/ilolex/english/> The 13 conventions are: 1. C4 Night Work (Women) Convention, 1919 (1969); 2. C6 Night Work of Young Persons (Industry) Convention, 1919 (1969); 3. C13 White Lead (Painting) Convention, 1921 (1969); 4. C29 Forced Labour Convention, 1930 (1969); 5. C87 Freedom of Association and Protection of the Right to Organise Convention, 1948 (1999); 6. C98 Right to Organise and Collective Bargaining Convention, 1949 (1999); 7. C100 Equal Remuneration Convention, 1951 (1999); 8. C105 Abolition of Forced Labour Convention, 1957 (1999); 9. C111 Discrimination (Employment and Occupation) Convention, 1958 (1999); 10. C122 Employment Policy Convention, 1964 (1971); 11. C138 Minimum Age Convention, 1973 (1999); 12. C150 Labour Administration Convention, 1978 (1999); and 13. C182 Worst Forms of Child Labour Convention, 1999 (2006)

11 Labor Law and Sub-decree on the Organization and Functioning of the Ministry of Labor Vocational Training and Prakas on the Establishment of Labor Department.

12 Labor Law, Art 343

13 Labor Law, Art 349

14 Labor Law, Art 351 – Art 358

15 Labor Law, Art 358

V. Labor Dispute Resolution System

The Labor Law provides for the basic structure of labor dispute resolution in Chapter XII and Chapter XVII. Labor disputes are classified into individual labor disputes and collective labor disputes. The Labor Law does not call for both collective and individual labor disputes to be resolved initially through direct negotiation between the disputing parties before submission of the disputes to a third party. However the Law does provide for several different third-party dispute resolution mechanisms.¹⁶

In an individual labor dispute, prior to any judicial action, either party can refer the case to the Labor Inspector of his province or municipality or capital for a preliminary conciliation. On receipt of the complaint, the Labor Inspector shall inquire of both parties to elicit the subject of the dispute and then shall attempt to conciliate the parties on the basis of relevant laws, regulations, collective agreements, or the individual labor contract. To this effect, the Labor Inspector shall set a hearing that is to take place within three weeks at the latest upon receipt of the complaint. The parties can be assisted or represented at the hearing. The results of the conciliation shall be contained in an official report written by the Labor Inspector, stating whether there was agreement or non-conciliation. The report shall be signed by the Labor Inspector and by the parties, who receive a certified copy. An agreement made before the Labor Inspector is enforceable by law. In case of non-conciliation, the interested party can file a complaint in a court of competent jurisdiction within two months; otherwise the litigation will lapse.¹⁷

In a collective labor dispute, if there is no planned settlement procedure in a collective agreement, the parties are required to communicate the collective labor dispute to the Labor Inspector of their province or municipality. However, the Labor Inspector can take legal conciliation proceedings upon learning of the collective labor dispute even though he has not been officially notified.¹⁸ The Labor Law requires the Minister in Charge of Labor to designate a conciliator within forty-eight hours from the moment he is apprised or himself learns of the dispute¹⁹ and conciliation must be carried out within fifteen days from the designation by the Minister in Charge of Labor. It can be renewed only by joint request of the parties to the dispute²⁰. During the period of conciliation, the parties to the dispute must abstain from taking any measure of conflict. They must attend all meetings to which the conciliator calls them. Unjustified absence from any such meeting is punishable by a fine set in the rules of Chapter XVI.²¹ A conciliatory agreement, signed by the parties and endorsed by the conciliator, has the same force and effect of a collective agreement between the parties and the persons they represent. However, when the

¹⁶ Labor Law, Ch. 12: Art 300–Art 317

¹⁷ Labor Law, Art 301

¹⁸ Labor Law, Art 303

¹⁹ Labor Law, Art 304

²⁰ Labor Law, Art 305

²¹ Labor Law, Art 306

party representing workers is not a trade union, the agreement is neither binding on such union nor on the workers it represents.²² In the absence of an agreement, the conciliator must record and indicate the key points where the conciliation failed and shall prepare a report on the dispute. The conciliator must send such record and report to the Minister in Charge of Labor within forty-eight hours at the latest after the conclusion of conciliation.²³ If conciliation fails, the labor dispute shall be referred to settle by arbitration at the Arbitration Council²⁴. The Arbitration Council must hear the dispute within fifteen working days of the Arbitration Panel's formation date.²⁵

VI. Individual Employment

1. Employment Relationship

Summary of Main Legal Instruments

The main legal instrument regulating individual contract employment in Cambodia is the Labor Law. The Labor Law provides the basic legal form and scope of a labor contract in Cambodia and details the rights and obligations of the employer and workers in a labor relationship²⁶. Providing further guidance are Decree 38 on Contract and Other Liabilities of October 28, 1988 and the Civil Code²⁷. These two laws set out the basic rules of contract such as formation of contract, forms of contract, effect of contract, execution of contract, interpretation of contract, and statute of limitation²⁸. Furthermore, the Civil Code provides a guideline for implementing a labor contract according to provisions of the Labor Law²⁹.

Forms of Employment

Under the Labor Law, an employment relationship between an employer and a worker can be governed by either an oral or a written contract.³⁰ The Labor Law provides two types of contracts, namely Fixed Duration Contract (FDC) or Specific Duration Contract

²² Labor Law, Art 307

²³ Labor Law, Art 308

²⁴ Labor Law, Art 309

²⁵ KONG Phallack, *Labor Arbitration in Cambodia: Law and Practice*, Cambodian Society of Comparative Law, Volume 1, 2010, pp.163-171

²⁶ Labor Law, Ch4, Art 65- Art 95

²⁷ Civil Code, Book 5, Ch 9, Art 664- Art 668, The Civil Code was promulgated by Royal Kram No. NS/RKM/1207/030 of December 8, 2007. However, until today, the Civil Code is not yet implemented because article 1305 states the code will be implemented from the date determined by other laws. The Law on Implementation of Civil Code is in the drafting stage

²⁸ Civil Code, Book 4, Ch 1- Ch9, Art 308- Art 514 and Decree 38 on Contract and Other Liabilities of October 28, 1988, art 1- Art 120

²⁹ Civil Code, Book 5, Ch 9, Art 668

³⁰ Labor Law, Art 65

(SDC) and Undetermined or Unfixed Duration Contract (UDC). Under the Labor Law FDC must be made in writing. If not, it becomes a UDC. Furthermore, the Labor Law provides that the labor contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years. Any violation of this rule leads the contract to become a labor contract of undetermined duration. When a contract is signed for a fixed period of or less than two years, but the work tacitly and quietly continues after the end of the fixed period, the contract becomes a labor contract of undetermined duration.³¹ According to the Labor Law, there are two ways to create a UDC. One is an intention creation by parties while entering into a contract without specifying the date and the other is an unintentional creation whereby FDC is transformed into a UDC either at the time of contracting or at a later time.³²

2. Statutory Regulation of Employment

Employment Listings

Generally, the Labor Law allows employers to directly or indirectly recruit workers but they are required to notify the Placement Office of the Ministry in Charge of Labor or the provincial or municipal Employment Office of any vacancies in his enterprise or any new need for personnel³³. However, as a matter of practice, employers usually directly recruit workers. Therefore, in practice, employers often skip the announcement requirement.

Labor Supply Organizations or Labor Contractors

The Labor Law defines a labor contractor as a sub-contractor who contracts with an entrepreneur and who himself recruits the necessary work force or workmen for the execution of certain work or the provision of certain services for an all-inclusive price. Such a contract must be in writing. The labor contractor is required to observe the provisions of the Labor Law in the same manner as an ordinary employer and assumes the same responsibilities as the latter. In case of insolvency or default by the labor contractor, the entrepreneur or the manager of an enterprise shall substitute for the contractor to fulfill his obligations to the workers and the harmed workers. In such case, the workers may file a case directly against the entrepreneur or manager. Furthermore, the Labor Law requires the entrepreneur to constantly keep available a list of labor contractors and send the list to the Labor Inspector's Office within seven whole days following the date of signing the labor contract or fifteen days for agricultural enterprises or businesses. This

³¹ Labor Law, Art 67(2) and (7); Art 73 (5); and Case 10/03- Jacqsintex Industrial Cambodia

³² Edward (kees) De Bouter, Daniel Adler, Lee U Meng, and Patricia Bar (Authors) & Sussie Brown, and Megan Reeve (Contributing Authors and Editors), *Cambodian Employment and Labor Law*, Community Legal Education Center, Third Edition, pp.79-80; Labor Law, Art 67(2) and (7); Art 73 (5); and Case 10/03- Jacqsintex Industrial Cambodia

³³ Labor Law, Art 21 and Art 258

list must indicate the name, address, and status of the labor contractor and the situation of each workplace.³⁴

In practice, there are two types of labor contractors, one who provides labor domestically and the other who exports labor overseas. The latter is governed by specific governmental regulations such as Sub-decree No.57 ANK/PK Of July 20, 1995 on Exporting Cambodian Workers Overseas and a complementary Sub-decree No.70 ANK/PK Of July 25, 1996 on creating a Manpower Training and Overseas Sending Board to act as a public agency for recruiting, training, sending and managing Cambodian workers to work overseas. Sub-decree No.57 ANK/PK Of July 20, 1995 is the most important law regulating labor migration management from Cambodia, and gives the Ministry of Labour and Vocational training (MOLVT) authority to license any company to send Cambodian workers abroad. The sub-decree establishes a joint cooperation between the MOLVT and the Ministry of Interior (MOI) for issuing passports and the Ministry of Foreign Affairs (MFA) in monitoring workers at destination countries, and also provides processes and procedures of cooperation between the MOLVT and private recruitment agencies, including the obligation for the recruitment agencies to sign a written contract with the worker and to organize pre-departure training as well as criteria for licensing such the deposit of a guarantee fund within the MOLVT. However, Cambodia has not yet signed the 1990 UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Convention No. 97 on Migration for Employment (Revised), 1949, Convention No. 143 on Migrant Workers (Supplementary Provisions), 1975 and Convention No. 181 on Private Employment Agencies, 1997.³⁵

3. Substance of the Individual Contract of Employment

Mandatory Terms in a Contract

The Labor Law provides that a labor contract establishes working relations between the worker and the employer and is subject to common law and can be made in a form that is agreed upon by the contracting parties. The contract can be written or verbal. It can be drawn up and signed according to local custom. If it needs registering, this shall be done at no cost. The verbal contract is considered to be a tacit agreement between the employer and the worker under the conditions laid down by the labor regulations, even if it is not expressly defined. The Civil Code provides that a labor contract must contain a description of the following: wages, working hours, and other working conditions.³⁶ The word “Working Conditions” includes general working conditions specified in Chapter VI and specific working conditions stated in Chapter VII of the Labor Law. The General Working Conditions include wage, hours or work, night work, weekly time off, paid

³⁴ Labor Law, Art 45- Art 50

³⁵ <http://www.ilo.org/ilolex/english/newcountryframeE.htm>

³⁶ Civil Code, Art 665

holidays, paid annual leave, special leave, child labor, women labor and also workers recruited outside the workplace.³⁷ The Specific Working Conditions refer to conditions set specifically for agricultural work such as plantations, farms (the growing of crops and raising of animals), forestry exploitation and fisheries. In addition to the general requirements, the law requires employers to provide partial payment in kind, family benefit, housing, housing allowance, water, supplies, latrines, funeral services (in case of death), day nursery, and school for kids.³⁸

Notice Period

The notice period required when one party unilaterally terminates a labor contract depends on the duration of the contract and the reason for termination. The Labor Law provides notice periods for FDC and UDC. For FDC, the Labor Law states that if the contract has a duration of more than six months, the worker must be informed of the expiration of the contract or of its non-renewal ten days in advance. This notice period is extended to fifteen days for contracts that have a duration of more than one year. If there is no prior notice, the contract shall be extended for a length of time equal to its initial duration or deemed as a contract of unspecified duration if its total length exceeds the time limit specified.³⁹ For UDC, the Labor Law provides a notice period as follows: i) Seven days, if the worker's length of continuous service is less than six months; ii) Fifteen days, if the worker's length of continuous service is from six months to two years; iii) One month, if the worker's length of continuous service is longer than two years and up to five years; iv) Two months, if the worker's length of continuous service is longer than five years and up to ten years, and v) Three months, if the worker's length of continuous service is longer than ten years.⁴⁰ For UDC, an employee does not have to give a reason for termination, but the Labor Law requires an employer to have valid reason relating to the worker's aptitude or behavior, based on the requirements of the operation of the enterprise, establishment or group.⁴¹

Presumption of Term

The Labor Law provides for three basic term lengths for labor contracts: indefinite term for UDC, definite-term of 1 to 24 months (FDC), and probationary term of 1 to 3 months ("probationary contract").⁴²

37 Labor Law, Art 102-Art 190

38 Labor Law, Art 190-Art 227

39 Labor Law, Art 73(5)

40 Labor Law, Art 75

41 Labor Law, Art 74 (2)

42 Labor Law, Ch 4, Art 65, Art 67, Art 68, Art

Incorporation of Terms in a Collective Agreement

Terms and conditions between individual employment contracts and collective labor agreements may be at variance with one another. The Labor Law provides that where rights and interests of the employees stipulated in individual employment contracts are less favorable to the employees than provided for in the collective agreement, the collective agreement will trump the individual employment contracts.⁴³

4. Contract Termination and Dismissal

General

The Labor Law details very specific circumstances under which a labor contract may be terminated: when the contract expires or is otherwise completed; with the consent of both parties; in the event of the serious misconduct or force majeure; and at the will of each party.⁴⁴

A labor contract of specific duration normally terminates at the specified ending date. It can, however, be terminated before the ending date if both parties are in agreement on the condition that this agreement is made in form of writing in the presence of a Labor Inspector and signed by the two parties to the contract. If both parties do not agree, a contract of specified duration can be canceled before its termination date only in the event of the serious misconduct or acts of God.⁴⁵ The premature termination of the contract by the will of either the employer or the worker alone for reasons other than those mentioned in this section entitles the other party to damages in an amount at least equal to the remuneration he would have received until the termination of the contract (in case of termination at the will of the employer), and damages in an amount that corresponds to the damage sustained (in case of termination at the will of worker)⁴⁶.

The labor contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party. However, no layoff can be taken without a valid reason relating to the worker's aptitude or behavior, based on the requirements of the operation of the enterprise, establishment or group.⁴⁷

⁴³ Labor Law, Art 98(2)

⁴⁴ Labor Law, Art 73 and Art 74

⁴⁵ Labor Law, Art 73(1-2)

⁴⁶ Labor Law, Art 73(3-4)

⁴⁷ Labor Law, Art 74

Dismissal for Cause

The employer can dismiss an employee for serious misconduct mentioned in the Labor Law⁴⁸. This is the only situation in which an employer is legally allowed to unilaterally terminate an employee's contract without giving notice or being liable for any type of severance or compensation pay. In the following circumstances, dismissal is permissible: i) Stealing, misappropriation, embezzlement; ii) Fraudulent acts committed at the time of signing (presentation of false documentation) or during employment (sabotage, refusal to comply with the terms of the employment contract, divulging professional confidentiality); iii) Serious infractions of disciplinary, safety, and health regulations; iv) Threat, abusive language or assault against the employer or other workers; v) Inciting other workers to commit serious offenses; and political propaganda, activities or demonstrations in the establishment. Besides these circumstances, the Labor Law allows for discretionary expansion of the circumstances under which the employer may dismiss a labor contract through its "other conduct" provision. This allows the employer to categorize many other activities aside from the ones listed above as cause for an employee's dismissal. However, in order for the provisions to be enforceable against the employee, the prohibited conduct must be specified in the labor contract, the collective labor agreement, or the company's internal regulations. The internal regulations must be approved by the Labor Inspectors in order to survive a legal challenge. Furthermore, the Labor Law empowers the competent court to determine the magnitude of offenses besides what are mentioned in the Labor Law⁴⁹, and the disciplinary sanction must be proportional to the seriousness of the misconduct⁵⁰. The employer is considered to renounce his right to dismiss a worker for serious misconduct if this action is not taken within a period of seven days from the date on which he has learned about the serious misconduct in question.⁵¹

The Role of the Union and Labor Authority in Termination/Dismissal

Cambodia is unique because it generally does not have an industry-wide or trade-specific concept of "union," as in other countries. Unions in Cambodia are not united, and multiple unions may exist in an enterprise. The union represents the employees in negotiating the collective labor agreement with the employer.⁵² The union also plays an important role in case of mass layoff. Under the Labor Law the employer must inform the workers' representatives in writing in order to solicit their suggestions, primarily, on the measures for a prior announcement of the reduction in staff and the measures taken to minimize the effects of the reduction on the affected workers.⁵³

48 Labor Law, Art 83, and Art 84

49 Labor Law, Art 84

50 Labor Law, Art 27

51 Labor Law, Art 26

52 *Labor Law*, Art 96

53 Labor Law, Art 95. The Workers' representatives are elected from the candidates nominated by the representative union organizations within each establishment (See also art 288)

The dismissal of a workers' representative or a candidate for workers' representative/trade union can take place only after authorization from the Labor Inspector. The same protective measures apply to former workers' representative three months following the end of their terms and to unelected candidates during three months following the proclamation of the results of the ballot. Any reassignment or transfer that would end the workers' representative's term is subject to the same procedure.⁵⁴

5. Privacy

There are no employment-specific privacy laws in Cambodia. However, the Civil Code of Cambodia contains a concept of personal rights. Personal rights under the civil code include the rights to life, personal safety, health, freedom, identity, dignity, privacy, and other personal benefits or interests. Nevertheless, "privacy," "personal secrets," and "personal life" are not specifically defined. This absence of definition could have potentially important ramifications in an employment context (e.g., company email, background checks) unless these terms are addressed in the company's relevant labor regulations and agreed to by the employee.

6. Employee Duty of Loyalty, Trade Secrets, Covenants Not to Compete

Duty of Loyalty

Cambodian Labor Law provides a duty of loyalty. Worker's loyalty and confidentiality towards the enterprise continues to be in effect during the execution and suspension of the employment contract.⁵⁵

Trade Secrets

A law on trade secrets is not yet in place in Cambodia. Labor Inspectors and Controllers must solemnly swear allegiance to fulfilling their duties and to not revealing, even after having left their post, any manufacturing or trade secrets or operating methods that they learned of during the course of their work.⁵⁶ Due to the absence of law, trade secret provisions are normally included in the employment contract and internal regulations of the companies.

⁵⁴ Labor Law, Art 293 and Prakas 305 dated 21 November, 2001

⁵⁵ Labor Law, Art 72 (See also article 60)

⁵⁶ Labor Law, Art 343

VII. Collective bargaining

1. Union Recognition

The Law on Trade Union is in the drafting stage. However, the 1993 Cambodian Constitution recognizes the right to form a trade union and to be members of the trade unions. The 1997 Labor Law (LL) also established provisions related to freedom of association and also the collective bargaining agreement, namely trade union freedom and worker representatives in the enterprise⁵⁷, the collective bargaining⁵⁸, strikes and lockouts⁵⁹, and non-discrimination.⁶⁰ Furthermore, Cambodia has ratified eight fundamental ILO Conventions,⁶¹ among them are two conventions related to trade unions, namely Freedom of Association and Protection of the Right to Organize Convention, 1948 (C.87) and Right to Organize and Collective Bargaining Convention, 1949 (C.98).⁶²

Under the Labor Law, all workers, regardless of sex, age, and nationality are free to be a member of the trade union of their choice⁶³. Both workers and employers have, without distinction whatsoever and prior authorization, the right to form professional organizations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, both collectively and individually, of the persons covered by the organization's statutes. Professional organizations of workers are called "workers' unions". Professional organizations of employers are called "employers' associations". However, trade unions or associations that include both employers and workers are forbidden⁶⁴.

Employers are required to cooperate with the trade unions and create favorable operating conditions such as discussion on internal regulations and negotiation of collective bargaining. They are also prohibited from discriminating against an employee on the basis of trade union membership and may not exert economic or other pressures to interfere with organizational operations.⁶⁵

57 Cambodian Labor Law (1997), Chapter 11 (Art 266- Art 299)

58 Cambodian Labor Law (1997), Chapter 5 (Art 96- Art 101)

59 Cambodian Labor Law (1997), Chapter 13 (Art 318- Art 337)

60 Cambodian Labor Law (1997), Art 12

61 Convention on Freedom of Association and Protection of the Right to Organise (C.87); Convention on the Right to Organise and Collective Bargaining (C.98); Convention on Forced Labour (C. 29); Convention on Abolition of Forced Labour (C.105); Convention on Minimum Age (C. 138); Convention on the Worst Forms of Child Labour (C. 182); Convention on Equal Remuneration (C. 100); and Convention on Discrimination (Employment and Occupation) (C. 111).

62 Cambodia ratified C.87 and C.98 on August 23, 1999

63 Labor Law, Art 271

64 Labor Law, Art 266

65 Labor Law, art. 12 and Art 280

2. Level of Bargaining

The collective agreement is a written agreement signed between an employer or a group of employers, or one or more organizations representative of employers; and one or more trade union organizations or representatives of workers. The collective agreements shall specify their scope of application. This can be an enterprise, a group of enterprises, an industry or branch of industry, or one or several sectors of economic activities⁶⁶.

3. Effect of the Agreement

The Cambodian Labor Law does not provide the date that a collective agreement can take an effect. In practice, it takes effect on the date agreed upon by both parties.

Under the Labor Law, the provisions of collective agreements can be more favorable toward workers than those of laws and regulations in effect. However, the collective agreements cannot be contrary to the provisions on the public order of these laws and regulations. Any provisions of labor contracts between employers and workers, already covered by a collective agreement, that are less favorable than the provisions provided for in this collective labor agreement shall be nullified and must be replaced automatically by the relevant provisions of the collective agreement.⁶⁷

The provisions of a collective agreement apply to employers concerned and all categories of workers employed in the establishments as specified by the collective agreement⁶⁸. At request of a professional organization of workers or employers that is representative in the relevant scope of application, or on its own initiative, the Minister in Charge of Labor, after consultation with the Labor Advisory Committee, may extend all or some of the provisions of a collective agreement to all employers and all workers included in the occupational area and scope of this agreement.⁶⁹

4. Duration of the Collective Agreement

The collective agreement is concluded for a definite term or for an indefinite term. When it is for a definite term, this term may not exceed three years. At its expiration, it shall remain in effect unless it has been cancelled, on the condition of keeping a three months' notice, by either party. When the collective agreement is concluded by shop stewards or worker's representative in case there is no a trade union in the enterprise, the term of such agreement is not to exceed one year. When the collective agreement is concluded for an indefinite term, it can be cancelled, but it continues to be in effect for a period

⁶⁶ Labor Law, Art 96

⁶⁷ Labor Law, Art 98

⁶⁸ Labor Law, Art 97

⁶⁹ Labor Law, Art 99

of one year to the party that forwarded a complaint to cancel it. The notice of cancellation does not prevent the agreement from being implemented by the other signatories⁷⁰.

5. Strikes

A strike is a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work⁷¹. The right to strike is guaranteed. It can be exercised by workers after the rejection of an arbitral decision⁷². The right to strike can also be exercised when the Council of Arbitration has not rendered or informed of its arbitration decision within the time periods prescribed in Chapter XII of the Labor law, when the union representing the workers deems that it has to exert this right to enforce compliance with a collective agreement or with the law and to defend the economic and socio-occupational interests of workers. However, the right to strike can be exercised only when all peaceful methods for settling the dispute with the employer have already been tried out⁷³ and it cannot be exercised when the collective dispute results from the interpretation of a juridical rule originating from the existing law, or the collective agreement, or the rule relating to an arbitral decision accepted by the concerned parties; and 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 expired⁷⁴.

Procedures of strikes must be set out in the union's statutes, which must state that the decision to strike is adopted by secret ballot⁷⁵, and the strike must be preceded by prior notice of at least seven working days and be filed with the enterprise or establishment. If the strike affects an industry or a sector of activity, the prior notice must be filed with the corresponding employer's association, if any. The prior notice must precisely specify the demands which constitute the reasons for the strike. The prior notice must also be sent to the Ministry in Charge of Labor⁷⁶. During the period of prior notice, the Minister in Charge of Labor must actively seek all means to conciliate between the parties to dispute, including soliciting the collaboration of other relevant ministries. The parties are required to be present at the summons of the Minister in Charge of Labor⁷⁷.

During a strike, the employer is prohibited from recruiting new workers for a replacement for the strikers except to maintain minimum service if the workers who are required to provide such service do not appear for work. Any violation of this rule obligates the

⁷⁰ *Labor Law*, Art 96

⁷¹ *Labor Law*, Art 318

⁷² *Labor Law*, Art 319

⁷³ *Labor Law*, Art 320

⁷⁴ *Labor Law*, Art 321

⁷⁵ *Labor Law*, Art 323

⁷⁶ *Labor Law*, Art 324

⁷⁷ *Labor Law*, Art 325

employer to pay the salaries of the striking workers for the duration of the strike⁷⁸. In addition, the employer is prohibited from imposing any sanction on a worker because of his participation in a strike. Such sanction is nullified and the employer can be punishable by a fine under the Labor law⁷⁹.

6. Third-Party Resolution of Disputes

Cambodian labor law provides for the following labor dispute resolutions, which are dependent on whether the dispute is an individual dispute or collective dispute.

Individual Labor Disputes

An individual dispute is one that arises between the employer and one or more workers or apprentices individually, and relates to the interpretation or enforcement of the terms of a labor contract or apprenticeship contract, or the provisions of a collective agreement as well as regulations or laws in effect. Prior to any judicial action, an individual dispute can be referred for a preliminary conciliation, at the initiative of one of the parties, to the Labor Inspector of his province or municipality. An agreement made before the Labor Inspector is enforceable by law.

In case of non-conciliation, the interested party can file a complaint in a court of competent jurisdiction within two months, otherwise the litigation will be lapsed⁸⁰.

Collective Labor Disputes

A collective labor dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peacefulness⁸¹. If there is no planned settlement procedure in a collective agreement, the parties shall communicate the collective labor dispute to the Labor Inspector of their province or municipality. However, the Labor Inspector can take legal conciliation proceedings upon learning of the collective labor dispute even though he has not been officially notified⁸². If conciliation fails, the labor dispute shall be referred to settle: a) by any arbitration procedure set out in the collective agreement, if there is such a procedure; or b) by any other procedure agreed on by all the parties to the dispute; or c) by the arbitration procedure provided for in this Section⁸³.

⁷⁸ Labor Law, Art 334

⁷⁹ Labor Law, Art 333

⁸⁰ Labor Law, Art 300- 301

⁸¹ Labor Law, Art 302

⁸² Labor Law, Art 303

⁸³ Labor Law, Art 309

VIII. Representation by Entities Other Than Unions

In every enterprise or establishment where at least eight workers are normally employed, the workers shall elect a shop steward or a worker's representative to be the sole representative of all workers who are eligible to vote in the enterprise or establishment⁸⁴. The missions of the shop steward⁸⁵ are as follows:

- to present to the employer any individual or collective grievances relating to wages and to the enforcement of labor legislation and general labor regulations as well as collective agreements applicable to the establishment;
- to refer to the Labor Inspector all complaints and criticism relating to the enforcement of the labor legislation and labor regulations that the Labor Inspector is responsible for monitoring;
- to make sure the provisions relating to the health and safety of work are enforced;
- to suggest measures that would be beneficial to contribution towards protecting and improving the health, safety and working conditions of the workers in the establishment, particularly in case of work-related accidents or illnesses

The shop steward must be consulted and put forward a written opinion on the draft of internal regulations, or on draft of modification to these regulations. The shop steward must also be consulted and put forward a written opinion on the measure for redundancy due to a reduction in activity or an internal reorganization of the enterprise or establishment. The number of shop stewards⁸⁶ is set in proportion to the number of workers in the establishment as follows:

- from 8 to 50 workers: one official shop steward and one assistant shop steward;
- from 51 to 100 workers: two official shop stewards and two assistant shop stewards;
- more than 100 workers: one extra shop official steward and one extra assistant shop steward for each group of one hundred workers.

84 Labor Law, Art 283

85 Labor Law, Art 284

86 Labor Law, Art 285

IX. Redundancy and Transfers of Undertakings

1. Redundancy

Legal Basis

The Cambodian Labor Law provides provision of a layoff or redundancy resulting from a reduction in an establishment's activity or an internal reorganization that is foreseen.⁸⁷

Procedures and Formalities

In case of mass layoff, the employer is subject to the following procedures:

- The employer establishes the order of the layoffs in light of professional qualifications, seniority within the establishment, and family burdens of the workers.
- The employer must inform the workers' representatives in writing in order to solicit their suggestions, primarily, on the measures for a prior announcement of the reduction in staff and the measures taken to minimize the effects of the reduction on the affected workers.
- The first workers to be laid off will be those with the least professional ability, then the workers with the least seniority. The seniority has to be increased by one year for a married worker and by an additional year for each dependent child.

The dismissed workers have, for two years, priority to be re-hired for the same position in the enterprise. Workers who have priority for re-hire are required to inform their employer of any change in address occurring after the layoff. If there is a vacancy, the employer must inform the concerned worker by sending a recorded delivery or registered letter to his last address. The worker must appear at the establishment within one week after receiving the letter.

The Labor Inspector is kept informed of the procedure covered in this article. At the request of the workers' representatives, the Labor Inspector can call the concerned parties together one or more times to examine the impact of the proposed layoffs and measures to be taken to minimize their effects. In exceptional cases, the Minister in Charge of Labor can issue a Prakas (ministerial order) to suspend the layoff for a period not exceeding thirty days in order to help the concerned parties find a solution. This suspension may be repeated only one time by a Prakas of the Ministry.

⁸⁷ Labor Law, Art 95

Compensation

The Cambodian labor law provides that if the labor contract is terminated by the employer alone, except in the case of a serious offense by the worker, the employer is required to give the dismissed worker, in addition to the prior notice the indemnity for dismissal of seven days of wage and fringe benefits if the worker's length of continuous service at the enterprise is between six and twelve months; and fifteen days of wage and fringe benefits for each year of service if the worker has more than twelve months of service, an indemnity for dismissal will be equal to. The maximum of indemnity cannot exceed six months of wage and fringe benefits. If the worker's length of service is longer than one year, time fractions of service of six months or more shall be counted as an entire year. The worker is also entitled to this indemnity if he is laid off for reasons of health⁸⁸.

In businesses of a seasonal nature, the layoff of workers at the end of a work period cannot be considered as dismissal, and does not result in any compensation. However, the lay-off shall be announced at least eight days in advance by a written notice conspicuously posted at the main entry of each work site, and if applicable, on each boat on which there is a work site⁸⁹.

2. Transfers of Undertakings

The Labor Law provides that if a change occurs in the legal status of the employer, particularly by succession or inheritance, sale, merger or transference of fund to form a company, all labor contracts in effect on the day of the change remain binding between the new employer and the workers of the former enterprise. The contracts cannot be terminated except under the conditions laid down in the present Section. The closing of an enterprise, except for acts of God, does not release the employer from his obligations. Bankruptcy and judicial liquidation are not considered as acts of God under the Cambodian Labor Law⁹⁰.

⁸⁸ Labor Law, Art 89

⁸⁹ Labor Law, Art 88

⁹⁰ Labor Law, Art 87

X. Wages, Hours, and Leave

1. Wages

The term “wage” under Cambodian labor law means the remuneration for the employment or service that is convertible in cash or set by agreement or by the national legislation, and that shall be given to a worker by an employer, by virtue of a written or verbal contract of employment or service, either for work already done or to be done or for services already rendered or to be rendered⁹¹. Wage may include actual wage or remuneration; overtime payments; commissions; bonuses and indemnities; profit sharing; gratuities; the value of benefits in kind; family allowance in excess of the legally prescribed amount; holiday pay or compensatory holiday pay; and amount of money paid by the employer to the workers during disability and maternity leave. However, wage does not include health care; legal family allowance; travel expenses; benefits granted exclusively to help the worker do his or her job⁹².

Minimum Wage

The Labor Law guarantees the minimum wage and states that wage must be at least equal to the guaranteed minimum wage; that is, it must ensure every worker of a decent standard of living compatible with human dignity⁹³. Any written or verbal agreement that would remunerate the worker at a rate less than the guaranteed minimum wage shall be null and void.⁹⁴ However, there is no minimum wage law in the Cambodia yet at the time being, except a Notice No. 041/11 dated in March 2011 provides a minimum wage for workers who work in a garment industry is 61 USD per month.

Under the labor law the guaranteed minimum wage is established without distinction among professions or jobs. It may vary according to region based on economic factors that determine the standard of living, and the wage is adjusted from time to time in accordance with the evolution of economic conditions and the cost of living. Elements to take into consideration for determining the minimum wage shall include a) the needs of workers and their families in relation to the general level of salary in the country, the cost of living, social security allowances, and the comparative standard of living of other social groups; and b) economic factors, including the requirements of economic development, productivity, and the advantages of achieving and maintaining a high level of employment⁹⁵.

91 Labor Law, Art 102

92 Labor Law, Art 103

93 Labor Law, Art 104

94 Labor Law, Art 105

95 Labor Law, Art 107

Overtime Pay

An employee who works overtime at the request of the employer must be paid at the following rates:

- working overtime on normal working days: 150 percent of the current wage rate for overtime hours; and
- working at night and public holiday: 200 percent of the current wage rate for overtime hours⁹⁶.

Taxes (including Social Security)

Personal Income Tax

The 1997 Law on Taxation requires employees to pay tax on salary at the following rates⁹⁷:

Taxable Parts of the Monthly Salary	Tax Rate
0 to 500,000 Riels*	0%
500,001 to 1,250,000 Riels	5%
1,250,001 to 8,500,000 Riels	10%
8,500,001 to 12,500,000 Riels	15%
12,500,000 <	20%

* Riel is Cambodian Currency. 1USD = 4100 Riels

Exemption

Under Article 44 of Law on Taxation, employees' income is tax exempted as follows:

1. Real refunds on professional expenses made by the employee under the assignment and for the benefit of the employer and which satisfy the 3 following conditions:
 - a. made for the direct and exclusive interest of the enterprise;
 - b. not exaggerated nor extravagant;
 - c. supported by detailed invoices already paid and made in the name of the recipient of the real expense refund.
2. Indemnity for the layoff within the limit as provided in Labor Law.
3. Additional remuneration with social characteristics where there is provision in Labor Law.
4. Supply gratis or below acquisition cost of special uniforms or professional equipment.
5. Flat allowance for mission and travel expenses. This allowance should not overlap the real expense refund provided in this article.

⁹⁶ Labor Law, Art 139 and Prakas No. 80/99 on Overtime Payment and Working Overtime on Normal Working Hours

⁹⁷ Law on Taxation, Art 47 (see details on salary tax from Art 40-54)

Health Insurance

Health insurance is not compulsory for employee under the labor law. However, the employer is responsible for a worker's work related accidents⁹⁸ and is required to join the National Social Security Fund under the 2002 Law on Social Security.

Social Insurance

The Law on Social Security states employers and workers covered by this law shall have be required to pay contribution to the National Social Security Fund. The National Social Security Fund is the public establishment. All matters other than technical are under the supervision of the Ministry of Labor and Vocational Training (MoLVT), while the Ministry of Economy and Finance (MEF) administers all finance related issues. The Cambodian National Security Fund is broken into three components such as occupational risk work injury or occupational disease, health care; and pension scheme. However, for the first phase of the implementation of the Law on Social Security only the occupational risks component is applied and the employer is required to pay the contribution for work injury scheme is determined by 0.8% of the assumed wage based on the employee's monthly wage⁹⁹.

2. Hours

Normal working hours may not exceed eight hours a day or 48 hours in a week.¹⁰⁰ "Night work" under the Cambodian Labor law represents a period of at least eleven consecutive hours that includes the interval between 2200 and 0500 hour. Besides continuous work that is performed by rotating teams who sometimes work during the day and sometimes at night, the work at the enterprise can always include a portion of night work.¹⁰¹

Overtime may not exceed 2 hours a day and employers are required to get permission from the Ministry in charge of labor.¹⁰² The limit is at 200 hours in a year. Under special circumstances, this limit may be increased to 300 hours of overtime per year. Businesses in the textiles, garments, sportswear, and fishery production fields automatically operate on this increased basis. Employees who work eight consecutive hours are entitled to 1 hour lunch break according a general practice of private sector employee in Cambodia and it is normally stated in an internal regulation of each enterprise of establishment. The Labor Law prohibits employers from using the same worker for more than six days

98 Labor Law, Art 249

99 See Law on Social Security (2002) and Sub-decree No 16 concerning on establishment of the National Social Security Fund (NSSF) dated 06 March 2007.

100 Labor Law art. 137

101 Labor Law art. 144

102 Labor Law, Art 137-140, Prakas 80/99, Notice 014/99 and Arbitral Award Case 10/04

per week and grant employees to have weekly time off for a minimum of twenty-four consecutive hours¹⁰³.

3. Leave

Annual Leave and Public Holidays

An employee is entitled to at least 18 days of annual leave with pay or at the rate of one and a half work days of paid leave per month of continuous service¹⁰⁴. In addition, Employees are given paid leave for public holidays based on Prakas issued annually by the Ministry in charge of Labor such as International New Year (January 1), Victory Day (January 7), Women's Day (March 8), Khmer New Year (3 days in mid April), International Labor Day (1 May), King's Birthday (3 days in May), Visaka Bochea Festival (1 day), King's Mother Birthday (1 day in June), King's father Birthday (1 day in October), Constitution Day (24 September), Phchum Ben day (1 day in September), National Water Festival (3 days in November) etc. In case the public holiday coincides with a Sunday, workers will have the following day off. Time off for holidays cannot be the reason for reducing monthly, bi-monthly, or weekly wages¹⁰⁵.

Leave for Pregnancy, Maternity, and Adoption

Maternity Leave

Female workers in Cambodia are entitled to a maternity leave of ninety days and half of their wage, including their perquisites, paid by the employer during the maternity leave¹⁰⁶.

Pre-natal Check-ups, Miscarriages, Abortions, or Stillbirth

The Cambodian Labor Law does not provide any provisions related to pre-natal check-ups, miscarriages, abortions, or stillbirth, but in practice, some companies allow workers to have a monthly medical check-up by using their annual leave, the employee is entitled to paid leave for the purpose of five pre-natal check-ups. The use of annual leave is also allowed for cases of miscarriages, abortions, or stillbirth as well.

Military Service and Trainings

The Cambodian labor law provides that all employment contracts are suspended during the mandate time for military services and Trainings¹⁰⁷.

103 Labor Law, Art 146-Art 147

104 Labor Law, Art 166

105 Labor Law, Art 161- Art 162

106 Labor Law, Art 182- Art 183

107 Labor law, Art 71(2)

XI. Antidiscrimination

1. Introduction

Cambodian Labor law strictly prohibits discriminations against race, color, sex, creed, religion, political opinion, birth, social origin, membership of workers' union or the exercise of union activities in employment. A revocation in order to make a decision on hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract is considered null and void. However distinctions, rejections, or acceptances based on qualifications required for a specific job shall not be considered as discrimination¹⁰⁸.

XII. Occupational Safety and Health and Workers' Compensation

1. Occupational Safety and Health

According to the Labor Law, an employer is responsible for providing adequate means of protection for employees, ensuring occupational safety and hygiene, and improving working conditions.¹⁰⁹ Labor Inspectors and Labor Controllers are authorized by Labor law to pay visits to and inspect establishments regarding health, working conditions and safety¹¹⁰. Employers are required to pay for employee medical check-up at the commencement of employment contract and periodic medical check-up during the employment.¹¹¹

The employer is responsible for work accidents or occupational diseases. An accident is considered to be work related, regardless of the cause. If it happens to a worker working or during the working hours, whether or not the worker was at fault; it is the accident inflicted on the body of the worker or on an apprentice with or without wage, who is working in whatever capacity or whatever place for an employer or a manager of an enterprise. Equally, accidents happening to the worker during the direct commute from his residence to the work place and home are also considered to be work-related accidents as long as the trip was not interrupted nor a detour made for a personal or non-work-related reason. All occupational illness, as defined by law, shall be considered a work-related accident and shall be remedied in the same manner¹¹².

108 Labor Law, Art 12

109 Labor law, Art 23, Art 228- Art 230

110 Labor Law, Art 233 and Law on Social Security (2002)

111 Labor Law, Art 247

112 Labor Law, Art 248- Art 249

2. Workers' Compensation

Compensation for fatal accidents or for accidents causing permanent disability is paid to the victim or his beneficiaries as an annuity. A supplementary compensation is granted to a victim who requires constant care from another person. In the event of incapacitation, compensation shall be paid no later than the fifth day after the accident¹¹³.

XIII. Pensions and benefits

Pensions and benefits for employees are not yet implemented in Cambodia at the moment. In practice, pensions and benefits are regulated in an internal regulation of some companies.

XIV. Foreign Workers

Cambodia has agreements with many countries, especially within the Association of Southeast Asian Nations (ASEAN), on short-term tourist visa exemption. Other citizens and individuals coming to work in Cambodia must secure the proper visa before entering the country.

The Ministry of Interior is responsible for visa approval for entry of most foreigners and overseas Cambodian residents who wish to enter Cambodia. No foreigner can work in Cambodia unless he possesses a work permit and an employment card issued by the Ministry in Charge of Labor and meets the following conditions: i) His or her employers must beforehand have a legal work permit to work in the Kingdom of Cambodia; and ii) He or she must have legally entered the Kingdom of Cambodia; possess a valid passport; possess a valid residency permit; be fit for their job and have no contagious diseases. The work permit is valid for one year and may be extended as long as the validity of extension does not exceed the fixed period in the residency permit of the person in question¹¹⁴.

XV. Conclusion

In conclusion, Cambodian labor law provides a comprehensive legal framework governing an employment relation between employers and workers regardless of sex, as long as an employment contract is executed in Cambodia. The Cambodian Labor Law provides a protection for trade unions and shop stewards and prohibits all forms of discrimination in

¹¹³ Labor Law, Art 253

¹¹⁴ Labor Law, Art 261- Art 265

an employment. Labor Law is one of the fascinating areas of law that is highly developed in Cambodia since the establishment of the Arbitration Council, a quasi-judicial body that has jurisdiction over a collective labor disputes. Since its establishment, this council has rendered hundreds of decisions regarding ambiguities of the terms in the law, and ensures the proper enforcement of the Cambodian Labor Law, especially in the garment sectors, as a result of the Cambodia-US Bilateral Trade Relationship.