

Employment and employee benefits in Myanmar: overview

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A Q&A guide to employment and employee benefits law in Myanmar.

The Q&A gives a high level overview of the key practical issues including: employment status; background checks; permissions to work; contractual and implied terms of employment; minimum wages; restrictions on working time; illness and injury; rights of parents and carers; flexible working; data protection; discrimination and harassment; dismissals; resolution of disputes between an employee and employer; redundancies; taxation; employer and parent company liability; employee representation and consultation; consequence of business transfers; intellectual property; restraint of trade agreements, relocation of employees and proposals for reform.

To compare answers across multiple jurisdictions, visit the employment and employee benefits [Country Q&A tool](#).

The Q&A is part of the global guide to employment and employee benefits law. For a full list of jurisdictional Q&As visit global.practicallaw.com/employment-guide.

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

Foreign nationals working in Myanmar are currently covered under the same labour laws as Myanmar citizens: there are no other specific provisions for foreign nationals. Similarly, employment laws in Myanmar apply equally to all employees working within the country, including those working for foreign-owned companies, and employees who are transferred or seconded to Myanmar for a short duration under a subsisting foreign employment contract must ensure that they comply with Myanmar labour laws throughout their time working in the country. Labour authorities

are currently in the process of drafting a Foreign Workers' Law to establish specific laws for foreign nationals working in Myanmar. Once the draft is approved by the union government, it will be submitted to parliament for final review.

Laws applicable to nationals working abroad

The Law Relating to Overseas Employment (1999) requires all Myanmar citizens, except seamen and government servants, to register with the Directorate of Labour. If employees are sent to work outside of Myanmar by their employer (for example, for an intra-office scheme), their welfare and employment conditions will continue to be governed by existing Myanmar labour laws, 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

In practice, labour laws apply to all workers regardless of the type of work they are engaged in. Having said that, certain laws differentiate on the basis of workplace, such as the Factories Act (1951). In addition, the newly enacted Regulations for Leave and Holidays, which came into force on 15 October 2018, provides definitions of daily wage earners, monthly wage earners, and wage earners for contract or temporary work to supplement the Leave and Holidays Act (1951). Self-employment is not specifically defined in Myanmar and is only relevant from a tax liability perspective.

Local labour laws do not explicitly differentiate between independent contractors and employees, so parties are free to define their engagement status in their contracts. In practice, the labour authorities in Myanmar are generally employee friendly. Despite this, when assessing whether two parties have an employer-employee relationship or a service engagement, the following factors can be considered:

- Degree of control, for example, the level of autonomy held by the person carrying out the work, use of an organisation's email and name cards, or ownership of equipment and materials.
- Profits or losses, that is, the opportunity to make a profit or the exposure to a risk of loss.
- Duration, such as the length and nature of the engagement.
- Benefits, for example, entitlement to statutory benefits such as social security.

Entitlement to statutory employment rights

All employees in Myanmar are entitled to the same set of statutory employment rights, including entitlement to paid leave, overtime pay, and severance pay. Local labour laws do not require statutory benefits to be provided to independent contractors.

Time periods

Since 2015, the Ministry of Labour, Immigration and Population (then known as the Ministry of Labour, Employment and Social Security) has required all employers in Myanmar to use an official employment contract form when entering into employment agreements with their employees.

The official employment contract form requires a fixed term to be stated, with an option to renew the contract at the end of the employment term. The township labour offices, which administer the registration of these forms, stipulate a maximum period of two years for each employment contract. In 2017, a new version of official employment contract form was published, no longer limiting the maximum employment term. However, most township labour offices in Yangon have retained the practice of only allowing each employment contract to last for a maximum of two years.

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

There are no specific grants or incentives available for employing people. Having said that, employees are insured by a social security fund established under the Social Security Law (2012) and are eligible for welfare benefits under it.

Filings

Employment contracts must be prepared according to the official employment contract form issued by the Ministry of Labour, Immigration and Population and signed within 30 days from appointment, except in cases in which the employee is on a probationary or training period as a pre-condition to appointment. The employment contracts must be approved and registered by the respective township labour office in accordance with the Employment and Skills Development Law (2013). Employers must also register their employees with the Social Security Board and local tax authorities.

Background checks

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

There are currently no restrictions on carrying out background checks in relation to applicants. Normally, employers require applicants to supplement their job applications with a ward recommendation certificate issued by the applicant's residential zone and a police recommendation letter stating the applicants' domicile status and criminal record, if any. An employer is also allowed to engage a third party to carry out a background check on the employer's behalf. However, with reference to the Law Protecting Privacy and Security of Citizens (2017), no citizen can be monitored, detected or investigated in a manner which could disturb their privacy and security, or affect their dignity. Employers should be mindful of this when conducting background checks by themselves or through 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 filed with the authorities when they start work?

Foreign employees can work in Myanmar as long as they hold a valid business visa. In accordance with the Registration of Foreigners Act (1940) and the Registration of Foreigners Rules (1948), foreign nationals wishing to remain in Myanmar for more than 90 days must also apply for a foreign national's registration certificate. However, this requirement is not always strictly adhered to in practice. Foreign national employees working with entities registered with the Myanmar Investment Commission (MIC) are also required to apply for a stay permit and work permit with the One Stop Service Section of the MIC. Other foreign national employees can apply for a stay permit and visa renewal through the collaboration of the Directorate of Investment and Company Administration (DICA) with the respective ministries.

Visa

Procedure for obtaining approval. This is as follows:

- Applications for 70-day, single-entry business visas can be submitted to the Myanmar embassy or consulate in the applicant's country of residence. The Ministry of Labour, Immigration and Population (MLIP) also allows foreign nationals to apply for 70-day, single-entry business e-visas online at <https://myanmar-evisa-online.com/>.
- Foreign national employees who have obtained at least two 70-day, single-entry business visas can apply for a multiple-entry visa (valid for three months, six months or one year) at the Myanmar embassy or consulate. Applications for visa renewals can be submitted to the Directorate of Investment and Company Administration. The visa fees, document requirements, and application procedures are subject to change from time to time at the discretion of the authorities.

Cost. The current official visa fees are as follows:

- **Single-entry business visa.** USDD50, valid for 70 days.
- **Multiple-entry business visa.** USD200, valid for three months; USD400, valid for six months; and USS600, valid for one year.

Time frame. Visa processing time depends on the Myanmar embassy or consulate in the applicant's country of residence. Typically, applicants can expect a range between one to five days.

Sanctions. Those without a valid visa will be denied entry into Myanmar. Under the Burma Immigration Emergency Provisions Act (1947), any individual who enters, attempts to enter, or overstays in Myanmar in contravention of the visa requirements, can be imprisoned for between six months and five years, and/or fined a minimum of MMK1,500 (maximum fines may extend to between MMK300,00 to MMK500,000), or both. The same penalty applies to any party who assists, or attempts to assist, in the prohibited act mentioned above.

Foreigner National's Registration Certificate

Procedure for obtaining approval. Applications for a foreign national's registration certificate should be submitted to the Foreigners Affairs Department of the MLIP. The application process is cumbersome; apart from the documents required for the application of a business visa, this process also requires a recommendation letter from the ministry related to the employer's nature of business, determined by the company's registration, in addition to other paperwork.

Foreign national registration certificate holders are expected to report their entry and exit into the country to the immigration department and pay a fee (about USD6) for every re-entry.

Time frame. A foreign national's registration certificate processing time depends on the Foreigners Affairs Department of the MLIP. Typically, applicants can expect a range of between one to two weeks.

Sanctions. Under the Registration of Foreigners Act (1940), any person who contravenes, or attempts to contravene, or fails to comply with these requirements can be imprisoned for up to three years, and/or fined. However, the provisions of this law are rarely enforced.

Restrictions on managers and directors

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

Age restrictions

Any person who is over 18 years old and meets the prescribed requirements of the hiring business can hold the role of a manager or company director.

Nationality restrictions

There are no specific restrictions limiting persons of any nationality from becoming a manager. Under the new Myanmar Companies Law (2017) (MCL), foreign citizens are allowed to become a director of a Myanmar citizen-owned company without owning a share. However, the MCL requires that at least one director of the company must be an ordinary resident in Myanmar (that is, a resident in Myanmar for at least 183 days in each year, but not necessarily a Myanmar national). Furthermore, public companies must have at least three directors, one of whom must be a Myanmar citizen and ordinarily resident in the country. The definition of "ordinarily resident" is contained in section 1(xix) of the MCL, and "ordinarily resident" means either a person who is a permanent resident in Myanmar under an applicable law, or who is resident in Myanmar for at least 183 days in each 12-month period commencing from either:

- In the case of an existing company or a body corporate registered under a repealed law, the date of commencement the MCL.
- In the case of any company or body corporate registered under the MCL, the date of registration of the company or body corporate.

The essential requirements of companies are contained in section 4 of the MCL, and a company registered under the MCL must have:

- A name.
- A constitution.
- At least one share in issue (provided that a company limited by guarantee need not have a share capital).
- At least one member.
- At least one director who must be ordinarily resident in Myanmar.
- If the company is a public company, it must have three directors, at least one of whom must be a Myanmar citizen who is ordinarily resident in Myanmar.
- A registered office address in Myanmar.

Other restrictions

Under the MCL, a director must be a natural person who is at least 18 years old, of sound mind, not bankrupt, and qualified to act as a director under the MCL and any applicable laws.

Regulation of the employment relationship



7. How is the employment relationship governed and regulated?

Written employment contract

A written employment contract, usually in Burmese but in both Burmese and English for foreign companies, must be made in accordance with the Employment and Skill Development Law (2013) within 30 days of the initial appointment of an employee.

Section 5(b) of the Employment and Skill Development Law (2013) lists the mandatory provisions that must be included in all employment contracts. These provisions cover topics including remuneration, termination, duration, and social security benefits. The mandatory employment contract form issued by the Ministry of Labour, Immigration and Population (MLIP) must be used by all employers, unless an exemption is obtained.

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 sentenced to imprisonment for up to six months, subject to a fine, or both. Further, employment contracts which are not registered with the labour department may be declared void.

Implied terms

There are no specific implied terms. The contents of the mandatory employment contract template issued by the MLIP cannot be changed without prior government approval from the Directorate of Labour.

Collective agreements

There are no specific collective agreements. However, collective agreements are made with the relevant conciliation body and both the employer and the 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 terms and conditions of employment cannot be unilaterally changed by the employer. The employer and employee must negotiate and agree on the desired changes and obtain approval from the MLIP.

Minimum wage

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

The national minimum wage is fixed by the National Minimum Wage Committee in accordance with its powers under the Minimum Wages Act 2013. The minimum wage was raised from MMK3,600 per day to MMK4,800 per day (MMK600 per hour) on 14 May 2018 irrespective of region. There is no salary cap in Myanmar. Under the Payment of Wages Act (2016), employers are required to pay daily workers and part-time employees by cash, cheque or bank transfer according to a fixed wage period which must not exceed one month. Permanent employees and other monthly fee earners must be paid monthly at the end of each payment cycle. Companies with over 100 employees are required to pay their permanent employees and monthly fee earners within five days of the end of the payment cycle.

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 per day or 44 hours per week, according to the nature of the work. Weekly working hours must not exceed 48 hours. The stipulated working hours for specific industries are:

- Shops, companies, trading centres, service enterprises, and places of entertainment: eight hours per day, 48 hours per week, and a maximum of 12 hours per week of overtime work.
- Factories: 44 hours per week, and not more than 48 hours per week for specific purposes. Overtime work can be granted through prior approval under the Factories and General Labour Laws Inspection Department.
- Oilfields and mines: 44 hours per 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 (2016), and 30 minutes after five hours of work under the Factories Act (1951).

Shift workers

Working hours and rest breaks for shift workers must be approved by the Directorate of Labour and Factories and General Labour Laws Inspection Department. The Factories Act (1951) states that shift systems cannot be arranged such that more than one relay of employees is engaged in work of the same kind at the same time.

Holiday entitlement

11. Is there a minimum paid holiday entitlement?

Minimum paid holiday entitlement

The Leave and Holidays Act (1951) mandates a minimum of one day off with pay per week, and 10 days of earned leave per year. Employees are also entitled to six days of paid casual leave per year. There is no statutory unpaid holiday entitlement, but employers are expected to provide employees with unpaid time off to attend to funeral matters if all paid leave entitlement has been exhausted.

Public holidays

Every employee must be granted all official public holidays based on the announcement of the Union Government in the *Official Gazette* and the local newspaper, amounting to between 20 to 26 days in a calendar year. Starting from 2019, the government granted alternative holidays, though there is no statutory provision to provide an alternative holiday when a public holiday coincides with a weekly day off.

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

Myanmar law allows up to 30 days of paid leave to every employee for medical 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. Under the Social Security Law (2012), employees are also entitled to medical treatment and cash benefits for injuries and illnesses. Medical treatment can be taken for up to 26 weeks starting from the date of treatment. Employees not covered by the social security programmes can also rely on the Workmen's Compensation Act (1923).

Entitlement to unpaid time off

There is no legal provision mandating that employees receive unpaid time off. An employer can allow its employee to apply for unpaid leave at their own discretion.

Recovery of sick pay from the state

The employer cannot recover sick pay from the government. Social security benefits however, are derived directly from the social security fund.

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 they are covered by the Social Security Law (2012), is entitled to paid maternity leave of six weeks before delivery and eight weeks after delivery. Mothers covered under the Social Security Law (2012) have the right to take an additional four weeks of paid leave after the statutory maternity leave for childcare if it is a twin delivery. The Act also provides for leave of up to a maximum of six weeks in cases of miscarriage, provided the miscarriage was not caused by a termination, which is illegal in Myanmar.

Paternity rights

A male employee covered under the Social Security Law (2012) is entitled to 15 days of paid paternity leave for infant care after delivery.

Surrogacy rights

There is no specific provision for surrogacy rights in Myanmar.

Adoption rights

An employee is eligible for up to eight weeks of paid childcare leave under the Social Security Law 2012 when adopting a child under one year of age.

Parental rights

See [Maternity rights](#) and [Paternity rights](#) above.

Carers' rights

There is no specific provision for carers' rights in Myanmar. If emergency care is required for dependants, an employee can use his/her medical leave or casual leave or annual leave entitlements.

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

If an employee is made redundant by an employer, the severance payment amount will be determined by the employee's period of continuous employment with that employer.

Consequences of a transfer of employee

Where an employee is transferred to a new affiliated entity at the request of the existing employing entity, the entities can agree to consider the periods of employment as one continuous period, subject to the approval of the MLIP.

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?

Temporary workers

All employees, including temporary workers, agency workers, and part-time workers, are entitled to the same rights as permanent employees under Myanmar law. There are no relevant qualifying periods for employers/workers unless there is a probationary 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 at least 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 contracts (see [Question 20](#)).

An employment contract must clearly mention the job position of the employee/worker, and can only be amended with the approval from the relevant labour authorities. All employees must be treated equally, regardless of the nature of their employment. Within a group of companies, under the inter-company arrangement, part-time and agency workers can have a contract with a principal or can be employed and paid by another member of the group.

Temporary, agency and part-time workers

There are no specific provisions governing temporary workers, agency workers and part-time workers. They are categorised as "employees" or "workers" under the relevant labour laws. The Regulations for Leave and Holidays provides definitions of daily wage earners, monthly wage earners, and wage earners for contract or temporary work to supplement the Leave and Holidays Act (1951) for leave entitlements.

Flexible working

16. Is there a statutory right for employees to request to work flexibly?

There are no specific provisions under Myanmar laws on flexible working. However, employers can arrange working time or working shifts, and can define the nature of certain work, with the consent of both the employee and the Department of Labour of the MLIP.

Data protection

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

Employees' data protection rights

There are no specific legal provisions governing employees' privacy and personal data protection rights. However, the MLIP's mandatory employment contract form contains non-disclosure and confidentiality obligations of the employee. The Competition Law (2015) also contains general provisions for non-disclosure and confidentiality.

Employers' data protection obligations

There are no specific legal provisions requiring employers to protect employee privacy and personal data.

Discrimination and harassment

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

Protection from discrimination

The Minimum Wages Act (2012) states that employees are entitled to the minimum wage stipulated irrespective of gender. The law also requires employers to treat their male and female employees equally and not to discriminate. Under the MLIP's mandatory employment contract forms, employers must not discriminate or allow unequal treatment of employees on the basis of being a member of a union, or based on factors of race, religion, gender, or age.

Protection from harassment

There is no specific legal provision providing protection from harassment.

Whistleblowers

19. Do whistleblowers have any protection?

There is currently no specific legal provision providing protection for whistleblowers. However, the government is in the process of drafting a law which is intended to protect whistleblowers in the future.

Termination of employment

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

Notice periods

One month's notice is required, as per the Ministry of Labour, Immigration and Population's (MLIP's) mandatory employment contract form.

Severance payments

The severance payment rates stipulated by the MLIP are 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 months' 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

Before dismissing an employee for an act of misconduct without providing a severance payment, the employer must have provided three warnings (one verbal warning and two written warnings) to the employee. An employee can only be dismissed only after a further violation is made within 12 months of the third warning. For behaviour considered as acts of gross misconduct, such as theft, gambling, or using narcotic drugs, an employer can dismiss the employee immediately without any severance payment.

The local township labour office must be notified after the dismissal of the employee.

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

Protection against dismissal

Generally, an employee cannot be dismissed without severance payment unless he or she commits an act of gross misconduct, or commits a further act of ordinary misconduct within 12 months after receiving the third warning from the employer (see [Question 20](#)).

Protected employees

There are no specific categories of protected employees.

Resolution of disputes between an employee and employer

22. Is there a governmental or independent organisation to which employees can refer complaints in the event that there is a dispute between the employee and the employer?

When there is a dispute between an employee and employer, the employee or employer must file a claim through the Workplace Co-ordinating Committee (WCC) in the first instance. If no solution can be reached with the WCC, then either party can request the respective township Labour Disputes Settlement Conciliation Body (LDSCB) to intervene. The unsatisfied party can file a complaint with the Labour Dispute Settlement Arbitration Body (LDSAB) if no agreement is reached with the LDSCB, and either party (or both parties) can further file a claim with the Labour Dispute Settlement Arbitration Council (LDSAC) if unsatisfied with the decision of the LDSAB. Although the decision of the LDSAC is conclusive and final for both the employer and the employee, a final court appeal can be made by any unsatisfied party by filing a writ with the Union Supreme Court on the decision of the LDSAC.

Redundancy/layoff

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

Generally, in cases of termination of employment and redundancy, an employer (or the employer's representative) should co-operate and negotiate with both the WWC and the labour organisation (where one exists).

Definition of redundancy/layoff

There are no specific provisions covering redundancies/layoffs in the enacted labour laws.

Procedural requirements

There are no specific provisions covering redundancies/layoffs in the enacted labour laws. Employees must be provided with at least one month's notice and the appropriate severance payment (see [Question 20](#)).

Redundancy/layoff pay

The required severance payment determined by the length of service must be provided to the employee (see [Question 20](#)).

Collective redundancies

There are no specific provisions covering collective redundancies in the enacted labour laws.

Employee representation and consultation

24. 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 specific provisions for management representation for employees in the Labour Organisation Law (2011) or the Settlement of Labour Disputes Law (2012). However, under the Settlement of Labour Disputes Law (2012) (as amended in 2019), a WCC comprising three representatives of the employer and three representatives of the employees should be established in every workplace that has more than 30 employees. The workplace co-ordinating committee is the first platform to hear individual disputes, and it also conducts negotiations on collective dispute matters, for example, conditions of employment and employee welfare.

Consultation

There is no legal obligation for the employer to consult union representatives before making management decisions.

Major transactions

There is no legal obligation for the employer to consult union representatives before engaging in major transactions. In practice, the MLIP and township labour offices require employers to explain major transactions to affected employees.

25. 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

There are no remedies provided by law for a failure to consult employees.

Employee action

Employees can act through the WCC, an arbitration body, or a labour organisation, or by filing a complaint in accordance with the labour dispute settlement mechanism.

Consequences of a business transfer

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

Automatic transfer of employees

There is no permission for the automatic transfer of employees under the law. The employer must discuss any transfer with employees and determine whether or not they wish to be transferred, or to end their contractual agreement.

Protection against dismissal

If an employer is unable to accommodate employees and intends to dismiss or lay off staff, he or she is liable to pay the usual severance pay (see [Question 20](#)).

Harmonisation of employment terms

There is no legal provision requiring the harmonisation of employment terms with existing employees.

Employer and parent company liability

27. 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?

Employer liability

Employers are vicariously responsible for the acts of their employees, except to the extent that their employees act beyond 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

28. 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 their arrears/dues in wages from the employer. In case of insolvency, the government may order the employer to sell assets to pay the due wages to employees.

State guarantee fund

There is no state guarantee fund.

Health and safety obligations

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

Employers must comply with the occupational health and safety obligations provided under relevant laws, such as the Occupational Safety and Health Law (2019), the Factories Act (1951) (as amended in 2016), and the Shops and Establishments Law (2016), and the Shops and Establishments Rules (2018). The statutes contain various provisions on occupational health and safety matters, such as fire and building safety, sanitation, dangerous substances, first aid, the reporting and investigation of workplace accidents and diseases, and more.

Taxation of employment income

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

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

Foreign nationals

All individuals who receive income from sources in Myanmar must pay tax on that income, regardless of nationality. Any foreign national who resides in Myanmar for more than 183 days in a year is considered to be a resident foreigner, and his/her taxable income is calculated based on all income received within and outside of Myanmar. Foreign nationals who are non-resident foreigners must pay income tax on income received within Myanmar only. Salary is defined as including wages, annuities, pension, gratuities, fees, commissions, or perquisites received in lieu of or in addition to any salary and wages, and is taxable under the Income Tax Law (1974) (as amended in 2016).

Nationals working abroad

Myanmar nationals working abroad are eligible for an income tax exemption on salary, but must pay a 10% income tax on other income earned abroad.

31. 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, regardless of nationality, are subject to the following progressive tax rates, after the deduction of any applicable exemption and income tax relief (except income received from property) under the Union Taxation Law (2018 – 2019):

- MMK1 to MMK2 million: 0%.
- 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%.

The income tax reliefs below are available:

- Personal basic allowance: 20% of income, capped at MMK10 million.
- Co-resident parent relief: MMK1 million per parent.
- Registered spouse relief: MMK1 million.
- Child relief: MMK500,000 per child.

Individuals with an annual salary income below MMK4.8 million are exempted from paying income tax.

Social security contributions

Under the Social Security Law (2012), an employer must withhold 2% of an employee's total monthly wages and contribute 3% of the employee's monthly wages to the social security fund. The total social security contribution is currently capped at MMK15,000 (MMK9,000 from the employer; MMK6,000 from the employee), based on a salary cap of MMK300,000.

Bonuses

32. 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?

It is common to reward employees through discretionary bonuses. For sales staff, some employers may also introduce contractual bonuses in the form of sales commission. All such bonuses are optional and can be provided as an added benefit by the employer. There are no statutory restrictions or guidelines.

Intellectual property (IP)

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

The recently enacted Myanmar IP laws generally designate the employer as the default rights owner of IP created by an employee during the course of employment. If the created work is done by a salaried employee during his or her working hours under an agreement between the employer and employee, or under the consequences of such an agreement, the employer will be the owner of the economic rights unless otherwise agreed upon.

- The employee's creation does not contradict the provisions contained in the employment agreement.
- The employer does not fail to register as owner of the creation within the prescribed notice period.
- The employer has not waived the right to own the IP rights by contract.

Restraint of trade

34. 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

Clauses which restrict the activities of an employee during employment are allowed, subject to the approval of the township labour office which reviews all employment agreements (*see Question 7*). The labour officer will determine if the type of restricted activities are deemed reasonable before approving such clauses. Generally, prohibiting employees from participating in another venture which is in competition with the employer's business during their term of employment is allowed.

Post-employment restrictive covenants

Section 27 of the Contracts Act (1872) states that agreements which restrain individuals from exercising a lawful profession, trade, or business of any kind are, to that extent, void. However, in practice, provisions which are reasonable in scope, in terms of territory and duration, are permitted. Post-contractual terms should be carefully drafted to avoid being deemed as void and the inclusion of the terms are subject to the approval of the labour office.

Relocation of employees

35. Can employers include mobility clauses in employment contracts, or take any other measures, to ensure that employees are obliged to relocate?

Mobility clauses are subject to the express approval of the township labour officers in charge, but are generally allowed. There are no fixed guidelines on the requirements, but the labour office can require employers to include provisions guaranteeing relocation assistance to the employees.

Proposals for reform

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

There are ongoing discussions to redraft the Labour Organization Law, the Workmen's Compensation Act and the Overseas Employment Law, and to enact the Foreign Workers' Law.

In 2016, the MLIP published a draft of a Foreign Workers' Law, which sought to introduce a work permit system, among many other requirements, applicable only to foreign nationals working in Myanmar. The draft law, which received a lot of attention from business communities nationwide, has yet to be submitted to the parliament.

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