

EMPLOYMENT LAW BASICS

IN MAINLAND SOUTHEAST ASIA

Tilleke
& Gibbins

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Employment Contracts

Are contracts always required, and what types of employment contracts are allowed?

Cambodia —

The duration of employment agreements can be fixed or undetermined. Undetermined-duration contracts (UDCs) can be written or verbal, but fixed-duration contracts (FDCs) must be in writing and are limited to two years (renewable for up to an additional two years, after which they are converted to UDCs). Once the maximum period of an FDC has passed, there must be at least a month break before any new FDC period may start; otherwise, the subsequent FDC is considered as a renewal of the former FDC, which then will automatically be considered as a UDC.

Laos —

Employment contracts are required in all cases in Laos, and employment contracts with legal entities or organizations must be in writing. (Employment contracts may be verbal if the employer and employee are both individuals.) There is no standard template and the parties may set the content of the employment contract, but the Law on Labor (2013) provides minimum requirements for what must be included in the employment contract. Contracts can be either fixed-term or indefinite (i.e., open-ended).

Myanmar —

All employment agreements in Myanmar must use an official employment contract template and be registered with the relevant local labor office. The official employment contract form requires that a fixed term be stated, with an option to renew the contract at the end of the employment term.

Thailand —

Employment agreements are considered hire-of-service contracts under Thai law, and they are not required to be made in writing. The employer and the employee are free to agree on any other terms in addition to the compulsory

provisions, provided that the agreed terms are no less favorable than rights provided by statute. Employment agreements can be fixed-term or indefinite.

Vietnam —

Employment contracts must be in writing, with the exception of contracts for temporary jobs of less than one month, which can be verbal.

Probationary Period

Are probationary periods allowed, and if so, for how long?

Cambodia —

There is no obligation to provide a trial or probationary period, but it is customary. A probationary period may not exceed three months for regular employees, two months for specialized workers, and one month for nonspecialized workers. The law does not define “regular,” “specialized,” and “nonspecialized,” so this is determined on a case-by-case basis.

Laos —

Probationary periods may be included in employment contracts, with a maximum allowable length of 30 days for work that does not require specific expertise (e.g., manual factory labor) and 60 days for work requiring specialized skills. During this probationary period, both the employer and employee have the right to terminate employment by giving the other party the required amount of advance notice. Employers must also inform the employee of the probationary period outcome seven days before it ends.

Myanmar —

Probation or training periods are not mandatory and depend on company policy. However, according to the employment contract template, the probation period is three months, starting on the date of appointment. Employees on probation are eligible for casual, medical, and maternity/paternity leave.

Thailand —

Although Thai law does not specifically address trial or probationary periods in employment relationships, employees who have worked for less than 120 days can be terminated without receiving severance pay. For this reason, many

employers set probation periods of up to 119 days to avoid having to pay severance pay in case of termination without cause.

Vietnam —

Trial or probationary periods may be negotiated between the parties, and employers typically insist upon including them in the labor contract at the outset of the employment relationship. Skilled and specialized positions have a maximum allowable probationary period of 180, 60, or 30 calendar days, depending on the type of job and its requirements. The maximum probationary period for other types of work is 6 business days.

Minimum Wage

What is the minimum wage?

Cambodia —

Cambodia's minimum wage rates apply only to workers in the textile, garment, and footwear industries. The minimum wage is USD 200 per month (or USD 198 for workers on probation). This came into effect January 1, 2023.

Laos —

The minimum wage that came into effect on May 1, 2023, is LAK 1,300,000 (approx. USD 74) per month, LAK 50,000 (approx. USD 2.75) per day, or LAK 6,250 (approx. USD 0.34) per hour. This minimum wage applies to work not exceeding 26 days per month, six days per week, or eight hours per day, and does not include bonuses or other benefits.

Myanmar —

Myanmar's minimum wage is MMK 600 (approx. USD 0.29) per hour and MMK 4,800 (approx. USD 2.28) for an eight-hour workday. The minimum wage requirement applies to all employers except small businesses and family-run businesses with fewer than 15 employees.

Thailand —

Thailand's minimum wage is THB 328–354 per day (approx. USD 9.68–10.44), depending on the province in which the workplace is located. These rates came into effect October 1, 2022.

Vietnam —

The monthly minimum wage in Vietnam is VND 3,250,000–4,680,000 (approx. USD 139–200), or an hourly wage of VND 15,600–22,500 (approx. USD 0.67–0.96), depending on the area in which the workplace is located.

Social Security and Statutory Payments

Who has to contribute to social security, and what are the required contributions? Are there other mandatory statutory payments?

Cambodia —

Both employers and employees are required to contribute to the National Social Security Fund for employees' pensions. Contributions began on October 1, 2022. The contribution rates will increase in steps as the NSSF pension program is phased in: 2% each (employer and employee) for the first five years and 4% each for the second five years, with additional stepped increases expected after each ten-year period. The maximum contribution would be KHR 48,000 (approx. USD 12), with half of the contribution paid by the employer and half by the employee. The contributable wage for the pension scheme ranges from KHR 400,000 to KHR 1,200,000.

Employers must also cover contributions equal to 0.8% of each employee's average monthly total wage for Cambodia's employment injury scheme and 2.6% of the average monthly wage for the country's health insurance scheme.

Laos —

Employers must contribute 6% of each employee's monthly wage to the National Social Security Scheme, while the employee's contribution is 5.5%, capped at a salary reference base of LAK 4.5 million (approx. USD 250), regardless of the salary of the employee.

Myanmar —

Myanmar's Social Security Law 2012 regulates employer and employee contributions to the country's social security fund and requires employers with five or more workers to contribute. The employer's contribution is 3 percent of the employee's salary, and the employee's is 2 percent. There is a maximum monthly salary cap of MMK 300,000 for social security payment calculation.

Thailand —

All employers must register with and contribute to the Social Security Fund. Generally, both employers and employees each make monthly contributions at the rate of 5% of the employees' wages (up to a maximum contribution of THB 750), while the government contributes at a rate of 2.75%. Employers are also required to contribute annually to a workers' compensation fund, with rates ranging from 0.2% to 1% of total payroll.

Vietnam —

Both employers and employees are required to contribute to Vietnam's compulsory social, health, and unemployment insurance funds. The employer's total contribution to these funds is 21.5% of each employee's wages, and the employee's contribution is 10.5%. For foreign employees, the employer's contribution is 20.5% while the foreign employee's is 9.5%.

Health and social insurance contributions are capped at 20 times the basic minimum wage (which is VND 1,800,000 as of July 1, 2023, meaning the capped amount is VND 36,000,000). Unemployment insurance contributions are capped at 20 times the regional minimum wage.

Working Hours

What are the regular working hours for employees?

Cambodia —

Regular working hours cannot exceed 8 hours per day or 48 hours per week. Employers may allow employees to work up to two hours of overtime per day for exceptional and urgent work. Overtime work must be voluntary, and Cambodian labor laws stipulate overtime payment rates of 150% or 200% of the hourly wage, depending on the shift worked. Employees must take a rest period of at least 24 consecutive hours per week. This weekly time off must be on Sunday unless this would cause negative consequences for the public or the business. There are detailed criteria and procedures for businesses such as restaurants and hotels to implement flexible working schedules for carrying on operations through the weekend.

Laos —

Regular working hours are limited to 48 hours per week for most employees, but certain risky occupations or roles in strenuous conditions are limited to 36 hours per week. Hours beyond regular working hours are considered overtime. Employees can work no more than 3 overtime hours per day or 45 overtime hours per month, and all overtime must be voluntary and paid. In certain cases, these limits can be exceeded if the employer seeks the proper authorization before the overtime starts.

Myanmar —

Working hours are normally set at 8 hours per day or a maximum of 48 hours a week, with a maximum of 44 hours per week for factory workers. Some employees who work in oil and gas exploration enterprises can work 12 hours per day for 28 consecutive days followed by 28 consecutive rest days. Overtime pay is required for hours worked beyond these limits.

Thailand —

In general, normal working hours cannot exceed 8 hours per day and 48 hours per week by law, and any time beyond this is considered overtime. For hazardous work, normal working hours may not exceed 7 hours per day and 42 hours per week. Employees are entitled to at least one rest day per week and one rest hour per day.

Vietnam —

Regular working hours are typically limited to 8 hours per day and 48 hours per week for normal working conditions. If calculated on a weekly basis, the regular working hours must not exceed 10 hours a day and 48 hours a week.

Leave and Holidays

How many days of paid annual leave and sick leave are employees entitled to, and how many public holidays are employers required to observe?

Cambodia —

Annual Leave: Employees are entitled to 1.5 days of paid annual leave per month (i.e., 18 days per year). The annual leave allowance must increase by one day per year for three consecutive years of service.

Sick Leave: Employees with a doctor's certificate can take sick leave for up to six months. Though payment is not legally mandated, the government has recommended full wages for the first month, 60% of wages for the second and third months, and no payment for the remaining months.

Public Holidays: Employers are required to observe the number of public holidays according to official instructions from the government. Working on paid public holidays (which must be at overtime rates) must be approved by a labor inspector. Paid public holidays falling on Sunday are not carried forward to the following day.

Laos —

Annual Leave: Employees in Laos are entitled by law to 15 days of annual leave per year (or 18 days in sectors deemed dangerous to health).

Personal leave: Employees are allowed a minimum of three days of paid personal leave per instance and only in circumstances prescribed by law.

Sick Leave: Employees with a medical certificate are allowed 30 days of paid sick leave per year, though hourly employees must have worked with the employer for a set period before receiving this entitlement.

Public Holidays: Employees are legally entitled to a minimum of six public holidays, with women, teachers and academic staff, and non-Lao citizens each receiving one additional day. Foreign laborers are also entitled to an additional day according with the national day of their country of origin. There are also several traditional or religious holidays customarily granted (but not legally mandated) during the course of the year, subject to agreement between the employer and employee.

Myanmar —

Annual Leave: Employees are entitled to 10 days of paid leave per year.

Casual Leave: Six days of paid casual leave (i.e., leave for urgent personal matters) can be taken per year.

Sick Leave: Myanmar law allows up to 30 days of sick leave per year.

Public Holidays: Employees are entitled to all gazette public holidays, which are typically between 20 and 26 days per year.

Thailand —

Annual Leave: After one year of service, employees are entitled to a minimum of six working days of paid annual leave.

Sick Leave: Employees are entitled to sick leave for days they are ill, but are only entitled to paid sick leave up to 30 working days per year. Being unable to work because of a work-related injury or illness is not regarded as sick leave, and is handled separately.

Public Holidays: Employees are entitled to a minimum of 13 public holidays per year, one of which must be Labor Day.

Vietnam —

Annual Leave: Employees are entitled to 12–16 annual leave days with pay, depending on the type of work.

Sick Leave: Employees are entitled to 30–70 days of sick leave per year, depending on the number of years they have contributed to the national social insurance fund and the type of work. Wages (at the rate of 75%) are covered by the social insurance fund, however they are capped at 20 times the basic minimum wage.

Public Holidays: There are 11 public holidays per year in Vietnam.

Work Rules

What are the requirements surrounding work rules/internal regulations?

Cambodia —

If a company has more than eight employees, its internal regulations must be recorded and registered with the MLVT.

Laos —

Employers are required by law to set internal regulations—covering a number of points stipulated by law and based on input from trade unions, employee representatives, or the majority of employees—and to have them approved by the Labor Management Authority. The rules must be written in Lao (and translated if there are foreign employees in the workplace) and posted in an accessible location in the workplace at all times. Laos' Labor Administration Authority has a template that employers can use to start drafting their internal regulations. The internal regulations must be submitted for approval (and amended if necessary) every two years.

Myanmar —

Employers may attach disciplinary rules for workplace conduct that have already been announced by the Ministry of Labor to their employment contracts. Employers who would like to attach additional rules regarding the nature of work must submit the rules to the relevant labor office for approval before registering the employment contract.

Thailand —

Employers with ten or more employees must have written work rules in Thai language and must post a copy of them in a prominent location at the place of work. The work rules must cover at least the issues prescribed by law.

Vietnam —

Internal labor rules must be issued in writing and registered with the labor authority if there are at least 10 employees. Without internal labor rules, it is unlikely that an employer can legally apply disciplinary action against employees.

Termination

When can an employer unilaterally terminate employment, and what is the notice period for unilateral termination? In which cases is the employer obligated to pay severance?

Cambodia —

If an employer unilaterally terminates an employee on a fixed-duration contract before the contract's expiration date, the employer must pay the employee damages at least equal to the wages he or she would have received had the contract been fulfilled. Furthermore, fixed-duration contracts will be automatically renewed unless the employer gives 10 or 15 days' notice (depending on contract length) of the intent not to renew. An employer may terminate an undetermined-duration contract for any reason if the employer provides the employee with proper prior notice, which depends on the employee's seniority. However, the employer must pay severance. It is also possible to conduct mass layoffs or collective dismissal resulting from a reduction in an establishment's activity or an internal reorganization foreseen by the employer.

Employers must pay severance to fixed-duration contract employees at the conclusion or termination of the contract. For undetermined-duration contracts, “seniority payments” paid every six months of an employee’s tenure replace severance payments. Upon termination, only the final seniority payment is due, along with any seniority back payments.

Laos —

Employers can terminate an employment contract for lack of skills, health issues that persist despite specific accommodations, or to reduce employee numbers for business reasons. To terminate an employment contract, generally the employer must either give notice of at least 30 days for manual or unskilled labor and at least 45 days for skilled labor requiring specific expertise, or make payment in lieu of notice. Severance payments are also required. Employees can also be dismissed immediately, with no severance payments, if they harm the employer, violate internal regulations or terms of their employment contract despite a warning, violate the rights of other employees despite a warning, are absent for an extended time, or are imprisoned for certain offenses.

Myanmar —

Termination of employment requires one month’s notice and justification. The official employment contract template lays out acceptable reasons for termination. Except for gross misconduct, an employer cannot terminate employment without notice or severance pay.

Thailand —

In all cases, termination of an employment agreement must conform to the terms of the agreement, applicable work rules, and applicable law. Employees are entitled to notice of at least one full payment cycle in advance of the effective date of termination, or payment of wages in lieu thereof. However, if a longer notice of termination is stated in the employees’ employment agreements or work rules/policies, then the employer is obligated to comply with the longer notice period.

Employment may be terminated immediately, without notice or severance pay, if employees perform their duties dishonestly, intentionally commit a criminal offense against the employer, intentionally cause the employer to suffer losses, negligently cause serious damage to the employer, violate the work rules or employer’s orders despite a warning, are absent for an extended time, or are imprisoned for certain offenses.

Vietnam —

Employers can only terminate an employment contract if there are specific legal grounds to do so, such as performance issues, prolonged illness, a force majeure event, or winding up of the company. Depending upon the grounds for termination, the employer may also be required to have internal policies in place, perform various consultation obligations, and follow detailed procedures. Failure to follow one of these steps will render a termination illegal.

Foreign Employees

What are the quotas or limits on hiring foreign workers? What permits or approvals are necessary for hiring foreign workers?

Cambodia —

The normal foreign work quota is one foreigner for every ten local employees, but employers can ask to hire more foreign workers than the standard quota by explaining why it is necessary. Employers must request an annual foreign work quota for their company in advance of applying for foreign work permits, and employers must provide support and submit application documents for foreign work permits every year.

Laos —

Foreign employees who conduct physical work (i.e., unskilled labor) are limited to 15% of the number of Lao employees, while the limitation for foreign labor with specific expertise is 25%.

To import foreign employees, it is first necessary to obtain a labor quota approval from the Department of Labor Management in the Ministry of Labor and Social Welfare. Thereafter, the employer must seek approval from the Department of Labor and Social Welfare to import the foreign employee, and then request a business visa from the Ministry of Foreign Affairs. The employee will also need a work permit from the Department of Labor and Social Welfare and a stay permit card from the Ministry of Public Security.

Myanmar —

Foreign nationals who work at a company formed under the Myanmar Companies Law are eligible to apply for work permits and visas. However, according to the Myanmar Investment Law, foreign nationals must be

employed as skilled workers (e.g., senior managers, technical or operational experts, or advisors). Only Myanmar citizens are permitted to be employed as nonskilled workers.

Thailand —

In most cases, foreign workers must have valid work permits and visas. Companies are generally allowed one work permit for every THB 2 million of registered capital. Employers need to maintain at least four Thai employees per foreign employee.

Vietnam —

All foreign nationals working in Vietnam must have a work permit, regardless of the length of time they intend to work in Vietnam, unless exempted. Vietnamese employers must provide support and submit application documents for the work permit. Vietnamese law does not stipulate a ratio of foreign employees to Vietnamese ones, but before hiring a foreign national, employers are generally required to submit a “labor usage plan” explaining the demand for the use of foreign labor.

Data Protection

Does the country have unified data privacy legislation, and what should employers be aware of when considering the protection of their employee’s personal and sensitive data?

Cambodia —

Cambodia does not have any dedicated statute on data protection or data privacy. Laws of general application apply to the extent that they implicate data protection and data privacy issues. Also, the right to privacy is protected broadly under the constitution and is considered as a personal right under the Civil Code. Therefore, processing personal data must be contractual and requires consent from data subjects.

Laos —

While the regulatory framework on data privacy in Laos focuses mainly on electronic data, all individuals have specified rights pursuant to the Civil Code, including the right to privacy. The Law on Electronic Data Protection (2017) is not specific to personal data of individuals and categorizes all electronic data as either general, sensitive, or prohibited data.

General data can be accessed, used, and disclosed without the consent of the information owner, but subject to the source being provided, while consent is required for the administration of sensitive data (including financial information, CV information, medical history, project plans, budget plans, and official trade secrets). Prohibited data includes information on race, ethnicity, political opinion, religious belief, sexual behavior, criminal records, or other information that may affect the stability of the nation or public order, and may not be electronically collected, used, or disclosed.

If data collected in Laos is to be transferred abroad, the owner of the information must give consent.

Myanmar —

There are no specific laws or regulations related to data protection in Myanmar, but some specific laws contain provisions related to data privacy, security of communications, and disclosure of confidential information. Employers should verify the specific requirements for their situation before handling personal data.

Thailand —

Thailand's Personal Data Protection Act B.E. 2562 (2019) (PDPA) is a unified data privacy law similar to the European Union's General Data Protection Regulation (GDPR). Employers fit the PDPA's definitions of data controllers and data processors. As such, employers are subject to the PDPA's extensive rules on collecting, processing, storing, and transferring personal data, as well as the requirements on obtaining the consent of data subjects.

Vietnam —

Vietnam's Personal Data Protection Decree (PDPD) came into effect on July 1, 2023, as the country's first unified data protection legislation. Employers need to ensure their human resources operations comply with the law's extensive provisions and requirements for safeguarding their employees' personal data.

Remote Work

Are there specific legal provisions for remote or work-from-home arrangements?

Cambodia —

There are no specific legal regulations for remote or work-from-home arrangements. In practice, such considerations depend on the agreement between employer and employee. Under Cambodian law, employers may exercise supervision and direction over their employees. Strictly interpreted, this means employers have the power to supervise and direct employees' work arrangements, which may include setting up work-from-home arrangements for their employees.

Laos —

There are no specific legal provisions regulating remote or work-from-home arrangements in Laos, and there is no legal obligation for an employee to be physically at the workplace or registered address of the employer.

Myanmar —

There are no specific laws or regulations governing or restricting remote or work-from-home arrangements.

Thailand —

In 2023, Thailand amended the Labor Protection Act to explicitly allow employment contracts to accommodate work-from-home arrangements. However, the optional nature of the wording suggests that employers do not have to agree to allow an employee to work remotely, and there is no criminal punishment attached to the provision. Thus, the legislation promotes remote work as an option rather than imposing penalties.

Vietnam —

Vietnam's labor laws are silent on work-from-home arrangements. An employer can issue a policy on working remotely in compliance with its current labor contract, internal labor regulations, and other effective internal documents.

AI and Automation

Are there specific legal provisions relating to replacing human employees with technology or machinery? If so, what are the basic requirements?

Cambodia —

There are no specific legal provisions in Cambodian law regarding replacing human employees with technology or machinery. Nevertheless, termination of employment due to replacement by technology or machinery may be viewed by the enforcement authority as unfair termination or termination without a proper reason or cause, which entitles the employee to damages.

Laos —

The Law on Advanced Technology (2021), promotes use of AI in the service sector in Laos and does not set any minimum thresholds for AI to be used.

Myanmar —

There are no specific laws or regulations related to replacing human employees with technology or machinery.

Thailand —

Thailand's Labor Protection Act contains a section that governs reduction of employee numbers due to adoption of machinery or technology. When termination falls within the scope of this section, the employer must give the required advance notice, notify the relevant officials, and pay special severance (which may include additional special severance if the employee has worked for the employer for more than six consecutive years).

Vietnam —

There are no specific legal provisions relating to replacing human employees with technology or machinery. Although Vietnam's current laws aim to foster the usage of AI, the laws still concentrate on the use of human employees in association with the development of AI.

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