Human Resource Watch: **Cambodian Labor Law gets an overdue update:**

EMPLOYEE SENIORITY PAYMENT BENEFITS ENFORCED

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Since its initial enactment in 1997, Cambodian Labour Law has remained largely untouched. However, with recent amendments introduced by the government in the past year, Cambodia's Labour Law is now witnessing the most significant changes in its 22-year history. Starting in mid-2018, a number of pro-employee initiatives were introduced in an attempt to bolster and improve Cambodian Labour Law and the benefits provided to the workforce. In brief, employers are now required to pay ongoing seniority payments to employees with open-ended employment contracts (referred to as "undetermined duration contracts"). In addition, those seniority payments must also be back-paid for time worked prior to 2019. These payments can be substantial—employees with fixed term contracts are entitled to five percent of the total wages earned during the duration of their contracts—and are accompanied by other major changes including a requirement to pay all employees twice a month, and the enactment of a pension scheme that is expected to be launched by the end of 2019.

Seniority Payments

On June 26, 2018, Cambodia's Labour Law was amended to include the concept of seniority payments, which are compulsory, periodic payments made to employees with undetermined duration contracts. The introduction of seniority payments replaced the previously required concept of indemnity for dismissal—a local legal concept equivalent to a severance payment—for undetermined duration contracts.

Before this amendment and its delegated legislation, if an employer unilaterally terminated an employee with an undetermined duration contract for any reason other than the employee's serious misconduct, the employer was required to pay the employee an indemnity for dismissal—a one-time payment at end of the employment relationship. The indemnity fee was calculated at a rate of 15 days of the employee's daily wages per year of service.

Effective since January 1, 2019, employers are no longer required to pay the indemnity for dismissal, and instead must provide seniority payment to employees with undetermined duration contracts. Seniority payments have two components: (1) an ongoing seniority payment calculated at a rate of 15 days of an employee's wages and benefits over the last year; and (2) seniority back payments for employment periods before 2019 at a rate of 15 days of wages and benefits for each year of service before 2019.

The first component requires employers to pay half of the annual, ongoing seniority payment—seven and a half days of wages and benefits—in June and December each year. If a new employee has worked at least one full month before the required June or December payment, the employee is entitled to a full seniority payment equal to seven and a half days of wages and benefits. However, if an employer unilaterally terminates an employee who has worked for at least one month since the last seniority payment, the employee is entitled to only seven days of wages and benefits, or nothing if the termination is based on the employee's serious misconduct. Additionally, an employee who resigns is arguably not entitled to the remaining seniority payment, although this is yet to be tested before the court.

The second component requires employers to provide seniority back payments to employees for employment periods before 2019. Seniority back payments are calculated at a rate of 15 days of wages and benefits for each year of service before 2019. Employers are not required to make all seniority back payments for employment periods before 2019 at once, and should provide qualifying employees with an additional seven and half days of wages and benefits every six months—at the same time as seniority payments. Employees in the garment, textile, and footwear production industries receive an expedited payment schedule so that their seniority back payments are settled at a rate of 15 days of wages and benefits every six months. In all cases, the total of seniority back payments are subject to a payment cap equivalent to six months of the respective employee's actual wages. An employee who resigns is not entitled to the remaining, unsettled seniority back payments.

Legislative ambiguities remain regarding the exact formula for determining the average daily wage for seniority back payments, and Cambodia's Ministry of Labour and Vocational Training has indicated that further guidance on this issue, amongst others, will be issued after consultation with the private section.

From the employer's perspective, this amendment converts a potential, accrued liability—a potential payment of the indemnity for dismissal to a terminated employee—into a current liability that must be paid to all employees on a regular basis.

As a result of these changes, employees with undetermined duration contracts will be receiving approximately five percent more in total compensation, which will certainly delight employees, but may cause concern for employers with tight budgets and margins.

Severance Payments

Delegated legislation to the amendment also reminds employers that that they are required to pay fixed-term contract employees a severance payment at the end of their employment contract(s). The severance payment must exceed or be equivalent to five percent of the wages paid to the employee during the length of the contract.

Previously, a significant number of employers failed to pay severance if the employee was offered another employment contract at the completion of the prior contract. However, with the introduction of seniority payments and clarification on the requirement to provide severance payments, it is clear that employees on fixed-term contracts are entitled to severance payment at the end of all fixed-term contracts.

Bimonthly Salary Payments

Also starting from 2019, salary payments for all employees must be paid twice a month (a measure that previously only applied to those considered "laborers"). The first payment must be made between the 16th and 19th of each month and should amount to half of the employee's gross monthly salary. The second payment must be made between the 1st and 7th of the following month and should amount to remaining balance owed to the employee after the first payment, including overtime (if any), and deduction of income tax.

Pension Scheme for Private Sector

Under the Law on Social Security Schemes and its delegated legislation, there are three social security schemes available to the private sector—occupational risk insurance, health insurance, and pensions. Although only the first two schemes have been implemented in Cambodia, the Cambodian government has been actively working on implementing the pension scheme, which is expected to launch towards the end of 2019. As of now, it is unsure whether pension contributions will be made by employers or whether they will be withheld from their employees' salaries—a notable difference that employers should carefully watch for.

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