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GUIDE TO RESTRUCTURING A CROSS-BORDER WORKFORCE

CAMBODIA

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Reduction in workforce

01. Is there a concept of redundancy - based on a shortage of work or other economic reasons - as a justified reason to dismiss employees in your jurisdiction? If so, how is it defined?

The Cambodian Labour Law dated 13 March 1997, as amended (the Labour Law) does not address the redundancy of a single employee. However, Article 95 defines "mass layoff" as "any layoff resulting from a reduction in an establishment's activity or an internal reorganization that is foreseen by the employer". It is a justifiable reason to dismiss employees, provided the statutory process outlined in section 2 is complied with.

02. In brief, what is the required process for making someone redundant?

According to Article 95, the employer establishes the order of the layoffs in light of professional qualifications, seniority within the establishment, and family burdens of the workers.

Initially, the employer must inform the workers' representatives in writing in order to solicit their suggestions, primarily, on the measures for a prior announcement of the reduction in staff and the measures taken to minimize the effects of the reduction on the affected workers, while the worker representative engages in discussions and provides his/her written opinion regarding this mass layoff plan pursuant to Article 284.

The first workers to be laid off will be those with the least professional ability followed by the workers with the least seniority. Seniority must be increased by one year for a married worker, and by an additional year for each of the worker's dependent children.

Additionally, for a period of two years, dismissed workers have priority to be rehired for the same position, provided the worker informs their former employer of any change in residential address. Lastly, labour inspectors of the Ministry of Labour and Vocational Training (MLVT) must be informed of the mass layoff process set out in Article 95.

03. Does this process change where there is a "collective redundancy"? If so, what is the employee number threshold that triggers a collective redundancy?

The concept of redundancy under the Labour Law is limited to mass layoffs; thus, any redundancy is necessarily a collective redundancy. There are no numerical thresholds that trigger Article 95, pursuant to which a number of workers (though not necessarily all) must have been dismissed due to a reduction in activities or internal reorganisation.

However, under AC Arbitral Award 26/12, we noted that a total of 20 employees were terminated under the mass layoff procedures.

04. Do employers need to consult with unions or employee representatives at any stage of the redundancy process? If there is a requirement to consult, does agreement need to be reached with the union/employee representatives at the end of the consultation?

Pursuant to Article 95, the employer must inform the workers' representatives in writing to solicit their suggestions on the measures for a prior announcement of the reduction in staff and the measures taken to minimise the effects of the reduction on the affected workers. At the request of the workers' representatives, an inspector of the MLVT can summon the concerned parties to examine the impact of the proposed layoffs and measures to be taken to minimise their effects.

05. If agreement is not reached, can the restructure be delayed or prevented? If so, by whom?

Under Article 95, in exceptional cases, the Minister of Labour can issue a ministerial order (prakas) to suspend the layoff for a period not exceeding 30 days to aid the concerned parties in finding a solution. This suspension may be extended once by the Minister of Labour.

06. What does any required consultation process involve (i.e. when should it commence, how long should it last, what needs to be covered)? If an employer fails to comply with its consultation obligations, what remedies are available?

Other than the aforementioned procedures, there are no requirements in the Labour Law.

07. Do employers need to present an economic business rationale as part of the consultation with unions/employee representatives? If so, can this be challenged and how would such a challenge normally be made?

Not applicable.

08. Is there a requirement or is it best practice to consult employees individually (whether or not the employer is also legally required to collectively consult employees)?

There are no requirements to consult employees individually. We are not aware of best practices in this respect.

09. Are there rules on the selection of individual employees for redundancy?

Yes. As described above, Article 95 sets out the order of layoffs in light of professional qualifications, seniority within the establishment, and family burdens of the workers. Thus, the first workers to be laid off will be those with the least professional ability, followed by workers with the least seniority. The seniority has to be increased by one year for a married worker and by an additional year for each dependent child.

10. Are there any specific categories of employees who an employer is prohibited from making redundant?

Under Article 182, employers are prohibited from laying off female workers during their maternity leave or at a date when the end of the notice period would fall during maternity leave.

Under Article 71, employers cannot terminate employees during periods of illness certified by a qualified doctor. The period of the illness is capped at six months.

Pursuant to the Law on Trade Unions dated 17 May 2016, Articles 43 and 67, shop stewards, shop steward candidates, elected union leaders of legally registered unions, founding union members and ordinary union members who volunteer to join a union, and candidates for union elections are entitled to special protection for different specified periods. Additionally, shop stewards may only be dismissed with an authorisation from the labour inspector.

11. Are there categories of employees with enhanced protection (e.g., union officials, employees on sick leave or maternity/parental leave, etc)?

Yes. Under the Law on Trade Unions and the Labour Law, the special categories of protected workers include:

- female worker during their maternity leave or at a date when the end of the notice period would fall during maternity leave;
- workers who are absent from work for a period of up to six months because of sickness that is certified by a qualified doctor
- shop stewards, who are protected during their term in office of two years, and three months after the end of their term;
- unelected candidates for shop steward positions, who are protected for three months after the result of the election;
- elected union leaders of legally registered unions, who are protected during their term in office;
- founding union members and other union members, who are protected from the date of submission of an application for union registration until 30 days after the union is duly registered;
- candidates standing in union elections, who are protected for 45 days before and after elections are held; and
- workers who are members of the Labour Advisory Committee of the MLVT.

The dismissal of these workers requires prior approval of a labour inspector from the MLVT. Pregnant employees are not categorised as protected employees, as dismissal of these employees does not require approval from a labour inspector. However, an employer cannot terminate employees who are on maternity leave, as detailed in question 10 above.

12. What payments are employees entitled to when made redundant? Do these payments need to be made within a specified period? Are there any other requirements, such as giving contractual notice, payments into a central fund, etc.

Each laid-off worker is compensated in accordance with the type of employment contract they have entered into with the employer and the length of time they have worked there.

An employee under a fixed duration contract (FDC) would be entitled to the following compensation upon termination by the employer:

- wages that have not yet been paid;
- unused and unpaid annual leave through the termination date;
- severance payment equal to at least 5% of the wages paid to the employee during the length of the contract; and

If an employee is terminated at the expiration of the FDC, then item (i) would not apply.

An employee under an undetermined duration contract (UDC) would be entitled to the following compensation upon termination by the employer:

- wages that have not yet been paid;
- unused and unpaid annual leave through the termination date;
- compensation in lieu of notice if the employer did not give prior notice in accordance with the Labour Law;
- seniority indemnity for the semester that the employee is terminated and total seniority back payments that have not been paid.

13. If employees are entitled to redundancy/severance payments, are there eligibility criteria and how is the payment calculated?

As detailed in section 12, the statutory payments depend on:

- the type of employment contract;
- the reason for termination; and
- whether prior notice was provided to the worker or employee.

As for the calculation of seniority payments, Article 2 of Instruction No. 58 sets out the following formulas to calculate the ongoing seniority payment:

- average monthly wages and other benefits = wages and benefits per month ÷ 6 (or the number of actual months worked);
- average daily wages and other benefits = average wages and other benefits per month ÷ 22, 24, or 26 (depending on the working days of the establishment); and
- seniority payment per semester = average daily wages and other benefits x 7.5.

14. Do employers need to notify local/regional/national government and/or regulators before making redundancies? If so, by when and what information needs to be provided?

Pursuant to Article 95 of the Labour Law, a labour inspector from the MLVT must be kept informed of any mass layoff proceedings. There are no timing requirements. However, according to Article 371, employers who dismiss workers in accordance with Article 95 without informing the labour inspector, or who carry out dismissals during a suspension period imposed by the Minister of Labour, are liable to a fine ranging from 80,000 Riels to 5,040,000 Riels.

15. Is there any obligation on employers to consider alternatives to redundancy, including suitable alternative employment?

Not applicable.

16. Do employers need to notify local/regional/national government and/or regulators after making redundancies, e.g. immigration department, labour department, pension authority, inland revenue, social security department? If so, by when and what information needs to be provided?

Yes. Under Article 21 of the Labour Law, an employer must make a declaration to the MLVT each time it hires or dismisses a worker. This declaration must be made in writing within 15 days of the date of hiring or dismissal.

17. If an employee is not satisfied with the decision to make them redundant, do they have any potential claims against the employer? If so, what are they and in what forum should they be brought, e.g. tribunal, arbitration, court? Could a union or employee representative bring a claim on behalf of an employee/employees and if so, what claim/s and where should they be brought?

Employees have a general right to file a complaint with the MLVT, the Arbitration Council, or any competent court if any unjustified termination takes place. As for filing a complaint, this would trigger a non-binding labour mediation proceeding. If the mediation proceeding does not resolve the dispute, then the parties could file a complaint with the Arbitration Council or the local courts.

18. Is it common to use settlement agreements when making employees redundant?

We are not aware of settlement agreements being commonplace in Cambodia, nor are they regulated under applicable labour rules.

19. In your experience, how long does it normally take to complete an individual or collective redundancy process?

In our experience, we would suggest planning one month for this process.

20. Are there any limitations on operating a business for a period following a redundancy, like a prohibition on hiring or priority for re-hire being given to previous employees?

Yes. Pursuant to Article 95, dismissed workers have, for a period of two years after dismissal, priority to be rehired for the same position in the enterprise. These workers are required to inform their employer of any change in address occurring after the layoff. If there is a vacancy, the employer must inform the concerned worker by sending a recorded delivery or registered letter to their last address. The worker must appear at the establishment within one week of receiving the letter.

21. Is employee consultation or consent required for major transactions (such as business transfer, mergers, acquisitions, disposals or joint ventures)?

The Labour Law does not require employers to consult employees in case of a merger, acquisition, or reorganisation transaction. However, if the employer desires to assign an employee's contract to a new entity, then the consent of the employee would be required pursuant to Article 667 of the Civil Code.

22. What are the remedies that are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Not applicable.

23. Is there any statutory protection of employees on a business transfer? Are employees automatically transferred with the business? Are employees protected against dismissal (before or after the transfer of employment)?

Yes. According to Article 87, if a change occurs in the legal status of the employer, particularly by succession or inheritance, sale, merger, or transference of funds to form a company, all labour contracts in effect on the day of the change remain binding between the new employer and the workers of the former enterprise. Employment contracts may only be terminated as provided for in the Labour Law during a period of business transfer.

24. What is the procedure for a transfer of employment (upon a business transfer or within group companies)?

The Labour Law does not address transfer procedures.

25. Are there any statutory rules on harmonising the transferring employees' terms of employment with the existing employees' terms of employment?

The Labour Law does not address harmonisation procedures.

26. Can an employer reduce the hours, pay and/or benefits of an employee?

No. An employer may not reduce the hours, pay, or benefits without the consent of the employee.

27. Can an employer rely on an express contractual provision to vary an employment term?

According to Article 665 of the Civil Code of Cambodia, the employee has the right to immediately terminate their employment contract if the actual working conditions differ from the employment contract. The employer should therefore notify employees and obtain their consent before amending any of the terms and conditions of employment.

28. Can an employment term be varied by implied conduct?

Cambodian law does not address whether contracts may be varied by implied conduct, and we would strongly recommend that any amendments or variations be set out in writing.

29. If agreement is required to vary an employment term, what are the company's options if employees refuse to agree to the proposed change?

The company has no remedies if employees refuse to agree to the proposed change of employment terms, other than termination of employment.

30. What are the potential legal consequences if an employer varies an employment term unilaterally?

Pursuant to Article 665(2) of the Civil Code, the employee may terminate the employment contract immediately if the actual working conditions differ from those specified in the contract.

Areas to Watch

In June 2023, the Prime Minister of Cambodia, Hun Sen, announced that the government plans to set up specialized labour courts in the country in the next five years, to handle all labour matters in the Courts of Cambodia. It is unclear whether the incoming Prime Minister, Hun Manet, will follow through with this plan as no labour courts have been established to date.