

Tilleke & Gibbins

How to Hire and Fire in Laos

A guide to Lao labor law



Overview

Labor Law

The first Labor Law in Laos (officially known as Lao P.D.R.) is Labor Law No. 002/NA, which was promulgated in 1994 to regulate employment relationships, utilize workers' abilities for national socioeconomic development, increase the efficiency and productivity of society, and improve workers' living conditions. The Labor Law established an important legal framework for formalizing employer-employee relationships, and employment terms and conditions, in Laos.

Over a decade later, the implementation of the Lao government's 6th National Socio-Economic Development Plan (2006-2010) ushered in a number of new laws and regulations aimed at further promoting socioeconomic development, including human development and competitive advantages, in Laos. Accordingly, amendments were introduced to the Labor Law with the enactment of the Labor Law No. 06/NA in 2006.

Since that time, increasing investments and foreign activities in Laos—particularly in energy, mining, natural resources, real estate, and tourism—have contributed to both the public and private sectors recognizing the need for further amendments to the Labor Law to ensure that it is consistent with the needs of modern society, leading to the enactment of Labor Law No. 43/NA in 2013.

The latest version of the Labor Law includes provisions that are applicable to both Lao and foreign employees working in Laos, and to legal entities such as NGOs, international organizations,

and diplomatic missions. The changes introduced to the law are quite exhaustive, incorporating 104 new articles and numerous amendments, which relate to such issues as workplace gender equality, professional development, employment contract issues, etc.

As an employer in Laos, you will find valuable general information about Lao employment laws in this Q&A handbook. Please note, however, that this summary is designed to provide general information only and should not be used as a substitute for case-specific legal advice.

Employment Contracts

Basic Rules

Does the Lao Labor Law apply to my company?

The Lao Labor Law applies to every legal entity established in Laos, and to both employers and employees who work in Laos regardless of their nationality.

Do I need to enter into an employment contract with my employees?

An employment contract is required. However, the form of the employment contract may differ. Employment contracts may be verbal when the employer is an individual. Employment contracts entered into between an employee and a legal entity must be made in written form.

What do I need to include in an employment contract?

Your contract with employees must include the following provisions:

- ▶ details of the employer, and full name of the employee, along with their respective addresses;
- ▶ work to be performed (i.e., rights, obligations, duties, and responsibilities of the employee);

- ▶ duration of the contract and the probationary period;
- ▶ wages, including method/form of payment;
- ▶ welfare and benefits the employee is entitled to;
- ▶ working hours, rest days, and holidays;
- ▶ benefits the employee may receive at the end of the contract; and
- ▶ any other matters agreed between the parties in accordance with the Labor Law.

What types of protective covenants may I have in the employment contract?

With respect to confidentiality and protection of intellectual property, the Law on Intellectual Property of 2011 expressly grants protection to IP owners' trade secrets. You can incorporate and reiterate this type of clause in an employment contract to protect your trade secrets.

Other clauses, such as noncompetition clauses, are currently not addressed in the Labor Law. What is typically permissible, however, is reasonable restraint, which is narrow in scope and specific to individual circumstances. As such, if you include post-contractual noncompete clauses in your contracts, they must be reasonable in scope.

What types of employment contracts are allowed under Lao law?

The duration of an employment contract may be one of the following:

- ▶ **Indefinite-term employment contract:** Open-ended labor contract with no fixed term.
- ▶ **Fixed-term employment contract:** The length of a fixed-term employment contract may be renewed, but the total duration, including renewal, may not exceed three years; otherwise, the employee is considered to be hired under an indefinite-term employment contract.

Is a probationary period allowed?

An employment contract may set out a probationary period to evaluate whether or not the employee is qualified for the position. The duration of the probationary period will depend on the qualifications of the employee:

- ▶ **For physical labor employees:** The length of the probationary period may not exceed 30 days. During this period, either party may terminate the agreement with three days' prior notice.
- ▶ **For employees using intellectual/special skills:** The probationary period may not exceed 60 days. During this period, either party may terminate the agreement with five days' prior notice.

The Labor Law further sets out that you must inform your employee at least seven days before the end of his/her probationary period as to whether employment will be confirmed. Your employee must receive at least 90% of his/her remuneration for the work performed during the probationary period, even if the probationary period has not been successfully passed.

Working Hours

Overview

What are the regular working hours for my employees?

The Labor Law limits working hours to 48 hours per week. Work that is performed beyond this limit will be considered as overtime. Likewise, the law provides that an employee cannot work more than six days per week and eight hours per day.

Employees involved in the special types of work described below must have regular working hours that do not exceed six hours per day and 36 hours per week:

- ▶ exposure to radiation or to dangerous transmissible disease;
- ▶ exposure to vapors or smoke that are hazardous to health;
- ▶ direct exposure to dangerous materials or chemicals, such as explosives;
- ▶ working in underground tunnels, underwater, or at high elevations at limits that are not more than those specified by relevant laws;
- ▶ working in an abnormally hot or cold place;
- ▶ working directly with constantly vibrating equipment; and
- ▶ other forms of dangerous work.

Are night shifts defined and regulated?

The Labor Law defines night work as work performed between 10 p.m. and 6 a.m. for not less than seven consecutive hours. Employees performing night shifts are entitled to a minimum daily rest period of 11 consecutive hours in every 24-hour period before taking a new shift. According to the law, payment for night work or night shift must be at least 15% higher than the usual hourly rates of daytime work for each hour worked.

Is overtime regulated?

According to the Labor Law, overtime cannot exceed three hours per day or 45 hours per month. In addition, an employee cannot work overtime for more than four consecutive days, except in emergencies. Overtime wages differ according to the type of overtime, with the Labor Law providing different rates for different days and periods in which the overtime is performed (e.g. overtime on regular days, overtime at night, overtime on public holidays).

According to the Labor Law, before requesting an employee to work overtime, an employer must receive consent from the trade union, employee representatives, or the majority of employees. Furthermore, should overtime be necessary for more than 45 hours per month, in addition to the consent mentioned above, you must submit a special request to the Labor Administration Authority, Ministry of Labor and Social Welfare.

Leave Days

Overview

How many days of annual leave are my employees entitled to in Laos?

The Labor Law provides that employees who have worked consecutively for a period of one year are entitled to 15 days of annual leave. However, employees working in sectors that are deemed to be dangerous to health are entitled to 18 days per year.

During their annual leave, employees are entitled to receive full wages. The law further states that, if an employee cannot take annual leave due to a request from you, you must pay extra wages to your employee equal to 100% of the normal wage for each day of annual leave that he/she is unable to take.

Are there any other types of leave that my employees are entitled to?

Personal leave. The Labor Law provides that every employee working in Laos is entitled to paid personal leave for not less than three days each time any of the following events occur:

- ▶ the employee's own father, mother, spouse, or child is injured and hospitalized, and there is nobody to take care of them;
- ▶ the employee's father, mother, spouse, or child passes away;
- ▶ the employee gets married;
- ▶ the employee's wife gives birth or miscarries; or
- ▶ the employee is affected by a natural disaster.

Sick leave. The law provides that, upon presentation of a medical certificate, employees are entitled to sick leave fully paid up to a maximum of 30 days each year. However, workers working on a daily or hourly basis under a specific employment contract are entitled to sick leave only if they have worked for more than 90 days for the same employer.

Public holidays. The Labor Law provides a list of public holidays as follows:

- ▶ International New Year on January 1 (one day);
- ▶ International Women's Day on March 8 (one day) for female employees only;
- ▶ The Lao New Year festival (three days);
- ▶ International Labor Day on May 1 (one day);
- ▶ National Teacher's Day on October 7 (one day) for teachers and academic staff only; and
- ▶ National Day on December 2 (one day);
- ▶ The national day of employees who do not hold Lao citizenship (one day on the national day of the relevant country).

In addition to these public holidays, additional holidays of religious or traditional significance (e.g. the Boat Racing Festival, and the That Luang Festival) are customarily granted during the course of the year. Furthermore, the Labor Law provides that, if a public holiday falls on a regular rest day, the employee is entitled to an extra day off. Customary/traditional holidays can be subject to agreement between you and your employee(s).

Maternity leave. Female employees are entitled by law to receive full wages in case of maternity leave, which can range from 90 to 105 days, or 120 days in the case of multiple births. In the event of miscarriage, female employees are also entitled to maternity leave, with the number of days to be determined by the attending physician.

Internal Regulations

Overview

What are internal regulations?

Internal regulations are internal labor rules that include details pertaining to working hours, breaks, leave, as well as protection, discipline, and the organization of employees in the workplace.

Internal Regulations

Do I need to set internal regulations within my company?

According to the Labor Law, each workplace must devise and adopt internal regulations, based on inputs from trade unions, employee representatives, or the majority of employees. The internal regulations must also be approved by the Labor Administration Authority, and, afterwards, they must be displayed in an easily readable location at the workplace premises, with a copy in Lao language for locals, and a copy in English if there are foreign employees. The date on which labor authorities approve the internal regulations is considered to be the effective date.

Do I need to set internal regulations within my company?

Your internal regulations must set out the following:

- ▶ working hours/days, and leave plan;
- ▶ breaks during working hours, weekly rest days, and rest days due to health issues or other reasons;

- ▶ health and safety guidelines;
- ▶ framework for dispute resolution and disciplinary action; and
- ▶ benefits and mandatory rules to be observed by employees.

When drafting internal regulations, you should start with a template from the Labor Administration Authority. The template allows for you to add clauses/provisions not originally provided in the form.

Permitted Disciplinary Measures

What disciplinary measures are permitted if my employee violates my internal regulations?

The Labor Law provides the possibility for you to issue warnings for breach of internal regulations. You can also temporarily transfer your employee(s) to a lower position as a form of disciplinary action, but the temporary position must not exceed three months; otherwise, a new contract has to be agreed upon between you and your employee(s). Violations of internal regulations can also lead to the dismissal of an employee, as further elaborated in the “termination” section of this guide.

Generally, you are not permitted to deduct your employees’ wages or issue fines as a form of disciplinary action. You may, however, deduct the cost of any company materials, tools, or assets damaged by your employee from their wage, but such deductions may not exceed 20% of your employee’s wage if they cannot pay for the damages in a single installment. You may also deduct your employee’s wage according to the time that they are absent from work.

Termination

Legal Grounds

How can I terminate an employment contract?

The employment will be terminated when one of the following conditions is met:

- ▶ the expiration of the contract, or completion of tasks set out in the contract;
- ▶ the death of the employee or the employer;
- ▶ the termination of the company;
- ▶ the employee has been sentenced to imprisonment; or
- ▶ the employer and employee have provided mutual consent.

According to the Labor Law, either you or your employee may terminate an indefinite-term contract at any time, such as in the case of voluntary resignation by your employee. In the event of termination for economic reasons, you must consult employee representatives, and inform the Labor Administration Authority in writing. For a fixed-term employment contract, this may be terminated by mutual consent, or if either of the parties has breached contract terms.

Under what circumstances may I unilaterally terminate my employee?

As an employer, you can terminate an employment contract for the following reasons:

- ▶ *Lack of skills:* the employee cannot correctly perform his/her duties, even after the employee has been placed in another position;
- ▶ *Health issues:* the employee has been moved to another position according to his/her health issues, but remains unable to perform the required tasks;
- ▶ *Reduction of the employee for business reasons:* the employer considers that reducing the number of workers will help improve the work within its labor unit. In this case, the employer must consult with the trade union, employee representatives, or the majority of workers, before reporting the employee reduction decision to the Labor Administration Authority.

Please note that, while you have the right to terminate an employment contract for any of the reasons specified above, severance payments are due to your terminated employee.

Similarly, the law provides the possibility for your employee to terminate his/her employment contract, while being entitled to receive severance pay, for the following reasons:

- ▶ the employee is in a poor health condition, has been certified by a doctor as such, and, despite treatment and after being moved to a more suitable position, remains unable to perform work properly;
- ▶ several objections related to the employment contract have been raised by the employee, but the issues persist;
- ▶ the employee is unable to perform his/her duties due to workplace relocation; or
- ▶ the employee is subject to molestation, harassment, or sexual harassment by the employer, or more broadly within the workplace, and the employer ignored the issue.

Under what circumstances may I dismiss my employee?

Your employee may be dismissed if they are at fault, and will not be entitled to receive severance pay, for the following reasons:

- ▶ the employee causes deliberate damage to the employer. It should be noted that the law does not differentiate between physical or economic damages;
- ▶ the employee violates internal regulations, their employment contract, or the rights of other employees several times and has been warned at least once by the employer;
- ▶ the employee was absent from the workplace for four consecutive days without proper reason; or
- ▶ the employee has been sentenced to imprisonment for an offense perpetrated deliberately against the labor unit. However, there is an exception for negligent offenses.

Though provided in the Labor Law, authorities recommend that employers reiterate in their internal regulations and employment contracts that no notice will be provided to the employee in the event of a dismissal due to any of the reasons specified above. Additionally, you are authorized to list more reasons than those prescribed in the law in your internal regulations and employment contracts.

In which cases am I prevented from unilaterally terminating my employee?

Unjustified dismissal. When the employment contract is terminated with unjust cause, your employee is entitled to request reinstatement. If you do not wish to reinstate the employee, you can instead pay compensation and other benefits that the employee is entitled to with respect to severance pay, and any other compensation or benefits provided in the employment contract.

The following cases may constitute unjustified termination:

- ▶ insufficient reasons for dismissing an employee;
- ▶ abuse of power of the employer;
- ▶ infringement of the rights of the employee; or
- ▶ when the employer has received complaints from the employee, but the employer did not take further action, resulting in the resignation of the employee.

Unauthorized termination. You are required to seek approval from the Labor Administration Authority if you wish to terminate an employee who falls under any of the categories listed below.

- ▶ pregnant, or has a child less than one year of age;
- ▶ undergoing medical treatment or rehabilitation, which is substantiated by a medical certificate;
- ▶ an employee representative or the head of a trade union;
- ▶ involved in a legal proceeding, or is detained and awaiting a judicial decision;
- ▶ injured and undergoing medical treatment, which is substantiated by a medical certificate;
- ▶ recently experienced a natural disaster;
- ▶ on annual leave, or on leave with the permission of the employer;
- ▶ working in another location after being assigned by the employer; or
- ▶ in the process of making a claim or taking legal action against the employer, or cooperating with government officials in a claim or legal action against the employer.

If you fail to seek approval before terminating such an employee, it would constitute unauthorized termination and the terminated employee would be entitled to protection from labor authorities.

Notice Period

How much notice must I provide to my employee in the case of unilateral termination?

There is no defined notification period for a fixed-term contract, and such terms are generally agreed upon in the employment contract. With respect to an indefinite-term contract, each party may terminate the contract at any time provided notification is provided to the other party at least 30 days in advance for contracts involving physical labor employees, and at least 45 days in advance for contracts involving employees who use intellectual/special skills. Alternatively, the employer can choose to make payment in lieu of notice to the employee who will be terminated.

Severance

How much is the severance pay?

The Labor Law provides for severance payments to be made for the following types of termination of employment:

- ▶ In the case of general unilateral termination of the contract, the severance value is 10% of the employee's last wage multiplied by the number of months worked.
- ▶ In the case of unjustified unilateral termination of a contract, the severance value is 15% of the employee's last wages, multiplied by the number of months worked, with no capped amount for severance payment.
- ▶ In the case of the death of an employee, the employer must pay 50% of the compensation that would have been received by the employee for general unilateral termination of the contract.

Suspending or Postponing an Employee Contract

If your employee receives unspecified wages, the calculation of severance is based on the average wage received during the course of the last three months.

When an employment contract is terminated for a reason that is not specifically set out under the Labor Law, you must compensate your employee according to the relevant provision of the employment contract, internal regulations, or any side agreement entered into between yourself and your employee.

Can an employment contract be suspended or postponed?

Aside from termination, an employment contract can be subject to suspension or postponement in the event that your employee must undertake national service, or is held, detained, or restricted in a certain area.

The duration of the suspension may not exceed one year, during which your employee is not entitled to receive wages or other benefits under the employment contract. At the end of the suspension period, your employee must be reinstated in his or her former position or an equivalent one. These are the only instances where the suspension of an employment contract is permissible.

Foreign Employees

Work Permits

Do I need to obtain work permits for my foreign employees?

The spirit of the Labor Law is to give employment priority to Lao nationals. However, you may hire foreign employees if the requirements to do so are fulfilled and after approval has been granted by the Ministry of Labor and Social Welfare.

A foreign employee working in Laos needs to have a work permit. To obtain a work permit for your foreign employee, you must submit an application form to seek quota approval from the Ministry of Labor and Social Welfare to bring in the foreign employee. Upon approval of the quota, you must request a work permit within one month from the date of approval. A work permit will then be issued to the foreign employee. In addition to their work permit, a business visa and a stay permit card will have to be sought by the foreign employee and his/her employer.

How can my foreign employee qualify for a work permit?

To qualify for a work permit, a foreign worker must fulfill the requirements that permit him or her to be granted a business visa, as follows:

- ▶ be over 20 years old;
- ▶ possess the relevant skills for the required work position;
- ▶ has no criminal record and is in good health; and
- ▶ received sponsorship by a company or an individual in Laos.

Limitations

Are there any other limitations on hiring foreign workers?

Under the Labor Law, employers must prioritize the hiring of Lao nationals. As a result, the number of foreign employees allowed is limited, and, prior to hiring a foreigner, you must receive authorization and quota approval from the Ministry of Labor and Social Welfare. In considering whether or not to grant approval, the ministry will take into account the following factors:

- ▶ whether the employer possesses financial stability, and the ability to conduct business and pay wages to the foreign employee; and
- ▶ the necessity of specific skills for the duties required for the available position the foreign employee is being hired for (the employer will be required to submit a work plan for the position to authorities annually).

The quota approval will be granted provided that your workplace complies with the following restrictions on the total foreign workforce within your labor unit:

- ▶ foreign employees who conduct physical work are limited to 15% of the total number of Lao employees; and
- ▶ foreign technical experts who conduct intellectual/special work are limited to 25% of the total number of Lao employees.

Are there restrictions on the length of my foreign employee's employment contract?

The employment contract for foreign employee is limited to a fixed-term contract of 12 months, which is renewable for a total period of up five years.

The extension of each contract for another period of 12 months must be submitted to labor authorities for approval to ensure that you remain in compliance with requirements. Extensions will be considered on a case-by-case basis, and authorities will take into account the following:

- ▶ demand for the job;
- ▶ business operations;
- ▶ growth of production; and
- ▶ use of new technology.

Social Security and Retirement Age

Legal Grounds

Is there a Social Security Fund and is it mandatory for me to contribute to it?

The Labor Law and the Social Security Law require every employer and employee to contribute to the Social Security Fund.

Your contribution is 6% of your employee's monthly wage, while your employee's contribution is 5.5% of his/her monthly wage. The total contribution is capped at LAK 4.5 million (approximately USD 540) based on a 2015 decision by the Ministry of Labor and Social Welfare.

Is there a mandatory retirement age?

The Labor Law does not expressly provide for a mandatory retirement age, but instead sets an age at which employees can receive retirement benefits under the state system. The eligible ages for receiving retirement benefits is 60 years for men and 55 years for women who have worked under normal conditions, and 55 years for men and 50 years for women who have worked under dangerous conditions.

According to the Social Security Law, an employee who has reached the age of retirement, and who has his or her income insured or has contributed for at least 15 years to the Social Security is entitled to receive a pension from the National Security Fund. The amount of the pension depends on the number of years of contribution made and the level of income insured. The Labor Law further adds that, employees who have contributed to the fund for 15 years or longer, have poor health conditions, and have 1-3 years remaining to reach their retirement age, shall also be entitled to retirement benefit.

Employee Representative Organization

Overview

What are the functions of an Employee Representative Organization?

Trade union. Under Lao law, trade unions are agencies that represent and protect the rights and benefits of employees. Trade unions can be established within labor units that have operated for at least six months, or within other branches of work in which employees want to establish such a union, whether at the central, provincial, municipal, or district level.

According to the Labor Law, trade unions: (1) encourage employees to comply with laws, employment contracts, the social insurance system, and other types of obligations with respect to the Labor Law; (2) contribute to the creation and revision of laws related to labor; (3) participate in the drafting of employment contracts and collective bargaining agreements; (4) participate in labor dispute resolution; and (5) incite employees to become a member of a trade union and further encourage the creation of grassroots trade union units.

Employee representatives. The employee representative is an individual chosen by employees to protect and defend the employees' interests. In companies where grassroots trade unions are established, the head of the union will act as the employee representative. According to the Labor Law, such a representative acts as a leader among the employees.

Employee representatives have the following duties: (1) promote/protect employees' interests; (2) participate in labor dispute resolution, collective bargaining, and drafting of employment contracts and internal regulations; (3) provide recommendations to improve wages, working conditions, and the social insurance system; (4) provide recommendations on the establishment of trade unions at the grassroots level; and (5) play a role in the implementation of rights and duties, as set out in the Labor Law and related regulations.

A workplace with 10 to 50 employees must have one employee representative, a workplace with 51 to 100 employees must have two employee representatives, and a workplace with more than 100 employees must have two employee representatives and one additional representative for every additional 100 employees.

What obligations do I have to trade unions and employee representatives?

You are obligated to provide protection to employee representatives. You must also provide trade unions and employee representatives with a meeting place, as well as sufficient time to meet and represent the employees of the labor unit.

Tilleke & Gibbins' Employment Practice in Laos

About

Business conditions, labor sentiment, and new opportunities evolve swiftly in the growing economies of Southeast Asia. Tilleke & Gibbins helps employers navigate these shifting legal landscapes by providing advice on labor law and employment matters that is timely and time-tested, innovative and practical.

Our first goal is to help employers formulate long-term, yet flexible, strategies on conditions of employment, staff restructuring, labor-management relations, and other critical employment issues. By helping employers create a positive work environment, we help companies save recruitment and litigation costs, react to changing labor conditions, and attract and keep talented employees.

When conflict cannot be avoided, Tilleke & Gibbins brings or defends our clients' employment claims in court. We combine the strength of our dispute resolution and litigation team with the expertise of our employment attorneys.

We offer the following services:

- ▶ **Strategic employment advice:** Conditions of employment, work rules and regulations, employment agreements, benefit plans, executive compensation, labor protection, workers' compensation, social security, provident funds, and safety issues.

- ▶ **Commercial transactions:** Issues related to labor expansion, contraction, and integration due to mergers, acquisitions, and restructuring.
- ▶ **Labor-management relations:** Conflicts in the workplace, strike management and control, lockouts, and labor demands.
- ▶ **Immigration:** Work permits, visas, and permanent residence permits.
- ▶ **Employment and labor litigation:** Enforcement of restrictive covenants related to competition and trade secrets, termination of employment claims, and sexual harassment claims.

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