

PANORAMIC

LABOUR & EMPLOYMENT DISPUTES

Cambodia

LEXOLOGY

Labour & Employment Disputes

Contributing Editor

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PRE-ACTION CONSIDERATIONS

Key Requirements

Are there any pre-action requirements for employment claims? If so, what are the consequences of non-compliance?

No. The Labour law does not set out any pre-action requirements for employment claims. Consequently, there are no penalties for non-compliance.

Article 385 of the Labour Law states that any labour disputes, including individual disputes and collective disputes, that cannot be settled through conciliation can be brought before the Labour Court. However, as the Labour Court has not yet been established, labour disputes are generally brought before the competent court in Cambodia.

Law stated - 14 October 2024

Third-party funding

Are there any rules or restrictions on third parties funding the costs of litigation or agreeing to pay adverse costs?

No. Cambodian law does not expressly restrict third parties from funding the costs of litigation or agreeing to pay adverse costs.

Law stated - 14 October 2024

Contingency fee arrangements

Can lawyers act on a contingency fee basis? What options are available? What issues should be considered before entering into a contingency fee arrangement?

Yes. Lawyers are not restricted from acting on a contingency fee basis under the Law on the Bar, which regulates lawyers in Cambodia. Further, article 68 of the Law on the Bar allows lawyers to charge based on the results obtained, which suggests that contingency fees are acceptable. Any contingency fee arrangements should be clearly set out in an agreement between the lawyer and his/her client.

Law stated - 14 October 2024

ISSUING A CLAIM

Forum

What is the appropriate forum for complaints concerning individual employment rights?

Under Cambodian law there are three potential forums for resolving complaints concerning individual employment rights: (1) mediation through the Ministry of Labour and Vocational

Training (MLVT), (2) arbitration through the Arbitration Council, and (3) litigation through the courts of Cambodia.

Under the Labour Law, parties to a labour dispute may submit a complaint to the MLVT's labour inspector, who will attempt to mediate the dispute. In the event that the parties cannot settle their dispute, any reports or decisions rendered by the labour inspectors are not binding.

Following mediation, any party to the dispute may either file a complaint to the Arbitration Council or the courts of Cambodia.

The Arbitration Council is an arbitral body that only handles labour disputes. Parties can decide whether decisions of the Arbitration Council are binding.

Lastly, parties to a labour dispute may file a complaint in the relevant Cambodian court of first instance.

Law stated - 14 October 2024

Territorial jurisdiction

Are there any limitations on territorial jurisdiction?

Article 1 of the Labour Law states that regardless of where the contract was made, and regardless of the nationality and residences of the contracted parties, the Labour Law governs relations between employers and workers resulting from employment contracts to be performed within the territory of the Kingdom of Cambodia.

Law stated - 14 October 2024

Standing

Who can bring a claim?

Under the Labour Law, any party to a dispute, either the employer or the employee, can file a claim.

Law stated - 14 October 2024

Commencing claims

How are claims commenced?

The process of initiating a claim depends on the forum selected:

- Labour Mediation at the MLVT: a claim is initiated when the parties submit their case to the Labour Dispute Department of the MLVT.
- Arbitration Council: if mediation is unsuccessful, a party may submit a claim to the Arbitration Council.
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Courts of Cambodia: if the dispute remains unresolved after mediation or arbitration, the parties can file a claim with the relevant Cambodian court of first instance, and the claim is considered commenced once filed.

Law stated - 14 October 2024

Fees

Are fees payable for the issuing of a claim?

Fees related to litigation in the Cambodian courts are payable based on the value of the claim. Under article 61 of the Civil Procedure Code, when an action is filed, the fee is calculated according to the below schedule:

- for the portion of the claim value up to 10 million Cambodian riel: 1,000 Cambodian riel for each 100,000 Cambodian riel;
- for the portion of the claim value exceeding 10 million Cambodian riel and up to 100 million Cambodian riel: 700 Cambodian riel for each 100,000 Cambodian riel;
- for the portion of the claim value exceeding 100 million Cambodian riel and up to 1 billion Cambodian riel: 300 Cambodian riel for each 100,000 Cambodian riel; and
- for the portion of the claim value exceeding 1 billion Cambodian riel: 100 Cambodian riel for each 100,000 Cambodian riel.

For mediation at the MLVT and arbitration at the Arbitration Council, no fees apply.

Law stated - 14 October 2024

Service

Is any qualifying service required?

For litigation, under article 79, paragraph 1 of the Code of Civil Procedure of Cambodia, there is a requirement for serving notice of a claim, stating that the complaint must be delivered to the defendant.

For mediation and arbitration, Cambodian law does not specify a formal requirement for serving notice of a claim. However, in practice, once the MLVT or Arbitration Council receive a complaint, they typically issue a formal written notice to the other parties involved.

Law stated - 14 October 2024

Defendants and legal personality

Against whom can a claim be brought? Can claims be brought against natural persons as well as corporations?

There are no restrictions on whom a claim can be brought against. Therefore, a claim can be brought against both a natural person and a legal person.

Law stated - 14 October 2024

Types of claims

What types of claims can be brought?

Cambodian law allows claims for both individual disputes and collective disputes:

- Individual dispute: claims relating to the interpretation or enforcement of the term of a labour contract or apprenticeship contract, or the provisions of a collective agreement as well as regulations or laws in effect (article 300 New of the Labour Law).
- Collective dispute: claims relating to work conditions, the exercise of the recognised rights of professional organisations, the recognition of professional organisations within the enterprise, and issues regarding relations between employers and workers. Such disputes could jeopardise the effective operation of the enterprise or social peacefulness (article 302 of the Labour Law).

Law stated - 14 October 2024

Time limits

What are the time limits for bringing employment claims?

Any claims regarding the payment of wages must be brought within three years from the date of the wage payment, otherwise the claim will expire pursuant to article 120 of the Labour Law.

In the event of labour mediation at the MLVT, if the parties are unable to agree on a settlement, then the interested party must file a complaint in court within two months, otherwise the claim will lapse pursuant to article 301 of the Labour Law.

For other civil claims, the period for extinctive prescription (ie, statute of limitations) is five years under article 482 of the Civil Code.

For criminal claims, the statute of limitations is one year for petty offences, five years for misdemeanours, and 20 years for felonies under article 144 of the Criminal Code.

Law stated - 14 October 2024

Counterclaims

Can any counterclaims be brought by an employer?

Under the Labour Law, an employer is not restricted from filing counterclaims.

Law stated - 14 October 2024

CASE MANAGEMENT

Procedure

What is the typical sequence of procedural steps in an employment dispute?

Before initiating any of the procedures below, parties will typically send demand letters to the other party. In the event that a demand letter and any subsequent negotiations fail, then the parties may refer to the dispute to (1) mediation, (2) arbitration, or (3) the courts.

As mediation is free of charge, many employees initially refer their cases to mediation. Following mediation, the most common venue for resolving disputes would be the Arbitration Council. In practice, submitting disputes to the courts of Cambodia is not common, due to costs and transparency issues.

1. Mediation: any employee or employer can initiate a labour mediation by filing a claim to the Labour Dispute Department at the Ministry of Labour and Vocational Training (MLVT). Under the MLVT labour mediation process, the MLVT acts as a mediator and has no power to make a binding decision. Further, the MLVT can make a report on its findings in the case. The MLVT labour mediation process is fast and free of charge. Typically, this process takes approximately one to two months.
2. Arbitration Council: applicable for both individual and collective labour disputes, meaning that the dispute involves one employer and one employee or one employer and a group of employees or a union. Parties can appeal the Arbitration Council's decision within eight days; otherwise, the decision is final and must be implemented.
3. Court: Cambodia does not have a separate labour court; thus, all labour disputes are handled by civil or criminal courts, as the case may be.

Law stated - 14 October 2024

Rules

What rules apply to case management?

No specific rules apply to mediation or arbitration. All cases brought to the courts of Cambodia are subject to the Civil Procedure Code of Cambodia.

Law stated - 14 October 2024

Amendments to claims

Under what circumstances can amendments to claims be made?

For litigation, the plaintiff is permitted to amend the action up until the conclusion of oral arguments, provided there is no change to the basis for the action. However, this permission does not extend to amendments that would significantly delay court proceedings.

Any amendments must be submitted in writing and served on the opposing party. If the court deems an amendment improper, it may, either upon motion or on its own initiative, issue a ruling prohibiting such an amendment (article 84, Civil Procedure Code).

Law stated - 14 October 2024

Adding parties to proceedings

Can additional parties be brought into a case after commencement?

Yes, additional parties can be involved in a case. If a third party has a legal interest in the outcome, they may intervene to support either side. Furthermore, if the rights and obligations in the case are to be determined jointly and unseverably for one of the parties and a third party, that third party can join the case as a co-party (article 43 and 49, Code of Civil Procedure).

Law stated - 14 October 2024

Consolidating proceedings

Can proceedings be consolidated?

Yes. The proceeding can be consolidated upon discretion of the court or the judge in charge of the case when it deems the cases fit to do so.

The court can decide to separate or combine cases by issuing a ruling, and it can also cancel such a ruling. If, during oral arguments, the court combines cases involving different parties, and a party requests to examine a witness who was previously examined before the cases were combined and had no opportunity to do so, the court must re-examine that witness (article 99, Code of Civil Procedure).

Law stated - 14 October 2024

Class and collective actions – special considerations

Are there any special considerations for class actions, multi-party or group litigation?

In Cambodia, these are referred to as 'joint suits'. Multiple people can file or be subject to a suit together as co-parties if any of the following conditions are met:

- they share the same rights or obligations in the suit;
- their rights or obligations in the suit arise from the same facts or legal reasons; or
- their rights or obligations in the suit are similar and based on the same type of facts or legal reasons (article 39, Code of Civil Procedure).

Law stated - 14 October 2024

Evidence

How is witness, documentary and expert evidence dealt with?

The court will determine facts based on evidence. However, it may also consider any matters and circumstances revealed during oral arguments. Facts admitted by a party in court, and facts that are obvious to the court, do not need to be proven with evidence. A party can retract an admission in the following situations:

- if the other party does not object;
- if the admission is false and was made by mistake; or
- if the admission was made due to another party's criminal act (article 123, Code of Civil Procedure).

Witnesses

The court may examine any person as a witness. The court may, via the issuing of a ruling, order the subpoena of a witness who fails to appear without justifiable grounds (article 132, Code of Civil Procedure).

Documentary Evidence

Documentary evidence shall be offered through the submission of a document in the possession of a party or by requesting the court to order the holder of a document to submit such document. Documentary evidence may be offered by requesting the court to entrust the holder of the document to send such document. Where the court finds it necessary, it may retain a document submitted or sent thereto (article 148, Code of Civil Procedure).

Expert Testimony

- The court may order expert testimony based on an offer thereof from a party.
- When offering expert testimony, a party who makes such offer shall submit a document stating the matters for which the expert testimony is being sought. It shall be sufficient to submit such document within the period specified by the court if there are unavoidable grounds thereof.
- The court shall hear the opinions of the counterparty regarding the offer described in paragraph 2.
- The court shall determine the matters for the expert testimony based on the document described in paragraph 2 while also giving consideration to the opinions described in paragraph 3. In such case, a document stating the matters for the expert testimony shall be sent to said expert witness.

(article 143, Code of Civil Procedure)

Law stated - 14 October 2024

Witnesses

Can a witness be compelled to give evidence? Can a witness give evidence from abroad?

A witness can be compelled to give evidence. The court can issue a ruling to subpoena a witness who fails to appear without a valid reason. If the witness still does not appear, and without a valid reason, the court can issue a ruling to fine the witness up to 1 million Cambodian riel.

A witness cannot give evidence from abroad, unless (1) the witness has no duty to appear before the court, or where the witness is unable to appear before the court for justifiable reasons, (2) where the witness would be required to spend undue expense or time to appear before the court in charge of the case; or (3) where neither party has any objection to such examination (article 132 & 136, Code of Civil Procedure).

Law stated - 14 October 2024

Witnesses

Is cross examination of a witness permitted?

Yes. The cross-examination of a witness is permitted under the Civil Procedure Code. A party desiring to cross-examine a witness must make such request to the judge during the hearing. While a judge has the discretion to allow or deny a party the ability to cross-examine a witness, in practice, judges often proceed with a cross-examination whenever there is any witness in a case.

Law stated - 14 October 2024

Tactical considerations

What steps can a party take during proceedings to achieve tactical advantage in a case?

After a complaint is filed, the court will assign a judge to handle the case. Typically, within 30 days, the judge will invite the parties to a preliminary meeting (preliminary stage). If both parties appear at the preliminary meeting, the judge will initiate a mediation and try to propose a compromising resolution for the parties. However, if the parties cannot reach a resolution and want to proceed with further proceedings, the judge will then lead further proceedings and prepare a list of issues.

The preliminary stage is crucial for the parties to understand each other's positions, and to try and negotiate a successful resolution of the matter for their client. Being prepared for the preliminary meeting and having supporting evidence, including witnesses or documentary evidence, strengthens a party's negotiating position.

Law stated - 14 October 2024

INTERIM RELIEF

Availability

Can interim relief be sought in employment disputes? If so, in what types of claims?

Yes. Under Cambodian law, employment disputes are not distinguished from general civil disputes.

Generally, interim relief can be sought in any civil proceeding, notably in relation to monetary claims under Chapter 2 of the Code of Civil Procedure. In practice, however, we are not aware of interim relief being granted by a Cambodian court in an employment dispute, and our view is that preserving an employee's employment pending resolution of a dispute is rare, in particular because Cambodian law generally allows for termination if statutory payments are made, even if termination is made with a lack of cause.

Law stated - 14 October 2024

Requirements

Are there any particular requirements relating to applications for interim relief?

Yes. There are requirements as follows:

1. A written motion for a ruling on preservative disposition must include the following information: (a) the names and addresses of the parties involved, as well as the names and addresses of their legal representatives or agents. (b) The specific contents of the preservative disposition being sought. (c) The rights or legal relationships that are intended to be preserved. (d) The necessity for the preservative disposition.
2. The moving party must make diligent efforts to provide specific details for Items (c) and (d) under paragraph 1, including stating evidence for each fact and the grounds that need to be proven.
3. A prima facie showing must be established concerning Items (c) and (d) of paragraph 1 (article 541, Civil Procedure Code).

Law stated - 14 October 2024

TRIAL

Hearings – conduct and typical time frames

How is a final hearing conducted for common types of employment disputes? How long does a hearing typically last?

Employment disputes are classified as civil disputes. The handling of such cases depends on the complexity of the outstanding case and/or on the discretion of the presiding judge. Typically, a hearing may be conducted one or two times, with each session lasting between two to four hours. A case may take from six months to one year overall at the court of first instance. If the case is appealed, the case may take from two to three years.

Law stated - 14 October 2024

Confidentiality and public access

**How is confidentiality treated? Can all evidence be publicly accessed?
How are sensitive employment issues dealt with? Is public access granted to the courts?**

Cambodia does not have a dedicated chamber for employment disputes; therefore, these disputes are treated as general civil disputes.

All civil disputes are public unless the judge decides otherwise. Therefore, public access is granted to the court's hearing. However, no evidence is made publicly available outside of the court hearing, and evidence is only strictly shared with the parties of the case.

Law stated - 14 October 2024

Media reporting

How is media interest dealt with? Are there any restrictions on media reporting?

Members of the media are permitted to attend court hearings, as these proceedings are open to the public. There are no restrictions on media reporting. In practice, we have observed media coverage of several notable collective labour disputes.

The presence of the media can ensure transparency and public awareness of the judicial process. It also holds the parties accountable and can influence the conduct of the proceedings. However, while the hearings are open to the public, it is important to note that no evidence presented during the trial is made publicly available outside of the court hearing. Such evidence is strictly shared only with the parties involved in the case to protect the confidentiality and integrity of the information.

Law stated - 14 October 2024

Elements of successful claims and burden of proof

How does a court decide if the claims or allegations are proven? What are the elements required to find in favour, and what is the burden of proof?

Cambodian law does not set out an explicit standard for burden of proof. The court evaluates the evidence submitted by the parties. However, it is at the judge's discretion to determine the weight and relevance of each piece of evidence. The Civil Procedure Code does not specify the required elements to rule in favour of a party; therefore, the decision relies on the judge's discretion, as deemed fit and reasonable.

Law stated - 14 October 2024

ALTERNATIVE DISPUTE RESOLUTION

Available types

What types of alternative dispute resolution (ADR) are available for employment disputes in your jurisdiction?

Alternative dispute resolution (ADR), such as arbitration or conciliation/mediation, is encouraged under the Labour Law, as these mechanisms generally lead to quicker, cheaper, and less confrontational solutions than court proceedings. There are no specific non-arbitrable employment disputes.

ADR for employment disputes is typically handled through the two methods below:

- Conciliation/mediation: the Ministry of Labour and Vocational Training (MLVT) has conciliators who facilitate discussions between conflicting parties to reach an agreement. Mediation is the initial step to resolving a labour dispute.
- Arbitration: if the dispute cannot be resolved at the conciliation stage, it may be passed to the Arbitration Council. The Arbitration Council is an independent, national institution with quasi-judicial authority derived from the Labour Law of Cambodia.

Law stated - 14 October 2024

Requirements and expectations

Are the parties required or expected to engage in ADR at the pre-action stage or later in the case? What are the consequences of failing to engage in ADR?

At the pre-action stage, the parties are generally encouraged to settle any disputes by involving a third-party conciliator/mediator like the MLVT. The parties may decide to bring the case to the Arbitration Council or the court if the conciliation fails. Failure to engage in ADR is likely to result in the dispute being taken to court, which may be costly, time-consuming, and contentious.

Law stated - 14 October 2024

Enforcement

How are ADR decisions and awards enforced for employment disputes in your jurisdiction?

Conciliation/mediation: Following the conclusion of the conciliation process, the Labour Inspector will provide a formal written report outlining the outcome of the conciliation. The report will be signed by the Labour Inspector and the parties. Any agreements made before the Labour Inspector are legally enforceable. If conciliation fails, the parties can submit the complaint to the court within two months. Otherwise, the possibility of initiating litigation will lapse (Article 301, Labour Law). However, collective labour disputes can be resolved by the Arbitration Council before bringing the case to court.

Arbitration:

- Binding awards: these decisions are enforced like court judgments, and non-compliance can lead to legal penalties. According to Prakas on Composition

of the Arbitration Council dated 21 April 2004, an arbitration award can be binding unless the parties mutually agree or if no objection is made by the parties within eight calendar days. If the period for opposition has lapsed and a party refuses to abide by the award, the other party can request the court to recognise and enforce the award through compulsory execution in accordance with the Civil Procedure Code. In addition, the Arbitration Council may notify the Labour Inspectors of the award to help take measures for its implementation.

- Non-binding awards: the Arbitration Council will offer recommendations for resolving the labour dispute. However, if either party disagrees, they can take the dispute to court. The non-binding awards mostly depend on the intentions of the parties involved.

Law stated - 14 October 2024

COLLECTIVE EMPLOYMENT AND LABOUR RIGHTS

Enforcement of collective rights

How are collective employment rights enforced?

Collective employment rights are enforceable under the Labour Law and other relevant regulations.

In addition, employers and employees can enter into a collective bargaining agreement (CBA), which provides favourable terms for employees as compared to existing laws. However, those clauses must not be contrary to public order and Cambodian law. A CBA must be registered with the Labour Inspector and posted in the workplace to be effective. The registered CBA will also be filed to the court's clerk's office for recordkeeping according to Prakas No. 287 on Procedures for Registering, Publishing and Monitoring the Enforcement of Collective Bargaining Agreements dated 5 November 2001.

Law stated - 14 October 2024

Standing

Who can bring a claim in relation to collective employment rights?

Employers, employees, trade unions, or labour organisations can file claims for collective employment rights in Cambodia. However, even if the collective labour dispute has not been officially filed, the MLVT's Labour Inspectors are authorised to initiate legal conciliation proceedings upon learning of the dispute.

Law stated - 14 October 2024

REMEDIES AND ENFORCEMENT

Available remedies

What remedies are available?

Civil remedies or compensatory damages are available for labour disputes.

Law stated - 14 October 2024

Assessing compensation

How is any compensation assessed?

If there is a CBA between the employer and the employee that specifies a mechanism for resolving labour disputes and compensation, the terms of the CBA will be followed. If not, the conciliators, arbitrators, or judges, may examine the facts and situation in accordance with the labour law and relevant regulations to make a fair decision. The compensation assessment may be based on several factors, including but not limited to unpaid wages, wrongful termination, damages, and other considerations.

Law stated - 14 October 2024

Enforcement mechanisms

How can any judgment be enforced?

It is required to separately file a motion to enforce a judgment with the respective court after receiving the judgment and once it becomes final in accordance with the applicable law. However, this procedure is not required for enforcing ADR decisions or awards unless a party has any objections or refuses to abide by the award.

Law stated - 14 October 2024

APPEALS

Appeal procedure and time frames

How and when can judgments be appealed? How many stages of appeal are there and how long do appeals tend to last?

As an initial matter, it is important to highlight that if any party is not satisfied with the respective award issued by the Arbitration Council, such party may file an appeal with the Minister of the MLVT. While the arbitration proceeding is an ADR venue for labour disputes between employers and employees, the parties can initiate a court proceeding with the local competent court.

In Cambodia there are three levels of courts –the court of first instance, court of appeals, and Supreme Court. Depending on how the counterparty responds, a case may take approximately six months to one year to obtain a final decision from the court of first instance. An appeal can be made if a judgment/decision of the respective court in question (either court of first instance or court of appeals) is not final and binding.

After a judgment/decision from the court of first instance is announced, the parties involved have one month to submit an appeal to the court of appeals, starting from the date when the written judgment was served to the related party.

However, possible appeals could increase the timeframe to obtain a final judgment. Practically, it takes approximately two to five years to obtain a final judgment from the Supreme Court of Cambodia.

Law stated - 14 October 2024

Other means of challenge

Can a judgment be challenged other than through the appeal process?

There is no explicit procedure for challenging or reconsidering a judgment other than through the appeal process.

Law stated - 14 October 2024

UPDATE AND TRENDS

Recent cases and developments

What are the key cases, decisions, judgments and policy and legislative developments of the past year?

Cambodia's Ministry of Labour and Vocational Training issued the Notification on Compensation for Terminating an Employment Contract on 21 March 2024, clarifying the compensation due to employees upon the termination of their employment contracts. The notification outlines different requirements depending on the nature of the termination and the type of employment contract, which may include the following compensation:

- wages that have not yet been paid;
- unused and unpaid annual leave through the termination date;
- severance payment equal to at least 5 per cent of the wages paid to the employee during the length of the contract;
- seniority indemnity for the semester (ie, half year period) in which the employee is terminated and total seniority back-payments that have not been paid (see definition below);
- compensation in lieu of notice if the employer did not give prior notice in accordance with the Labour Law;
- damages for being laid off before the expiration date of the fixed-duration contract, at least equal to the wages the employee would have received had he or she completed the original contracted term of employment; and
- damages for being laid off, in an amount equal to the seniority payment received during the employment contract.

Seniority payments refer to a payment made by an employer to an employee that is equal to 15 days of wages per year that is awarded to employees in June and December of each year (seven and a half days per six-month period). For persons employed before 2019, they also receive a seniority back-payment in the same amount for each year of service, subject to certain caps.

As for cases and decisions, few labour cases are actually submitted to court (and those that are are generally not made public), and most disputes are resolved through mediation, the Arbitration Council, and settlements.

Law stated - 14 October 2024

Technology developments

What impact is technology having on employment litigation in your jurisdiction?

The Cambodian courts still rely on a paper-based system for recording and keeping case materials. It includes all submissions of evidence and other legal filings. Digitalisation of court files and online access to the case materials is currently not available.

Law stated - 14 October 2024

Other issues

Are there any other special considerations to be taken into account when defending an employment claim in your jurisdiction?

None.

Law stated - 14 October 2024