

Employment and employee benefits in Myanmar: overview

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SCOPE OF EMPLOYMENT REGULATION

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Laws applicable to foreign nationals

There are no specific provisions covering foreign nationals working in Myanmar. The labour laws apply to all persons working in the country. Foreign nationals working in Myanmar are covered under the same labour laws as Myanmar citizens. Myanmar employment laws apply equally to all employees working within the country, including those working for foreign-owned companies. However, employees transferred or sent to Myanmar for short durations under a subsisting foreign employment contract must ensure that minimum standards under Myanmar labour laws are complied with during their time spent working in Myanmar.

Based on the latest information from the Ministry of Labour, Immigration and Population (MLIP) (formerly known as the Ministry of Labour, Employment and Social Security), MLIP will submit a draft law on work permits for foreign nationals who are working in Myanmar to the Union Attorney General's Office for review. This law, if enacted, will require foreign nationals working in Myanmar to obtain work permits, and working regulations will be required for foreign nationals.

Laws applicable to nationals working abroad

The Overseas Employment Law provides that all Myanmar citizens, except seamen and government servants, must register with the Directorate of Labour.

If Myanmar employees are sent to work outside of Myanmar by their employer (for instance, on an intra-office scheme), their welfare and employment conditions would be according to Myanmar labour law, unless the employment contract states otherwise.

EMPLOYMENT STATUS

2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

Categories of worker

There are no defined categories of workers. Certain laws differentiate on the basis of workplace, such as the Factories Act.

However, in practice most of the labour laws apply to all workers regardless of the type of work they are engaged in. Self-employment is not specifically defined in Myanmar and is only relevant from a tax liability perspective.

Entitlement to statutory employment rights

Not applicable (*see above*).

Time periods

There can be fixed-term and indefinite-term contracts. However, on 31 August 2015 the Ministry of Labour, Employment and Social Security (which is now called the Ministry of Labour, Immigration and Population) announced in its Notification 1/2015 that employers must use the official template contract published by the Ministry. Based on the official template contract, it is preferable to include a specific fixed-term period in the employment contract. Generally, employees' probation periods do not exceed three months.

RECRUITMENT

3. Are any grants or incentives available for employing people? Does any information/paperwork need to be filed with the authorities or given to new employees when employing people?

Grants or incentives

Employees are insured under Social Security Law and are eligible for welfare benefits under that law. Resident employees are also eligible for tax relief giving a basic allowance if they have a spouse, children or elderly parents living with them.

Filings

All employment contracts must be prepared according to the template draft provided by the labour department. They must be approved and a final copy signed in front of labour officials. This process is currently being implemented by officials.

In addition, employers must register their employees with the Social Security Board and local tax authorities. Once an employee has been appointed, it is compulsory to have the employment agreement prepared in writing. The employment contract must be signed within 30 days from appointment, except where the employee is on probation or training is a pre-condition to appointment. The law designates a list of mandatory provisions that must be included in the contract. The contract may be subject to approval by the local Labour Exchange Office. See *Question 7*.

BACKGROUND CHECKS

4. Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

There are no restrictions. Normally, an employer requires applicants to support their application with a ward recommendation certificate and police recommendation letter on domicile status and criminal record, if any. There are also no restrictions on background checks conducted by a third party.

PERMISSION TO WORK

5. What prior approvals do foreign nationals require to work in your country? What information/paperwork needs to be kept or filed with the authorities when they start work?

The government is currently drafting a law on work permits that will apply to all foreign nationals who are working in Myanmar. It will provide appropriate work permit procedures, which are expected to be in place by the end of 2016 or the beginning of 2017. Generally, foreign employees can work in Myanmar on a single entry business visa granting a stay of up to 70 days. Foreign employees who stay longer must apply for a multiple entry business visa under the relevant visa rules. On a case-by-case basis, embassies may grant a six-month to one-year multiple entry business visa. Costs, which are generally modest, are determined by the relevant Myanmar embassy in the jurisdiction in which the application is filed. Foreign nationals employed by companies that were registered and established under the Foreign Investment Law can apply for work permits and business visas, and whether they are granted will depend on the discretion of the Myanmar Investment Commission.

Visa

Procedure for obtaining approval. For a 70-day business visa, the application is made to the Myanmar embassy in the applicant's country. Further to the procedure above, the Ministry of Labour, Immigration and Population (MLIP) (formerly known as the Ministry of Labour, Employment and Social Security) allows foreign nationals to apply for an e-visa (business visa) here: <http://evisa.moip.gov.mm/index.aspx>.

Cost. This varies from country to country but is approximately US\$40-60.

Time frame. Visas take four to five days to process, or less if an express visa facility exists.

Visas can be renewed by exiting the country and re-applying in the same manner. There are certain procedures where an extension of stay may be granted by applying to the Directorate of Investment and Company Administration. However, this process remains inconsistent and is not a standard practice.

Sanctions. There are no prescribed legal sanctions as yet for employing a foreign national who does not have the necessary permission to work.

RESTRICTIONS ON MANAGERS AND DIRECTORS

6. Are there any restrictions on who can be a manager or company director?

Age restrictions

Any person who has attained the age of majority can be a manager. To become a company director, the person must hold at least one share and must have attained the age of majority.

Nationality restrictions

There are no restrictions on a manager's nationality.

REGULATION OF THE EMPLOYMENT RELATIONSHIP

7. How is the employment relationship governed and regulated?

Written employment contract

A written employment contract must be made in accordance with section 5(a) of the Employment and Skill Development Law 2013. The employment contract must be written in both the Myanmar and English languages. An employment contract must be written in compliance with the Employment and Skill Development Law 2013. The law lists mandatory provisions that must be included in the contract. Standard clauses on remuneration, termination, duration and social security benefits must be explicitly stated in employment contracts. Standard provisions, such as wages/salary, type of employment, location, and working hours, must be specifically stated. Additional terms include days off, meal arrangements, medical treatment, termination provisions, and accommodation and transport arrangements, if any. These are all compulsory terms that must be incorporated into the contract.

Under section 38 of the Employment and Skill Development Law 2013, an employer who fails to sign an employment agreement with its employee can be punished with imprisonment for up to six months, a fine, or both. Further, employment contracts which are not registered with the labour department may be declared void.

Implied terms

The Directorate of Labour has provided an employment contract template. The contents of that template cannot be changed without the prior approval of the Directorate of Labour. The law requires employment contracts to include minimum conditions of work. There is no concept of implied terms.

Collective agreements

Collective agreements are made with the relevant conciliation body and both employer and employees must abide by or carry out activities in accordance with the agreement.

8. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

The employer and employee must negotiate the desired changes and require approval from the Directorate of Labour.

MINIMUM WAGE

9. Is there a national (or regional) minimum wage?

The National Minimum Wage committee set out the minimum wage of MMK3,600 on 28 August 2015 for all employees, regardless of age, industry, experience, and region. There is no salary cap system. The Payment of Wages Law sets out the mandatory payment method. All employers must pay wages according to the fixed wage period, and no wage period can exceed one month.

RESTRICTIONS ON WORKING TIME

10. Are there restrictions on working hours? Can an employee opt out on either an individual or collective basis?

Working hours

Working hours are normally set at eight hours a day or 44 hours a week, according to the nature of work. Weekly working hours must not exceed 48 hours. The stipulated working hours are:

- Shops, companies, trading centres, service enterprises and entertainment houses: eight hours a day, 48 hours a week and overtime working hours must not exceed 12 hours a week.
- Factories: normally 44 hours a week, and must not be more than 48 hours a week for specific purposes, and overtime work can be granted through the prior approval of the Factories and General Labour Laws Inspection Department (FGLLID).
- Oilfields and mines: not more than 44 hours a week.

Mandatory overtime payments must be paid for every hour/day worked beyond the prescribed limits.

Rest breaks

The prescribed minimum rest period is 30 minutes after four hours of work under the Shops and Establishment Law, and 30 minutes after five hours of work under the Factories Act.

Shift workers

Working hours and rest breaks for shift workers must be decided after consulting with the Directorate of Labour and Factories and General Labour Laws Inspection Department.

HOLIDAY ENTITLEMENT

11. Is there a minimum paid holiday entitlement?

Minimum paid holiday entitlement

The law requires a minimum one day off with pay per week. Every employee must be granted all gazetted public holidays, amounting to about 24 days in a calendar year. This includes ten days leave for Myanmar New Year celebrations, which have been declared as public holidays by the State Peace & Development Council under notification No 1/2007 dated 16 February 2007. However, there is no statutory obligation to provide an alternative holiday when a public holiday coincides with a weekly off day. However, for purposes of calculating wages, if an employee works on a public holiday coinciding with a weekly off day, the employee must be paid for that day.

Public holidays

Employees are eligible to public holidays with pay. There are about 24 public holidays including ten days of Myanmar New Year public holiday in a year and they are included in the minimum holiday entitlement. There is no statutory obligation to provide an alternative holiday when a public holiday coincides with a weekly off day.

ILLNESS AND INJURY OF EMPLOYEES

12. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Who pays the sick pay and, if the employer, can it recover any of the cost from the government?

Entitlement to paid time off

The Social Security Law 2012 provides a number of benefits to employees and is applicable to any organisation. Employees are entitled to medical treatment and cash benefits for sickness, maternity/pregnancy, paternity, retirement, and for funeral expenses. Medical treatment can be taken for up to 26 weeks starting from the date of treatment. Myanmar law allows up to 30 days medical leave to every employee for the purposes of treatment. An application for medical leave must be supported by a medical certificate from a certified medical officer, doctor, or any other certified medical practitioner. To qualify for cash benefits, employees must have worked for at least six months with the employer.

Entitlement to unpaid time off

There is no legal provision concerning unpaid time off in Myanmar. However, an employer may allow its employee to apply for unpaid leave. The employee must provide a sufficient reason and enough time for the employer to consider the request and arrange for the employee's responsibilities to be handled during the leave.

Recovery of sick pay from the state

The employer cannot recover such costs from the government.

STATUTORY RIGHTS OF PARENTS AND CARERS

13. What are the statutory rights of employees who are:

- **Parents (including maternity, paternity, surrogacy, adoption and parental rights, where applicable)?**
- **Carers (including those of disabled children and adult dependants)?**

Maternity rights

Every employed mother, whether or not covered by the Social Security Law, is entitled to maternity leave of six weeks before delivery and eight weeks after delivery. The beneficiary has the right to enjoy another four weeks after the statutory maternity leave for child care if it is a twin delivery and the right to maternity leave of up to a maximum of six weeks in cases of miscarriage, provided the miscarriage is not a legally punishable one.

Paternity rights

A male employee under the Social Security Law is entitled to 15 days of leave for infant care after delivery.

Surrogacy rights

There is no provision in this regard in Myanmar.

Adoption rights

An employee is eligible for up to eight weeks childcare leave under the Social Security Law when adopting a child of under one year of age.

Parental rights

A male employee who is covered under the Social Security Law is entitled to 15 days of leave for infant care after delivery.

Carers' rights

There is no provision in this regard.

CONTINUOUS PERIODS OF EMPLOYMENT

14. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

Statutory rights created

There are no such provisions.

Consequences of a transfer of employee

In the case of transfer of a legal entity, an employee's contracts may be carried forward based on an agreement with the new employer.

FIXED TERM, PART-TIME AND AGENCY WORKERS

15. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?

All employees, including temporary workers, agency workers, and part-time workers, have the same rights under Myanmar law. There are no relevant qualifying periods for employers/workers, except if there is a probation period. The position or status of workers/employees depends on the employment contract for that type of employment. To terminate a fixed-term contract, the employer must give one-month's prior notice and pay a severance payment. The termination process and liabilities of a fixed-term contract is the same as for the termination of other employment (see *Question 19*).

An employment contract must clearly mention the job position of employees/workers, and can only be amended with the approval of the relevant labour authorities. Misclassifying the status of employment can result in liabilities and penalties for the employer. All employees must be treated equally, regardless of whether they are part-time or permanent staff. Within a group of companies, under the inter-company arrangement, the part-time and agency workers may have a contract with a principal or may be employed and paid by another member of the group when the contract meets the minimum requirements of workers.

Temporary workers

There is no specific definition or regulation of these kinds of workers. They are included under the definition of workers under the labour laws, such as the Social Security Law, Shops and Establishment Law, Employment Skill and Development Law, and Leave and Holidays Act.

Agency workers

There is no specific definition or regulation of these kinds of workers. They are included under the definition of workers under the labour laws, such as the Social Security Law, Shops and Establishment Law, Employment Skill and Development Law, and Leave and Holidays Act.

Part-time workers

There is no specific definition or regulation of these kinds of workers. They are included under the definition of workers under the labour laws, such as the Social Security Law, Shops and Establishment Law, Employment Skill and Development Law, and Leave and Holidays Act.

DATA PROTECTION

16. Are there any requirements protecting employee privacy or personal data? If so, what are an employer's obligations?

Employees' data protection rights

The Competition Law, which will enter into force on 24 February 2017, provides provisions on non-disclosure and confidentiality. The new employment contract template issued by the Directorate of Labour includes a non-disclosure and confidentiality clause within the contract for employment. In addition, an employer can sue under section 54 of the Specific Relief Act to restrain employees from disclosing protected or otherwise privileged information. Further, another statutory provision that addresses privacy is found in section 357 of the Constitution of Myanmar, which states that: "The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution".

Employers' data protection obligations

There are no relevant rules other than the above.

DISCRIMINATION AND HARASSMENT

17. What protection do employees have from discrimination or harassment, and on what grounds?

Protection from discrimination

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. There are no specific provisions for claims and compensation under labour laws. Discrimination can lead to criminal and/or civil actions.

Protection from harassment

There is no specific legal provision providing protection from harassment. However, harassment can lead to criminal and/or civil actions.

WHISTLEBLOWERS

18. Do whistleblowers have any protection?

There is no legal provision providing protection for whistleblowers.

TERMINATION OF EMPLOYMENT

19. What rights do employees have when their employment contract is terminated?

Notice periods

One-month prior notice is standard practice.

Severance payments

The Ministry of Labour, Immigration and Population (formerly known as the Ministry of Labour, Employment and Social Security), under an announcement of the current government, has issued severance payment rates depending on the service period, as follows:

- Six months to one year of service: one-half of monthly salary.
- One to two years of service: one month's salary.
- Two to three years of service: one and a half's month salary.

- Three to four years of service: three months' salary.
- Four to six years of service: four months' salary.
- Six to eight years of service: five months' salary.
- Eight to ten years of service: six months' salary.
- Ten to 20 years of service: eight months' salary.
- 20 to 25 years of service salary: ten months' salary.
- Over 25 years: 13 months' salary.

Procedural requirements for dismissal

An employment contract can be terminated on:

- Expiry.
- The bankruptcy of the employer.
- Force majeure events.
- Breach of contract.
- Death of the employee.
- Where the employee is convicted of criminal misconduct.

Commission of gross misconduct can be grounds for termination immediately without severance payment. For minor cases, a verbal warning must be given the first occurrence, a written notice for the second, and a bond issued for the third. The employee can then be dismissed without severance payment for a further violation after these three warnings.

20. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Protection against dismissal

The dismissal system under Myanmar law is not at will. The employer can only dismiss employees on the grounds of gross misconduct. Commission of gross misconduct can be grounds for termination immediately without severance payment. For minor cases, a verbal warning must be given the first occurrence, a written notice for the second, and a bond issued for the third. The employee can then be dismissed without severance payment for a further violation after these three warnings.

Otherwise, an employer must give one-month's notice and the usual severance payments when dismissing employees. Employees/workers are protected when engaging in industrial action in accordance with the law.

Protected employees

There are no special categories of protected employees.

REDUNDANCY/LAYOFF

21. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

Definition of redundancy/layoff

There are no specific provisions covering redundancies/layoffs in the labour laws, which are treated in the same way as other forms of termination (see *Question 19*).

Procedural requirements

One month's notice is required.

Redundancy/layoff pay

Redundancies are treated in the same way as other forms of termination and are subject to the same severance payments (see *Question 19*).

Collective redundancies

There are no specific rules on collective redundancies.

EMPLOYEE REPRESENTATION AND CONSULTATION

22. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What does consultation require? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management representation

There are no provisions for management representation for employees in the Labour Organisation Law or the Settlement of Labour Disputes Law.

Consultation

Employees can negotiate their conditions of employment and general welfare through their Workplace Co-ordinating Committee. There is no obligation for the employer to consult with union representatives before management decisions, including layoffs.

Major transactions

Employers must explain and inform in case of business transfers, disposals or acquisitions.

23. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

Not applicable (see *Question 22*).

Employee action

Not applicable (see *Question 22*).

CONSEQUENCES OF A BUSINESS TRANSFER

24. Is there any statutory protection of employees on a business transfer?

Automatic transfer of employees

Automatic transfers can take place in certain circumstances. The transferee employer must discuss the transfer with employees and determine whether they wish to be transferred or end their contractual agreement.

Protection against dismissal

If the new employer is unable to accommodate staff in the new entity, and desires to dismiss or lay off, he or she is liable to pay the usual severance payments (see *Question 19*).

Harmonisation of employment terms

There is no legal provision covering the harmonisation of employment terms with the buyer's existing employees.

EMPLOYER AND PARENT COMPANY LIABILITY

25. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
 - A parent company can be liable for the acts of a subsidiary company's employees?
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Employer liability

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

Parent company liability

Liability depends on the act of the employee and the management's knowledge of it.

EMPLOYER INSOLVENCY

26. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?

Employee rights on insolvency

Employees can claim from the employer their arrears/dues in wages. In case of insolvency, the government may direct that the assets of an employer are sold to pay the due wages of employees.

State guarantee fund

There is no state guarantee fund.

HEALTH AND SAFETY OBLIGATIONS

27. What are an employer's obligations regarding the health and safety of its employees?

Employers must comply with occupational health and safety rules issued in accordance with the relevant laws and by the relevant labour departments. Employers must arrange for minimum safety standards to protect from natural disasters, force majeure, and manage and educate the employees regarding occupational health and safety. The Occupational Safety and Health Law is currently being drafted.

TAXATION OF EMPLOYMENT INCOME

28. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
 - Nationals of your jurisdiction working abroad?
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Foreign nationals

An individual who resides in Myanmar for a period of more than 183 days in a year is considered to be a resident taxpayer. A resident taxpayer must pay tax on income received through sources in Myanmar and abroad. Income received in Myanmar is calculated by totalling the income for all days worked in Myanmar. Unless tax exemptions are granted, most international staff who are based in Yangon or elsewhere in the country and are receiving salaries offshore for work performed in Myanmar are required to self-assess their tax liability, and/or have their employer assess their tax liability, as well as pay tax to the Internal Revenue Department. Resident taxpayers must pay income tax at progressive rates on their salary income and 25% on other incomes. Non-resident foreign taxpayers are not eligible to any tax exemption or relief.

Nationals working abroad

Nationals working abroad are eligible for an income tax exemption on salary, and pay a 10% tax on other income from abroad.

29. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?

Rate of taxation on employment income

Resident individuals (see *Question 28*) are subject to the following progressive rates, after deduction of any applicable exemption and relief, of tax on income (except income from property) under the 2016 Union Taxation Law:

- MMK1 to MMK2 million: 0%, tax exempt.
- MMK2,000,001 to MMK5 million: 5%.
- MMK5,000,001 to MMK10 million: 10%.
- MMK10,000,001 to MMK20 million: 15%.
- MMK20,000,001 to MMK30 million: 20%.
- MMK30,000,001 and above: 25%.

Social security contributions

A social security fund is formed from contributions from both the employer and employee. Employees contribute 2% of their wages and the employer contributes 3% of the employees' wages to the fund. Employees who have registered under this fund are exempt from provisions of the Workmen's Compensation Act of 1923.

The maximum contribution amount to the social security system is capped at MMK15,000 (that is MMK9,000 from the employer and MMK6,000 from the employee).

BONUSES

30. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded, whether generally or in particular sectors?

Bonuses are optional and may be provided as an added benefit by the employer. There are no restrictions or guidelines.

INTELLECTUAL PROPERTY (IP)

31. If employees create IP rights in the course of their employment, who owns the rights?

Copyright only exists in work created in Myanmar by Myanmar nationals. Therefore, foreign nationals cannot claim copyright over their work which was created outside or inside Myanmar. There is no formal system to record copyright in Myanmar. In relation to work done by an employee, section 5(1)(b) of the Copyright Act 1911 states that unless the work is journalistic in nature, the copyright is owned by the employer.

RESTRAINT OF TRADE

32. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of activities

Section 27 of the Contracts Act states that agreements which restrain individuals from exercising a lawful profession, trade, or business of any kind are, to that extent, void. However, provisions which are reasonable in scope in terms of territory and duration are permitted. Post-contractual terms should be carefully drafted to avoid being held void.

Post-employment restrictive covenants

Post-contractual terms should be carefully drafted to avoid being held void and should be drafted reasonably.

PROPOSALS FOR REFORM

33. Are there any proposals to reform employment law in your jurisdiction?

Current reform proposals include:

- Bill amending Workmen's Compensation Act.
- Overseas Employment Law.
- Occupational Safety and Health Law.
- Employment Law for Foreign Nationals.

ONLINE RESOURCES

Ministry of Information

W www.moi.gov.mm/?q=tags/laws

Description. Provides newly-enacted laws in Burmese.

Ministry of Labour, Immigration and Population

W www.mol.gov.mm/en/laws-and-regulations/

Description. Provides labour-related laws in Burmese.

Directorate of Investment and Company Administration (DICA).

W www.dica.gov.mm/en/policy-law

Description. Official English language versions of some laws are available, such as the Foreign Investment Law.

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