



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



**LABOUR LAW IN MYANMAR**  
**25<sup>th</sup> JULY 2019**

**LAW RELATING TO WORKPLACE SAFETY  
AND HEALTH  
(Pyidaungsu Hluttaw Law No. 8/2019  
from 15 March 2019)**



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# Workplace Safety and Health Law

- To enter into force on the **date specified by notification of the president**, so not in force yet
- Union Government to form a **Workplace Safety and Health Council** (“Council”) with 15 government representatives, 3 employers’ representatives, 3 workers’ representatives and 3 “workplace and health experts”



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# Workplace Safety and Health Law

- Scope of application:
  - Many provisions to apply to almost all businesses (long list in section 4) - in this presentation referred to as **“All Businesses”**
  - Some provisions to apply only to businesses having a minimum number of employees as specified by the MoL - **“Larger Businesses”**



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# Workplace Safety and Health Law

- Scope of application (contd.):
  - MoL “shall, for inspection and supervision, issue notifications specifying the area, types of business and business size”
  - MoL may “add, amend or remove”
- Registration requirement: **All Businesses** shall register with the Factories and General Labour Law Inspection Department (“**FGLLID**”) and notify changes



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# Workplace Safety and Health Law

- **All Businesses** to notify the FGLLID of the construction, expansion or demolition of a workplace or work building and the placing, installation, expansion or change of use of machines
- **All Businesses** to appoint “a person in charge of workplace safety and health”
- **Larger Businesses** to form a “workplace safety and health committee” with equal number of representatives from the workers and the employer



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# Workplace Safety and Health Law

- Long list of obligations applying to **All Businesses** such as
  - hazard analysis; making the workplace safe based on its result
  - medical check-up of employees
  - provision of protection gear
  - prevention and protection arrangements
  - attending training sessions; ensuring that relevant employees attend
  - arrangements for immediate notification of the person in charge regarding workplace accidents or hazardous situation



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# Workplace Safety and Health Law

- making arrangements with regard to imminent workplace accidents (cessation of work, relocation of workers, emergency rescue arrangements)
- installation of safety and health instructions, hazard signs, etc.
- distribution of manuals and instructions issued by the relevant ministries; making them understood
- arranging fire drills, ensuring that employees are able to use fire-fighting equipment
- requesting hazardous work to be performed only within the specified time;
- covering workplace safety and health expenses



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# Workplace Safety and Health Law

- **Notifying the FGLLID** of workplace accidents, hazardous incidents, serious workplace accidents, workplace disease or workplace poisoning
- **Larger Businesses** to provide a dispensary, appoint registered doctors and nurses and provide required pharmaceuticals and aid



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# Workplace Safety and Health Law

- **All Businesses** prohibited to dismiss or demote employees prior to the issuance of a medical check-up report on workplace accident or disease; filing a complaint due to a hazard or health effect; working for a safety and health committee; cessation of work due to an imminent workplace accident or disease
- **Compliance obligations of employees** (section 30), but only Ks. 30,000 fine for most violations



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# Workplace Safety and Health Law

- **Manufacturers, importers, installers or removers, builders or demolishers** to obtain safety approval with regard to hazardous items or machines
- **Manufacturers and importers** to provide operating manual and conduct safety and health analysis with regard to hazardous items or machines
- **Criminal penalties for non-compliance**



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# WORKING HOURS; OVERTIME; HOLIDAYS



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# Working hours and overtime

- **Factories Act 1951 as amended**
- **Shops and Establishments Law 2016**
- **Shops and Establishment Rules (MoL Notification 68/2018)**
- **Mines Rules (MoNREC Notification 13/2018)**
- **Oilfields (Labour and Welfare) Act 1951**
- **Construction sites??**



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# Working hours

	Factories Act 1951 as amended	Shops and Establishments Law 2016
Regular working hours / day	8 hours	8 hours
Regular working hours / week	44 hours (48 hours for “continuous work”)	48 hours
Break time	30 min after 5 working hours	30 min after 4 working hours
Max. working hours / day incl. break time	10 hours	11 hours
Max. working days / week	6 days	6 days
Weekly off-day	Sunday or other day designated by employer	To be designated by employer



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## Working hours

- Conspicuously display notice with the working hours at the workplace
- Notify the Factories and General Labour Law Inspection Department (“**FGLLID**”) of working hours and shift or rotating system
- Keep notice on working hours for 12 months



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# Overtime

	Factories Act 1951 as amended	Shops and Establishments Law 2016
Max. overtime hours / week	16 hours (12 hours for “continuous work”)	12 hours (16 hours “in special cases”); no overtime past midnight
Overtime pay	2 x regular basic salary	“According to ‘Payment of Wages Rules’”
Formula for calculating overtime pay	Must be displayed in a visible place	Not specified
Approval for overtime policy	Required from FGLLID	Required from FGLLID if more than 15 employees



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# Overtime

- **Overtime pay formula (for factories):**

**Overtime pay per hour = ((monthly basic salary x 12 months) / (52 weeks x regular weekly working hours)) x 2**

- **Township labour offices reject clauses in annexes to the standard labour contract according to which overtime is covered by the ordinary salary**
- **File overtime payment record with FGLLID within 10 days from date of payment**



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# Overtime

- **Shops and establishments required to open 24 hours need permission from FGLLID; file application 7 days in advance**
- **Keep overtime records for 12 months**



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# Leave

- **Leave and Holidays Act 1951 as amended**
- **Leave and Holidays Rules (MoL Notification 69/2018)**
- **Paid leave -**
  - **Earned leave: 10 days**
  - **Casual leave: 6 days**
  - **Maternity leave: 6 weeks before and 8 weeks after giving birth**
  - **Medical leave: 30 days**
  - **Public holidays**



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# Leave

- Work on weekly off-day or public holiday requires prior permission from the FGLLID
- **Compensation leave (instead of payment of 2 x basic salary)**
  - Possible for work on weekly off-day if compensation leave is given within 3 days
  - Not possible for work on a public holiday
- System to discourage employees from taking leave around weekly off-days or public holidays



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# Leave

- Untaken earned leave may be **carried forward by mutual consent** for up to 3 years
- Employee is entitled to **compensation for untaken paid leave** if the employee resigns; it seems to be possible to exclude compensation for untaken earned leave in case of termination by the employer in the labour contract or workplace rules (Rule 42 Leave and Holidays Rules)
- File monthly report with FGLLID; keep records with specified forms for 12 months



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# ISSUES AROUND THE LABOUR CONTRACT TEMPLATE



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## Labour contract template

- Appointment letter → probationary period → employment contract (within 1 month after end of the probationary period)
- MoL template must be used if the business has more than 5 employees: One copy for employer, one copy for employee, one copy for township labour office
- If business has 5 or less employees: Individual labour contract; must be in compliance with section 5(b) Employment and Skills Development Law, but need not be presented / cannot be registered with the ts. labour office



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## Labour contract template

- Labour contract template was drafted for factory workers, but applies to all sectors, businesses, salaries, jobs...
- Township labour offices do not allow any deviation from the template



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# Labour contract template

- **Work-arounds:**
  - **Filing an annex with the township labour office (which, however, may reject the annex if it deems clauses in it to be non-compliant with labour law or practice)**
  - **No template required for foreigners working at non-MIC companies**
  - **Foreigners seconded from the foreign headquarters can have an individualised employment contract with the headquarters governed by foreign law**



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# FOREIGN EMPLOYEES AT MIC AND NON- MIC COMPANIES



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## Visa types

- Diplomatic (single)
- Tourist (single)
- **Business (single/multiple) - USD 50, 200, 400, 600**
- Social (single/multiple)
- Religious (single/multiple)
- Transit (single)
- Official (single/multiple)
- **Employment - USD 50**
- Education (single/multiple)
- Journalist (single)
- Crew (single/multiple)
- Workshop, seminar, meeting or research (single)



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## Work permits

- There is currently no work permit system as such
- Drafts of a “Foreigners Law” and a “Work Permit Law” were kicked out by parliament in March 2017
- Foreigners working in the country do so on the basis of a business visa
- Foreigners employed by MIC companies are issued with an “alien worker registration card” after the MIC has approved their appointment



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## MIC approval

- **Only required for foreign employees of MIC companies**
- **If an MIC company retains a freelancer: No MIC approval / alien worker registration card required**
- **If a foreigner is seconded from the headquarters: No MIC approval / alien worker registration card required**
- **Application to be filed within 7 days after the arrival of the foreigner at the latest (if the deadline is missed: easiest solution is for the foreigner to fly in again)**



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## MIC approval

- **Obtaining MIC approval with a tourist visa is not possible, but whether business or employment visa does not matter**
- **Required documents and information:**
  - **Application letter, form 12-A, application fee (Ks. 5,000), passport copy, number of foreign/local employees according to MIC proposal, number and details of existing foreign/local employees, copy of latest quarterly performance report**



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## MIC approval

- Evidence of expertise (copy of the certificate to be signed by the company's director; notarial translation to be provided if not in English); depending on the claimed level of expertise: university degree
- Details of previous employment in Myanmar, in particular the salary
- In case of a replacement: Proof that the previous foreign employee left the country (copy of the flight ticket)



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## Registration at ward / immigration department

- (Theoretically) within 24 hours of arrival, foreigners staying at their own accommodation or at accommodation provided by their company must register their arrival with (i) the ward administration office and (ii) the township immigration department (“Form C”)
- Renewal required if (i) new visa and (ii) no foreigner registration certificate (FRC)
- Required docs: Passport with visa, copies of corporate documents, appointment letter or employment contract, lease agreement



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## Registration at ward / immigration department

- Theoretically, landlord has to sign
- Foreigners staying in the country for more than 90 consecutive days have to obtain a “**foreigner registration certificate**” (FRC) from the township immigration department
  - Without FRC, it may not be possible to leave the country depending on the circumstances
  - Application to be made sufficiently in advance
  - Valid for one year until 30 November
  - **FRC apparently not required for holders of 6 or 12 months multi-entry business visas**



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## Visa extension in the country

- Requires business or employment visa
- Available:
  - First time extension: Stay permit for up to 6 months and single re-entry visa (USD 160)
  - Subsequent extensions: Stay permit for up to 12 months and multiple re-entry visa (USD 400)
- **MIC companies:** Apply to MIC for recommendation letter at least 3 weeks prior to visa expiry with filled-in application form, employment contract or appointment letter, CV and lots of other documents



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## Visa extension in the country

- **Non-MIC companies:** Apply to DICA for recommendation letter at least 3 weeks prior to visa expiry with filled-in application form, employment contract or appointment letter and copy of degree
- MIC or DICA informs the township immigration department of the issuance of the recommendation letter
- Now apply to township immigration department with filled-in application forms, “form C”, MIC or DICA recommendation letter, corporate documents, passport copy and two photos



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# Standard labour contract / social security

	MoL template applies to foreign employees?	Social security applies to foreign employees?
MIC company	Yes	Yes
Non-MIC company	No	No



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# TERMINATING AN EMPLOYMENT RELATIONSHIP



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## Rules on resignation and termination

- **Standard labour contract: Fixed term contract. Nevertheless, both employer and employee can terminate the contract during the term fairly easily.**



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## Rules on resignation and termination

	Resignation of employee	Termination by employer (no cause)	Termination by employer (cause)	Termination by employer (grave cause)
Notice period	30 days (probation: 7 days)	1 month	No notice period	No notice period
Payment instead of notice period possible?	Not regulated	Yes	N/A	N/A
Warning required?	No	No	3 written warnings	No
Compensation by employer?	No	Yes	No	No



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## Rules on resignation and termination

Period of employment	Amount of compensation
6 month - less than 1 year	1/2 month's salary
1 year - less than 2 years	1 month's salary
2 years - less than 3 years	1 1/2 month's salary
3 years - less than 4 years	3 months' salary
4 years - less than 6 years	4 months' salary
6 years - less than 8 years	5 months' salary
8 years - less than 10 years	6 months' salary
10 years - less than 20 years	8 months' salary
20 years - less than 25 years	10 months' salary
25 years and more	13 months' salary



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# DISPUTE RESOLUTION



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## Dispute resolution (individual disputes)

- Labour dispute resolution system (mediation/arbitration) stopped working for individual disputes (now: “**disputes concerning a right**”) in June 2018
- In Yangon Region, aggrieved employees may file a complaint with the Yangon Region Government - legal basis?



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## Dispute resolution (individual disputes)

- Request to the Factories and General Labour Law Inspection Department to order the employer to pay outstanding wages (S. 12(b), 13(a) Payment of Wages Law) probably still available
- Lawsuit with the ordinary courts



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**THANK YOU FOR YOUR ATTENTION!**



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