



# How to Hire and Fire: A Global Guide

2015 Edition





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## Using this e-book Guide

This e-book is divided into chapters by country, listed in alphabetical order. In the case of a federal country (eg USA), there are separate chapters covering the individual state jurisdictions as well as a chapter covering federal law itself.

We hope that this e-book is easy to navigate. If you get stuck, please refer to the notes below. Clicking on a country/jurisdiction in the list of contents will take you straight to the corresponding chapter. Alternatively, you can navigate around the book by electronically "flicking" through the pages.

If you would like to contact the author of a chapter directly, click the individual's name at the top of the relevant chapter to open a blank email addressed to the person, ready for you to complete and send with your enquiry.

To find out more about the member firm in any particular jurisdiction, please click on the firm name (which is both at the top of each chapter - underneath the author's name - and again at the end of each chapter) and you will be directed to the firms' website.

Clicking on the "home" logo at the top of each page will take you straight back to the contents page."

# Myanmar



## Myanmar



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### 01. General Principles

#### Forums For Adjudicating Employment Disputes

With the promulgation of the Settlement of Labour Dispute Law in 2012, the Myanmar government has adopted a conciliatory approach for the resolution of labour disputes. This is an important step forward from the antiquated Trade Disputes Act of 1926, which has been repealed with the enactment of this new law.

Under the new law, labour disputes are required to be placed before a workplace coordination committee for resolution, failing which, the claim or dispute may then go to a Township conciliation body for review. Further, dispute cases may be referred to an arbitration panel by the reviewing conciliation body. If the issue remains unresolved and the parties cannot arrive at an amicable solution at the Township or arbitration level, then the aggrieved party may file an action before the competent court in that jurisdiction. It should be noted that concurrent to the dispute resolution process, the law permits either party to nonetheless approach the relevant court to institute criminal or civil proceedings. In such case, a court, realizing that conciliation/arbitration proceedings are ongoing, may exercise its discretion to stay proceedings until such time that the conciliation/arbitration process is complete.

As regards the establishment of specialized courts, as of yet, no separate labour courts have been established in Myanmar. As such, labour actions would be filed with the competent court having jurisdiction in the matter.

#### The Main Sources Of Employment Law

There is no single umbrella legislation governing employment matters in Myanmar. Labour laws are an amalgamation of different pieces of legislation which regulate various aspects of employment. Employment contracts are covered by the Employment and Skill Development Law 2013, while welfare issues are addressed by the Social Security Law 2012, The Workmen's Compensation Act 1923 and The Leave and Holidays Act 1951. Wages, working conditions, and hours are governed by the Minimum Wages Law 2013, Payment of Wages Act 1936, Factories Act 1951 and the Shop and Establishment Act 1951. Labour unions and disputes are generally guided by the Labour Disputes Settlement Law 2012 and Labour Organization Law 2011. The Ministry of Labour, Employment and Social Security, is the primary authority responsible for ensuring minimum standards of employment.



### National Law And Employees Working For Foreign Companies

Myanmar employment laws apply equally to all employees working in the country, including those working for foreign owned companies, but may exclude employees transferred or sent to Myanmar under a foreign subsisting employment contract.

### National Law And Employees Of National Companies Working In Another Jurisdiction

If Burmese employees are sent to work outside of Myanmar by their employer, such as on an intra-office scheme, their welfare and employment would be guided by Myanmar labour law unless the employment contract states otherwise.

## 02. Hiring The Employee

### Legal Requirements As To The Form Of Agreement

As per Myanmar labour law, once an employee has been appointed, there is a compulsory obligation to have the employment agreement prepared. The employment contract must be signed within 30 days from appointment, except where the employee is on probation or training as a pre-condition to appointment. The law designates a list of mandatory provisions that must be included in the contract. This may be subject to approval from the local Labour Exchange Office, although this practice has not yet been enforced.

### Mandatory Requirements

#### Trial Period

Employment on probation or as a trainee is not mandatory and depends on company policy. Further, employees who are on probation or are trainees are not eligible for severance pay or medical leave.

#### Hours of Work

The stipulated working hours for shops, companies, trading centres, service enterprises, and entertainment houses is 8 hours a day. For factories, the prescribed working hours are not more than 48 hours a week. For oil fields and mines, it is not more than 44 hours a week. There are mandatory overtime payments that need to be paid for every hour/day worked beyond the prescribed limits. These have been set by the following laws where relevant:

1. The Factories Act 1951
2. The Shops and Establishments Act 1951
3. The Leave and Holidays Act 1951
4. The Oilfields (Labour and Welfare) Act 1951

#### Earnings

The Minimum Wages Law, which was passed on 22 March, 2013, along with the Minimum Wage Rules of 12 July, 2013, direct the National Committee to prescribe a minimum wage standard applicable to a wide number of sectors. The National Committee on Minimum Wages would consider existing salaries, living cost indices, standards of living, employment opportunities and various other considerations for setting the standard rate. The National Committee would also consider recommendations from the union, region and state committees in making its assessment. Minimum wages are yet to be officially set in law, although labour officers unofficially promote minimum wages on a region-to-region basis, with the minimum wage promoted at 3,000 MMK per day for the greater Yangon metropolitan area.

#### Holidays/Rest Periods

Every employee is to be granted any and all gazetted public holidays amounting to 24 days in a calendar year. This includes 10 days leave for Burmese New Year celebrations which have been declared as public holidays in accordance with Notification no. 1/2007, dated 16 February, 2007, by the State Peace and Development Council. There is, however, no statutory obligation to provide an alternative holiday when a public holiday coincides with a weekly rest day. However, for purposes of wages, if an employee works on a public holiday coinciding with a weekly rest day, the employee must be paid for that day.

#### Minimum/Maximum Age

Employees must be 16 years or older. There is no maximum age limit, though for government services, employees will retire at the age of 60.

#### Illness/Disability

The Social Security Law 2012 provides for a number of benefits to employees and is applicable to any organization with more than five employees. Employees are entitled to medical treatment and cash benefit for sickness, maternity, confinement, retirement and for funeral benefit. Medical treatment can be taken for up to 26 weeks starting from the date of treatment. For purposes of medical leave, Myanmar law allows up to 30 days to every employee for sickness. An application for medical leave must be supported by a medical certificate from a certified medical officer, doctor or any other certified medical practitioner. For cash benefit, employees need to have worked for at least 6 months with the establishment.

A unique feature of this legislation is that it makes express mention of an unemployment benefit insurance scheme through which cash benefits would be given to unemployed persons. Under the Workmen's Compensation Act, employers are liable to pay compensation for any injuries resulting from an accident arising during the course of employment, unless it has occurred due to negligence of the employee, such as due to intoxication or substance abuse.



#### Location of Work/Mobility

Depending on the type of industry, an employer may be required to provide transport arrangements, such as ferries and shuttle buses, for the convenience of its employees.

#### Pension Plans

There are pension schemes available for employees working with the government. However, under the Social Security Law, employers and workers will contribute to the social security fund as per rates set by the Ministry of Labour in consultation with the Union Government. This is an additional benefit for employees.

#### Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Every female employee is eligible for six weeks leave prior to delivery and a minimum of 8 weeks and up to a maximum of 14 weeks after delivery. In case of delivery of twins, an employee is eligible for an additional 4 weeks of maternity leave post-delivery. In case of miscarriage, an employee is entitled to 6 weeks of leave. A male employee is entitled to 15 days of leave for infant care after delivery. Every employee is eligible for leave for up to 8 weeks for child care in case of adoption of a child who has attained less than one year of age.

#### Compulsory Terms

The law requires employment contracts to include minimum conditions of work. These are laid out in the Employment and Skill Development law which contains provisions that are compulsory in the contract. Standard provisions, such as wages/salary, type of employment, location and working hours, have to be specifically stated. Additional terms, such as days off, meal arrangements, medical treatment, termination provisions, accommodation and transport arrangements, are all compulsory terms that need to be incorporated into the contract, if applicable to a given industry.

#### Non-Compulsory Terms

These may be anything apart from the bare minimum stated under the law. These can be mutually agreed by the parties, but shall not be less favourable than the minimum standards of employment under the law.



### Types Of Agreement

Agreements are to be in writing and are generally contractual in nature. They may be prepared for full-time work, part-time work or even for fixed-term work, if required.

### Secrecy/Confidentiality

There are no specific obligations under law to protect a party's confidentiality. However, these should be included within the contract for employment. Further, an employer may sue under S.54 of the Specific Relief Act to restrain employees from disclosing protected or otherwise privileged information.

### Ownership of Inventions/Other Intellectual Property (IP) Rights

There is presently no applicable legislation for protecting inventions or intellectual property rights of employees or an employer. The trademark law is antiquated and the only option available is to record declarations of ownership with the Registry of Deeds and Assurances. However, the system is not guaranteed, as these records are not open for public inspection. In actuality, there may be more than one registration application for the same trademark, copyright or patent. For this reason, in the absence of any legislation to protect intellectual property rights, protective clauses may be specifically incorporated into a contract.

### Hiring Non-Nationals

Employers must ensure that their employees are permitted to work in Myanmar. At present, companies formed under the Foreign Investment Law may hire non-nationals and apply for work permits and visas. For all other companies, whether locally owned or foreign, there are no restrictions for hiring non-nationals. However, they must ensure that valid documentation is in place. Recently, the Ministry of Immigration and Population has announced a work permit and residency system which has now been officially put into place.

### Hiring Specified Categories Of Individuals

There are special requirements for certain industries due to the nature of work involved and these may have restrictions such as age limits. For instance, in hazardous industries, employees must be at least 18 years of age.

### Outsourcing And/Or Sub-Contracting

Employers are free to outsource work or sub-contract, if necessary.

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## 03.

# Maintaining The Employment Relationship

### Changes To The Contract

Amendments to employment contracts may be made by employers but require the approval of the employees. Changes in employment terms to which employees have not consented are invalid.

### Change In Ownership Of The Business

There is no specific guidance on changes of ownership in the employment context under Myanmar law. However, in the case of a change in business ownership, the smooth transfer of employment contracts with no amendments does not require consent. However, if there is a material change in the contract terms, then the employer must obtain employee consent. For example, if the termination provisions expressly mention that a change in ownership requires employee consent to the transition, then such terms must be followed and employee consent sought before transferring the employment agreement to the new business owner/entity.

### Social Security Contributions

In Myanmar, employees and employers contribute to the Social Security Fund to cover compulsory and non-compulsory social insurance schemes under the Social Security Act (in effect from 1 April, 2014). Currently, an employer is to contribute 3% of an employee's wages towards the social security fund while an employee's contribution to the fund is 2% of his or her wages.

### Accidents At Work

Under the Workmen's Compensation Act, employers are liable to pay compensation for injuries or death resulting from accidents during the course of employment. The few exceptions to this rule are if the employee was under the influence of any intoxicating substance, engaged in wilful misconduct or disregarded safety precautions during an accident. Generally, compensation is calculated on the wage rate or salary for death, disability or any other injury. There are maximum and minimum compensation values provided under the law.

### Discipline And Grievance

Employers are allowed to set internal rules and procedures to maintain discipline. There are not yet mandatory requirements to set up procedures for grievance and redress. However, employees may bring their grievances to the local Labour Office or court.

### Harassment/Discrimination/Equal pay

The Minimum Wage Law stipulates equal pay for all employees irrespective of gender. The law also requires employers to treat their male and female employees equally and not to discriminate.





### Compulsory Training Obligations

The Employment and Skill Development law places obligations on employers to carry out training workshops for its employees, either individually or in a group. There is a definite focus on this area and the law stresses the need to build essential skills among the work force. There are also provisions for arranging apprenticeships for training in technology. For certain industries, the government may also set a skill development committee and a fund into which the employer will need to contribute.

### Offsetting Earnings

The Payment of Wages Act sets out circumstances where an employer may deduct or offset an employee's earnings. Such situations may arise due to absence from duty, deductions for damage or loss of goods entrusted, any house accommodation provided, social security contributions, saving schemes or for income tax payable. There is a maximum limit placed on the deductions that can be made and such deductions cannot exceed 50% of the employee's gross wages or salary.

### Payments For Maternity And Disability Leave

In addition to maternity leave outlined above, an insured woman will be entitled to enjoy a maternity cash benefit if she has worked for a minimum of one year before the commencement of the maternity period. Maternity cash benefit for an insured female worker is 70% of her average wage for the previous year, as well as 50% of the average month's wage for maternity expenses for a single delivery. The rates increase for delivery of twins or triplets. In addition to paternity leave, an insured man is entitled to a paternity benefit of 70% of his average wage for the previous one year.

### Compulsory Insurance

Contributions towards the Social Security fund referenced above are compulsory.

### Absence For Military Or Public Service Duties

There is a Reservist Law of 2010 addressing military leave, but it has not yet been implemented.

### Works Councils or Trade Unions

The 2011 Labour Organization Law regulates collective industrial relations, including trade unions, employers' associations and collective actions. The law uses industry/occupation and geographic categories. These are categorized at a company level for the same trade or activities, for township labour organizations and regional or state labour organizations at the township and regional level for the same trade or activities, for labour federations in the same trade or activities and for the Myanmar Labour Confederation at the national level. The law essentially states that a labour union may be formed by a minimum of 30 workers working in the same establishment. The labour union would exist as a separate juristic entity liable to be sued and to sue, with a name and common seal. The law also provides for lockouts and strikes. However, in a situation of probable lockout or strike, prior notice must be given to the township labour organization for approval. Lock-outs and strikes are restricted for essential services which cannot be interrupted, including water, electricity, fire and health services.



### Employees' Right To Strike

Employees have a right to go on strike if they meet certain criteria set out in the law. There are provisions for collective bargaining. In case of strikes, the labour union must obtain permission from the labour federation. The law allows strikes for labour organizations, but requires permission of the labour federation 14 days in advance for public utility service industries and 3 days in advance for others. The law also allows employers to lockout, but with permission of the relevant conciliation body, at least 14 days in advance. As noted, lockouts and strikes are illegal in the essential service sectors, such as water, electricity, health and telecommunications. In addition, lockouts and strikes are banned during the dispute settlement process, as is the dismissal of members due to collective actions.

### Employees On Strike

Employers cannot dismiss employees for a strike organised by their labour union.

### Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except to the extent that their employees act outside of the scope of their employment.

## 04.

## Firing The Employee

### Procedures For Terminating The Agreement

Termination provisions may be set by the employer or mutually agreed. In any case, an employee's consent to all the terms is necessary to make the agreement valid and enforceable. However, though parties have freedom to contract, any terms which are considered excessively unfair may be scrutinised by the court. This is particularly so, given the unequal bargaining power of the employer and employee.

Generally, for fixed-term contracts, employment will terminate upon the end of the term unless it is to be renewed. Indefinite contracts require a clear notice period by either party to end the employment. Typical termination provisions will be accompanied with a notice-period requirement. If an employee has been employed for less than three months, then one month's basic salary (i.e., one month for notice pay) is required upon termination; if employed for three months to one year, then an employee is entitled to two months' basic salary. These amounts increase based upon length of service.

**Instant Dismissal**

Instant dismissal, except for gross misconduct, is not allowed. An employer cannot terminate an employee without notice or severance pay for other reasons. For instant dismissal, the circumstances must be serious whereby an employee dishonestly performs his or her duty or intentionally commits a criminal act against the employer, intentionally causes the employer to suffer losses, performs an act of gross negligence which causes the employer to suffer severe losses or violates the lawful and just work rules or regulations or orders of an employer after having received written warnings.

**Employee's Resignation**

There is no specific guidance available under Myanmar law on severance pay for employees who resign. This is generally subject to agreement between an employer and an employee.

**Termination on Notice**

The Employment Skills and Development Law states that compensation may be paid to employees who have been terminated with notice. However, to date, no notifications implementing this section have been issued. We would recommend at least the minimum notice pay, discussed earlier at "Procedures for terminating the agreement," and additionally any other compensation as per company policy.

**Termination By Reason Of The Employee's Age**

Please refer to "Termination on Notice" given above for guidance.

**Automatic Termination In Cases Of Force Majeure**

If employment has to be terminated due to unexpected conditions, or terminated prematurely not due to the fault of the employee, then the employer is liable to pay compensation to the employee. There are no notifications issued providing further detail or guiding the quantum of such compensation, although an employer should at least meet the minimum requirements under law.

**Termination By Parties' Agreement**

The parties are free to agree on the conditions for termination, provided such terms satisfy the minimum requirements under law.

**Directors Or Other Senior Officers**

There are no specific compensation requirements given for terminating directors or other senior level officers. We would recommend following the general practice of ensuring the minimum requirements under law for all employees.

**Special Rules For Categories Of Employee**

There is no specific rule for different categories of employees on termination.

**Specific Rules For Companies in Financial Difficulties**

The labour laws do not provide any rules for companies facing financial difficulty.

**Restricting Future Activities**

Areas of non-compete have not been routinely included in contracts, nor have they been widely disputed in Myanmar. Section 27 of the Contracts Act and Section 57 of the Specific Relief Act provide that an agreement in restraint of trade would be considered void. This is consistent with the laws of most common law and civil law jurisdictions, whereby full restraint on trade is impermissible. What is typically permissible, however, is reasonable restraint, narrow in scope and specific to individual circumstances. Despite the absence of case law defining the scope of non-compete provisions in employment contracts, we are of the opinion that a carefully crafted and narrow provision would be enforceable.

**Severance Payments**

In the absence of enabling notifications under the law, the recommended practice from labour authorities is to give an employment package which includes at least one-month notice and severance payment according to years of service: If the employee has worked at the company from three months to one year, he is entitled to two months' salary; if he has worked for the company for one to three years, he is entitled to three months' salary and if he has worked for the company for more than three years, the employer must pay five months' salary.

However, this would not apply if the employee wilfully quits or is liable for misconduct. In such case, the employer would not be obligated to provide compensation.

**Special Tax Provisions And Severance Payments**

Such compensation in the form of severance payment is liable to income tax in the same way that wages, annuities, pensions or gratuities would be taxed.

**Allowances Payable To Employees After Termination**

Only salary is payable after termination for the duration of the notice period unless the allowances are explicitly mentioned.

**Time Limits For Claims Following Termination**

There is a limitation period of one year from the due date for filing a petition in court. Following termination, wages earned by an employee are due from the second working day from the date the termination takes effect.



## 05. General

### **Specific Matters Which Are Important Or Unique To This Jurisdiction**

It would be prudent to keep in mind that termination at will is, in fact, nearly impossible unless in exceptional circumstances. As is seen in many other Asian jurisdictions, the labour laws of Myanmar are heavily in favour of employees to provide job security. For this reason, it would be important to evaluate candidates thoroughly while recruiting. This is particularly so, given the small pool of international standard skilled employees.

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