



Guide to the Cambodian Labor Law for NGOs

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Foreword

This Guide aims to help Non-Governmental Organizations and their employees better understand and comply with the employment laws of Cambodia. It integrates the major sources of law - laws, executive regulations, and Arbitration Council decisions - into a single easy-to-use booklet. Our aim has been to compile and translate the often technical and difficult to understand rules into plain English. Where appropriate, we also go beyond the text of the law to offer practical advice on issues commonly faced by NGOs.

This publication is intended for informational purposes only, and should not be relied on as legal advice. In addressing employee or workplace problems, this guide should only serve as a starting point. Analysis of the text of the laws, ideally by an experienced legal professional, is strongly recommended. This guide is a selective summary of the legal provisions most applicable to NGOs. Certain topics - such as unions and collective bargaining - are intentionally omitted. As the laws inevitably change over time, this publication is only up to date as of September 2010.

We welcome comments, corrections, and suggestions for improvement. Please do not hesitate to contact us at info@bnlegal.com.

About BNG Legal's NGO Practice

As a leading Cambodian law firm, BNG Legal provides comprehensive legal services to a broad range of NGOs and foreign aid organizations. Our international and local clients are active in the health, environment, media, and social sectors, to name a few.

Registered with the Bar Association of the Kingdom of Cambodia, our multilingual Cambodian and foreign legal professionals combine a deep understanding of the local environment with international professionalism and integrity.

Access to Laws & Regulations

In addition to our professional advice, many of our clients rely on the texts of Cambodian laws on a daily basis. That is why we offer access to our online database to all of our clients, free of charge. Our bilingual database is the most comprehensive and up-to-date source for legal information in the Kingdom. For more information, please visit <http://www.bnlegal.net>

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Abbreviations & Explanations

AC - Arbitration Council

Anukret - Sub-Decree

Art. - Article

FDC - Fixed Duration Contract

LL - Labor Law of 1997

Prakas - Ministerial Declaration

UDC - Unspecified-Duration Contract

CHAPTER 1: REGULATING EMPLOYMENT

1.1 Sources of Law

Employer-employee relations are governed by a collection of legal authorities, including:

- the Constitution of the Kingdom of Cambodia
- the Labor Law of 1997
- Regulations enacted by the Royal Government (Sub-Decrees) and the Ministry of Labor (Prakas, Circulars, and Notices)
- Collective Bargaining Agreements
- Employment Contracts
- Employers' Internal Regulations
- Awards of the Arbitration Council. Though these decisions only apply in collective labor disputes, and are solely binding amongst the parties to the dispute, they can serve as persuasive authority in civil court.

1.2 Organizations Governed by the Labor Law

The Cambodian Labor Law, and related regulations, apply to all employer-employee relations where the work is to be performed within Cambodia. The nationality of the employer or employee is irrelevant. Nor does it matter where the labor contract was signed. So long as the work is performed in Cambodia, the labor law will apply.

The law grants a few narrow exceptions, which are unlikely to apply to NGOs. For instance, persons appointed to a permanent post in the public service, serving in air or maritime transportation, and domestic servants are specifically exempted.

As a matter of public policy, none of the rights, or benefits guaranteed under the Labor Law may be abrogated by contract or any other agreement between an organization and the employee. The benefits and protections stated in the Law should be treated as a minimum guarantee. The organization is free to offer more generous terms, though is not required to do so.

Art. 13, 25

1.3 Employment Contracts

A contract is defined as an agreement between an employer (whether an organization or an individual) and an employee to perform work in exchange for wages. A contract may be written or oral, be of a fixed duration, or of an unspecified duration.

To be covered by the Labor Law, a person must 1) perform work, 2) be remunerated, and 3) be under the direction and supervision of another person. In the case of independent contractors, or others under contract to perform a specific task, this third condition might not be satisfied, exempting them from the Labor Law completely. This is discussed in more detail in Chapter 3.

Art. 1, 3, 65

1.4 Internal Regulations

All organizations with eight or more employees must establish internal regulations to implement the Labor Law. All internal regulations must be in accordance with the laws of Cambodia.

Internal regulations must be implemented within 90 days of the organization's establishment, and must be approved by the Labor Inspector. The internal regulations must be posted in an area that is easily accessible to the workers. To amend the regulations, the employer must consult with the workers' representative and then seek the approval of the Labor Inspector.

Internal regulations must discuss:

- Process of hiring
- Wage and benefit calculation methods
- Any perquisites and benefits available to employees
- Schedule of working hours, including allotted breaks
- Holidays
- Notice periods
- Health and safety measures
- Worker obligations and associated sanctions

Art. 22-25, 29, 30, 284; Prakas 313/00; Notice 14/02; AC 141/08

CHAPTER 2: HIRING EMPLOYEES

2.1 Preference for Cambodian Nationals

Preference must be given to Cambodian nationals when hiring.

Art. 263; Prakas 185/97

2.2 Non-Discrimination in Employment Practices

The Cambodian Constitution guarantees equal protection for all citizens under the law, though there is no mention of foreigners. As such, when an organization is making a decision regarding any of the following:

- Hiring
- Work assignments
- Vocational training
- Promotions
- Remuneration
- Social benefits
- Termination or discipline of an employee

The organization may not consider the employee's:

- Race
- Color
- Sex
- Creed
- Religion
- Political association or union membership
- Social origin
- Birth

Decisions based on specific qualifications and skills are not considered discriminatory. Employees engaged in the same work, and possessing the same skill and ability, should be paid the same wage, irrespective of any immutable traits. At the same time as barring discrimination based on birth, the law states that preference must be given to Cambodian citizens in hiring of employees.

Aside from a Prakas issued in 1997 governing foreign manual laborers, there appears to have been no further rules or decisions implementing these non-discrimination requirements.

Constitution 31; Art. 12, 263; Prakas 185/97

2.3 Hiring Foreigners

Foreigners working in Cambodia must have:

- A work permit issued by the Ministry of Labor, valid for one calendar year, renewable indefinitely. This is comprised of a Work Book and a Work Card.
- A valid passport, visa and residence permit (issued by the employee's local Sangkat office).
- A health certificate issued by the Ministry of Labor, Health Department, verifying that the person does not have any contagious diseases and is physically fit for the particular job.

Prakas 185/97; Art 261-265

2.4 Payment for Job Placement Prohibited

The organization cannot request, accept, or deduct from future wages, any remuneration from an applicant, or third-party agent, for job placement.

Art. 44, 126, 260

2.5 Young Employees & Minimum Age Rules

The minimum age for general employment is 15 years old. Children aged 12 to 15 can perform light work provided that it does not interfere with regular education and is not hazardous to their physical or mental development.

In the case of orphanages, or other organizations where primary education is provided, vocational training must not exceed three hours per day. Additionally, organizations must maintain a record of the following for each child:

- Date of Birth
- Labor Conditions
- Daily Schedule, including hours of study, rest, labor assignments, and nutritional information.

This record must be presented to the Labor Inspector at the end of each year for approval.

Art. 172-181; Prakas 106/04; Notice 11/03

2.6 Medical Checks

All employees, both Cambodians and foreigners, are required to have a medical examination, performed by the Department of Labor's Medical Unit, prior to employment. The cost of the examination is the responsibility of the organization.

Art 247; Prakas 09/94; AC 02/03

CHAPTER 3: CLASSIFICATION OF EMPLOYEES

3.1 Fixed & Unspecified Duration Contracts

Under the Cambodian Labor Law, a contract for work to be performed is defined as a fixed duration contract (FDC) if:

- The contract is written,
- The contract contains precise commencement and termination dates, and
- The contract duration, including any renewal period, does not exceed two years.

If any of these conditions is not met, then the contract is defined as a contract of unspecified duration (UDC). Thus, any employee who has been working continuously for a single employer for over two years is automatically on an UDC.

If a contract meets the requirements necessary to be a FDC, but work continues past the contract's expiration date without a renewal, then the contract will automatically become an UDC.

Art. 67, 73; AC 10/03, 02/04

3.2 Casual Employees

Casual employees are defined as workers who undertake a specific task for a short duration of time. They are subject to the same rules and regulations as regular employees, and are also entitled to the same benefits and rights. A casual worker automatically becomes a regular worker if they work for the same employer at least 21 days per month, for two consecutive months.

Art. 9, 10; AC 03/03, 26/04, 30/04

3.3 Part-Time Employees

Employees who work less than 48 hours per week are considered as part-time. They have the same rights as full-time employees under the Labor Law, with the exception of being paid a lesser wage. Part-time employees are entitled to leave, bonuses, and other benefits in proportion to their work time.

AC 03/03

3.4 Probationary Employees

An organization may hire an employee for a probationary period in order to evaluate their skills. The maximum probationary period depends on the type of employee:

- Regular employee: 3 months probation.
- Specialized worker: 2 months probation.
- Non-specialized worker: 1 month probation.

Art. 68, 82; Notice 06/97, 17/00; AC 27/03, 13/04

3.5 Volunteers, Interns, & Trainees

Many organizations recruit and depend on volunteers, interns, and other short-term staff paid little to no compensation. Though the organization might not treat them the same as regular employees, the Labor Law makes no distinction.

The Law looks to three main factors to determine if such a person is an employee:

- Work is performed,
- Under the direction and supervision of an employer, and
- In exchange for remuneration.

The first two are easily satisfied in most cases. If the volunteer or intern receives even a modest (by foreign standards) stipend, they most likely would be deemed an employee. This would entitle them to all the same benefits and protections as permanent staff.

3.6 Independent Consultants

Independent consultants are commonly hired by NGOs seeking flexibility and outside expertise. But as with volunteers, organizations need to be careful how they contract with and treat these individuals, lest they be determined to be employees.

The law differentiates between employees and “labor contractors”. An employee is paid a wage in exchange for work, and is under the direction and supervision of the employer. Labor contractors, on the other hand, are contracted to provide a specific service in exchange for a fee, and are not under the direction and supervision of the contracting party.

Depending on the contract and practice, independent consultants could be classified as either employees or as labor contractors. Should they be found to be employees, they would be entitled to all the same benefits and protections as permanent staff.

AC 47/06

3.7 Apprentices

Apprentices are those who have entered into an apprenticeship contract in order to learn occupational skills in exchange for work. Though in common parlance an apprentice is synonymous to intern or trainee, the Labor Law imposes certain obligations on the employer of apprentices that make the arrangement ill-suited to many organizations. For instance, the instructor bears parental responsibilities towards the apprentice, meaning they must look after them even outside the work place.

Apprenticeships might be suitable to organizations involved in training young adults in manual or technical trades. In such case, the organization should consult Chapter III of the Labor Law.

Art. 51-64

CHAPTER 4: WAGES

4.1 Payment of Wages

Wages must be paid directly to the employee, unless agreed otherwise. Manual laborers must be paid at least twice per month, and their paydays must not be more than 16 days apart. Regular employees must be paid at least once per month. Any employee working on a commission basis must be paid at least every three months.

In the case of termination, any wages or indemnity owed by the organization must be paid within 48 hours of termination. If wages are not paid according to the guidelines set forth, the Labor Inspector may set a deadline by which the wages must be paid. In the event that wages are not paid, the matter can be referred to the Court for resolution.

Art. 113 – 119

4.2 Notifying Employees About Wages

Employers have a duty to fully inform employees about their wage rate before work begins, and before any change in wage. Each pay day, the employee should be provided with a pay slip explaining how the pay was calculated, and sign the payroll ledger proving receipt of the payment.

Art. 112; AC 24/03

4.3 Minimum Wages

Organizations must pay a wage “commensurate with human dignity”. To date, the minimum wage has only been specified by law for certain manufacturing industries, leaving most NGOs relatively unrestricted. When setting the wage for its lowest-paid employee, organizations should consider the following;

- Needs of the worker’s families,
- Cost of living, and
- Comparative salary levels by industry.

Although no minimum wage has been set outside of the manufacturing sector, it is possible for NGOs to run afoul of this provision by employing unpaid interns or volunteers. Though the law does not specifically deal with such individuals, and there have been no reported cases, a full-time unpaid volunteer who does the work of a regular employee could plausibly bring a claim against the NGO. To mitigate such risk, the organization should either treat volunteers sufficiently differently from paid staff, or provide a modest monetary stipend, and/or provide housing or food assistance.

Art. 104, 107

4.4 Deductions & Fines

Deductions from employees wages is restricted to:

- The actual cost of tools and equipment that the employee does not return upon departure,
- Items and materials under the control and usage of the worker,
- Amounts advanced to acquire the above items, and
- Amounts owed to the company store.

Fining or deducting wages for the following reasons is strictly prohibited:

- As punishment for misconduct,
- Refusing to work overtime,
- In exchange for job placement,
- Refusing to eat at the company canteen, and
- Performing the mandatory medical check.

Art. 126, 127; AC 02/03, 21/03, 30/03, 60/04

4.5 Supervision & Distribution of Tips & Service Charges

Mandatory service charges added automatically to a customer's bill must be distributed in full to the employees in contact with the clientele, according to industry custom. The employer has a duty to collect, distribute, and account for these funds.

Employers are free to distribute tips and gratuities not part of mandatory service charges as they choose. Generally, it is good practice to distribute such funds to the employees who collected them.

Art. 134-136

4.6 Salary Tax

Employees of local and international NGOs are subject to the the same salary tax as employees of private companies. Taxable salary includes basic remuneration, wages, bonuses, overtime and other allowances. The tax on salary should be withheld from the paycheck by the employer on the employee's behalf. The tax is due to the General Department of Taxation by the 15th day of the month following the salary payment.

A resident employee is taxed on both Cambodian and foreign sources, on an incremental scale with a maximum marginal rate of 20%. Non-resident employees pay tax solely on Cambodian income, at a flat rate of 20%.

Law on Taxation, Art. 47-49

4.7 Expatriate NGO Employee Salary Tax Exemption

International NGOs employing expatriate staff may apply to the Ministry of Foreign Affairs and International Cooperation or the Ministry of Economy and Finance for a salary tax exemption for these employees.

The exemption is granted solely through application, and is reviewed by the relevant government agencies on a case-by-case basis. The exemption does not automatically apply, and is only available to organizations meeting certain requirements, specified by law. For instance, NGOs carrying out programs and activities solely for the benefit of their own members, group, or community are ineligible.

Not. 64/01, Letter No. 1440 PI/2001, Letter No. 2285 (IO/MFA.IC)

CHAPTER 5: WORKING HOURS & OVERTIME

5.1 Normal Working Hours

Employees can work for a maximum of 8 hours per days, 48 hours per week. Employees must be given one full day off, meaning 24 consecutive hours, per week. Unless the organization's operations require otherwise, this should be taken on Sunday.

Art. 137, 146, 147, 148

5.2 Overtime

Organizations can ask their employees to work overtime for exceptional and urgent jobs. Performance of overtime work is voluntary, so employees cannot be penalized for refusing to work overtime. In addition, the employer is supposed to ask the permission of the Labor Inspector before giving employees overtime work.

Overtime must be compensated at 150% of the employee's wages, if the overtime is completed before 10 pm. If the overtime is scheduled after 10 pm, on Sunday, or a public holiday, then the organization must pay 200% of the employee's wages. In any event, overtime is generally limited to 2 hours per shift.

Employees who work overtime must receive either 1,000 riels or a free meal when they work overtime. This meal can be provided in the middle of the shift or before overtime starts.

Art. 108, 139; Prakas 80/99; Notice 017/00; AC 78/04, 73/04

5.3 Alternative Work Schedule

Instead of the standard 8-hour day, 6-day workweek, the law allows employers to set an alternative work schedule. Over the course of a 12 week period, work must not exceed 48 hours per week or 10 hours per day. Work above these constraints must be paid at the overtime rates.

Prakas 90/98

5.4 Young Employees

Minors cannot work more than 8 hours per day, meaning they are ineligible for overtime. In addition, they must be given at least 13 consecutive hours off between shifts.

Prakas 144/02

CHAPTER 6: HOLIDAYS, LEAVE & BENEFITS

6.1 Paid Public Holidays

Each year, the Ministry of Labor issues a Prakas determining the number and dates of paid public holidays. In recent years, there have been approximately 26 public holidays. In the event that such a holiday is on a Sunday, employees must be given the following Monday off. During the holiday period the organization must pay their employees their normal wages. The law is silent on whether an organization can reschedule the official public holidays to coincide with foreign holidays.

Organizations that must remain open during public holidays can request employees to work on such days. If they agree, the employee must be paid 200% of their regular wage for that day's work.

Art. 161-163, Prakas 10/99

6.2 Paid Annual Leave

Organizations are required to give their employees paid annual leave of 1.5 days per month, for a total of 18 days per year. For every 3 years of continuous service, employees are entitled to an additional day of leave per year. For example, after the third year of continuous service, the number of paid annual leave days will be 19 days per year, after 6 years it will be 20 days per year, and so on.

Part-time employees (those working less than 48 hours per week) must be given annual leave proportional to their work hours. So for instance, an employee working 24 hours per week must be given at least 9 days paid leave per year.

According to the law, employees are entitled to use their leave after one year of service. As leave would still accrue during the first year, prohibiting an employee from taking leave until their second year of employment would result in a back-log of leave time. Many organizations therefore allow employees to take leave during their first year. If an employment contract is terminated prior to one year, the employee is entitled to an indemnity based on the 1.5 days per month scale.

Contracts renouncing the right to take annual leave are invalid and unenforceable. Upon termination, the employer must compensate the departing employee for unused annual leave. An employer cannot force workers to use annual leave during periods of no work, unless there is such an agreement freely entered into with those employees.

The organization is required to pay employees in advance when taking paid leave days. The allowance is calculated by the average wages (benefits, bonuses, indemnities) that the employee had earned during the previous 12 months, and cannot under any circumstances be less than what would have been earned had the employee worked.

There are few legal restrictions on scheduling of annual leave. The law states that in principle, leave is normally given during Khmer New Year. However, employer and employee can agree otherwise, so long as the Labor Inspector is informed. The only legal restriction gives the organization the right to defer any leave request beyond 15 days to another time of year. This leaves the employer relatively free to determine its own procedures for requesting and scheduling leave.

Employees may choose to defer annual leave, in excess of 12 days per year, until the end of their labor contract. However, annual leave cannot be deferred more than three consecutive years without expiring.

Art. 166-170; AC 45/05

6.3 Special Leave

Employees have the right to request up to seven days of “special leave” for personal and family matters. While there is some uncertainty as to which events qualify, employers should not unreasonably refuse requests for the following events:

- Marriage, either of the employee themselves or a child,
- Birth of an employee’s child, and
- Death, or sickness of an employee’s spouse, parent or child.

In the event of a special leave request, the organization may deduct the leave taken from the employee’s annual leave. If the employee has no annual leave remaining, then the organization cannot deduct it from the next year’s annual leave. The employer may require the employee to work overtime in order to make up for the leave taken. However, when working overtime, the employee cannot work more than 10 hours per day or 54 hours per week.

Art. 171; Prakas 76/98, 267/01

6.4 Sick Leave

The Labor Law is generally silent on the matter of sick leave, other than requiring an organization to suspend a contract for up to six months in case of illness. In other words, the employer is required to hold a sick employee’s position, without pay, for at least six months.

However, the Arbitration Council and certain Prakas have found that every organization must set up internal regulations to provide sick leave to employees when they present certification from a doctor confirming their illness. Sick leave should be paid on the following scale:

- During the 1st month of illness: 100% of wages,
- During the 2nd and 3rd months of illness: 60% of wages,
- During the 4th month and longer: no wages paid.

Additionally, the organization must pay the employee any attendance or seniority bonuses that are interrupted due to illness. If an employee is absent for more than six months due to illness, the organization may terminate their contract.

Art. 71-72; AC 26/03, 68/04, 30/04, 62/04, 63/04

6.5 Maternity & Paternity Leave

Expectant mothers are entitled to 90 days of maternity leave after one year of continuous service. There is no restriction on whether the leave must start before or after the birth.

During the maternity leave period, the organization must pay 50% of the employee’s average wage earned during the preceding 12 months. The payment should be made before the employee begins the leave. For a period of two months after returning from leave, the employee is only obligated to perform light work. An employee may not be terminated because they become pregnant, or while they are on maternity leave.

Aside from the events mentioned in “special leave” (discussed above), the law makes no mention of paternity leave.

Const. Art. 46; Art. 182-183; AC 48/07, 53/07

6.6 Breast Feeding

New mothers are entitled to take one hour per day, for the first year following the child's birth, to breast-feed during work hours. This hour period may be split into two 30 minute sessions, one in the morning, and one in the afternoon. The organization and the employee should come to an agreement on the time the breaks should be taken, otherwise, the breaks should occur midway through each shift. Breastfeeding breaks are in addition to, not in place of, regular breaks.

Art. 184-185

6.7 Nursing Room & Daycare Center

Any organization that employs more than 100 women must provide a nursing room and a daycare center for all children over 18 months of age. If an organization is unable to establish a daycare center on site, then it must pay for the cost of private daycare.

Art. 186

CHAPTER 7: DISCIPLINARY ACTION & DISMISSAL

7.1 Disciplinary Action

Employers can discipline employees only if they have evidence of misconduct. All disciplinary action must be proportional to the misconduct. This proportionality is subject to the judgment of the Labor Inspector. Disciplinary actions can take many forms, such as reprimands, demotions, suspensions, and dismissals. Indefinite suspensions and wage deductions are prohibited.

The employer's internal regulations must specify the procedures and severity of disciplinary actions. Any action that contravenes these regulations is invalid.

Once the organization becomes aware of misconduct they have 15 days to impose disciplinary action, otherwise the right is waived. Serious misconduct must be disciplined within seven days.

Art. 26-28; AC 27/03, 36/04; 54/04; 55/04

7.2 Serious Misconduct

In case of serious misconduct warranting immediate dismissal, the organization has seven days to dismiss the employee after learning of the misconduct. Employers need to be aware of this very important rule, as if it is not done within seven days, the right to dismiss is waived. However, the employee could still be disciplined for non-serious misconduct, see Section 7.1.

Given the compressed timeframe, it is highly recommended that organizations develop procedures for investigating and disciplining suspicious behavior before the first case arises. Failure to do so can result in the organization being forced to continue employing a known thief.

The Labor Law provides several examples of serious misconduct including, but not limited to, the following:

- Stealing, misappropriation, embezzlement,
- Fraudulent acts committed at the time of signing or during employment,
- Serious infractions of disciplinary, safety, and health regulations,
- Threats, shouting, abusive language or assault against the employer or other workers,
- Inciting other workers to commit serious offenses,
- Political propaganda, activities or demonstrations in the establishment,
- Violent action during a labor strike, and
- Failure to return to work within 48 hours of a labor strike, if such strike is determined to be illegal.

Art. 83b, 330, 337; AC 18/04, 22/04, 13/04

7.3 Claims Against the Organization & its Managers

Employees have the right to lodge complaints against managers within the organization for serious offenses, such as:

- Fraudulent measures to entice an employee to sign a labor contract,
- Refusal to pay wages,
- Frequent late payments, and
- Abusive language, threats, or violence.

However, employees cannot demand the dismissal of a manager or any other employee.

AC 04/03, 16/04, 23/04, 34/04, 70/04

7.4 Suspension of the Employment Contract

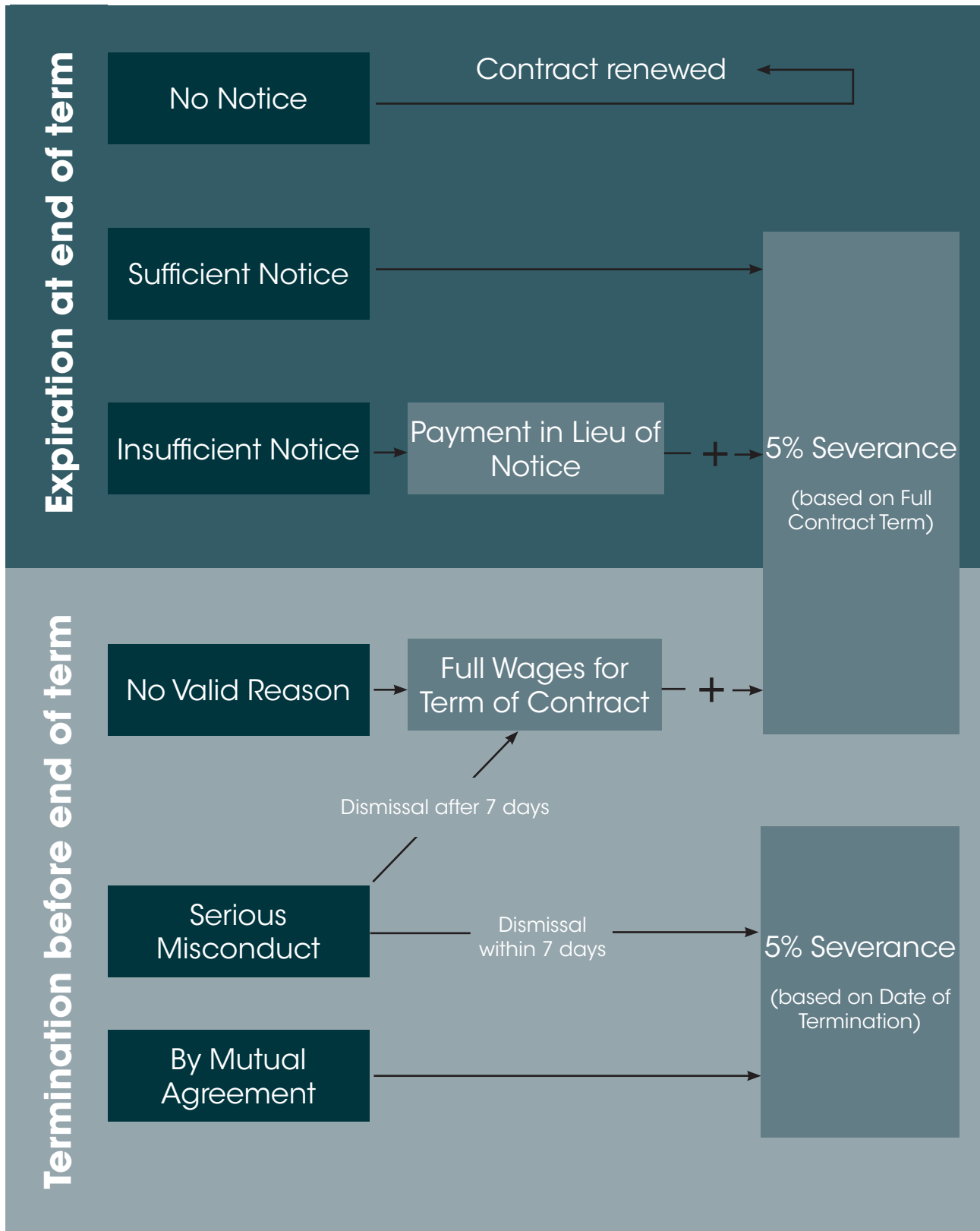
An employment contract may be suspended for a variety of reasons. During the suspension, the employee is not required to work, and the employer is not required to pay wages. The only valid reasons for suspending a contract are:

- Military service by the employee or employer,
- Illness accompanied by a doctor's certification,
- Disability resulting from a work-related accident, or illness,
- Pregnancy, child-birth, or any post-natal illness,
- Absence authorized by the organization based on any laws, or agreements between the organization and employee,
- Temporary layoffs set-forth in the organization's internal regulations,
- Absence during paid leave,
- Incarceration of a worker without a later conviction,
- During investigations of employee misconduct,
- As discipline for misconduct, though the length of suspension must be proportional to the offense,
- An act of God that prevents one, or both parties from performing contractual obligations, for a period of up to 3 months,
- Serious economic difficulties sustained by the organization, or other serious material difficulties that prevents the continued operation of the organization.

Such suspension cannot exceed two months, and must be determined by the Labor Inspector.

Art. 27, 71, 72

7.5 Termination of Fixed Duration Contracts



Generally, a fixed duration contract terminates at the end of the term specified in the agreement. A FDC can be terminated prematurely only if:

- Both parties are in agreement, made in writing and signed in the presence of the Labor Inspector,
- There has been serious misconduct by either party (see Section 7.2), or
- An Act of God makes performance of the contract impossible.

Any employer-initiated termination in violation of this rule entitles the employee to the remaining pay under the contract.

If the employee quits in violation of this rule, they are required to pay the organization damages resulting from the termination of the contract. The amount of damages can be difficult to determine, and will depend on the circumstances.

Art. 73

7.6 Notice Requirement for Fixed Duration Contracts

For FDCs of six to twelve months, the organization must give notice of its expiration and non-renewal at least 10 day prior to the expiration date.

For FDCs of greater than one year, the organization must give notice of its expiration and non-renewal at least 15 days prior to the expiration date.

Failure to give an employee prior notice will result in the FDC being renewed for a duration equal to the original contract. If the renewal is greater than two years, then the contract will be considered to be an unspecified-duration contract.

Art. 73

7.7 Severance at Expiration of Fixed Duration Contract

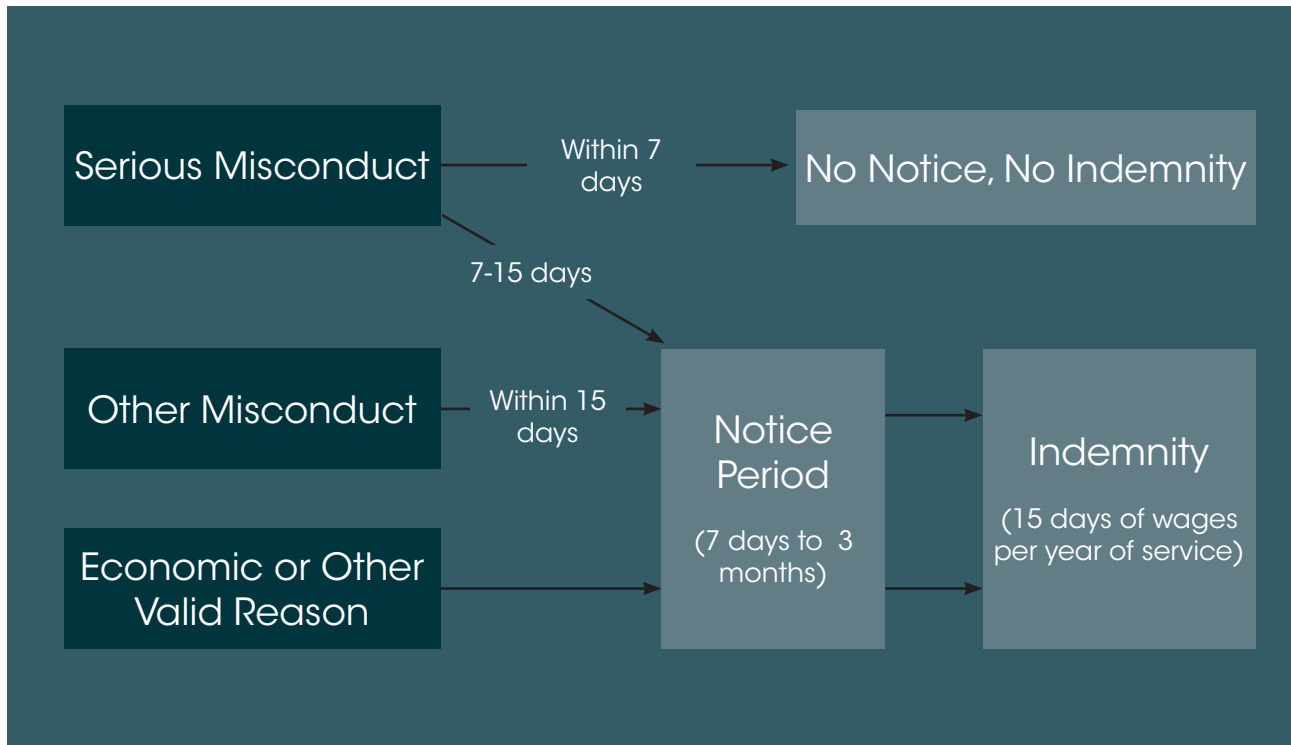
At the expiration of the contract, employees on FDCs are entitled to a severance of at least 5% of the wages paid during the contract period.

Art. 73

7.8 Termination of Unspecified Duration Contracts

An employer can terminate an UDC for any reason relating to the employee's aptitude or behavior, or based on the requirements of the organization. A downturn in the organization's finances constitutes a valid reason for termination.

An employee can terminate an UDC for any reason.



Art. 74; AC 02/04; AC 17/04; AC 19/04

7.9 Notice Requirement for Unspecified Duration Contracts

Both the employer and the employee must give prior written notice when terminating an UDC. The notice period is determined by the length of continuous service as follows:

- Less than 6 months of service: 7 days notice,
- 6 months to 2 years of service: 15 days notice,
- 2 years to 5 years of service: 1 month notice,
- 5 years to 10 years of service: 2 months notice,
- 10 years and greater: 3 months notice.

Throughout the notice period, each party is obligated to perform their contractual duties.

If the organization terminates the contract without observing the proper notice period, it must pay the employee the wages that would have been earned during the proper notice period. The law is silent on the consequences of the employee failing to give proper notice. Presumably the employer

could bring a suit seeking compensation for any damages sustained.

During the notice period, the employee is allowed two days of paid leave per week to look for new employment.

Neither party is required to observe the notice requirement in the following situations:

- The employee is probationary, or an intern,
- Serious misconduct by either party (see Section 7.2), and
- Acts of God that make it impossible to perform contractual obligations.

Art. 74, 75, 77, 78, 79, 81, 82, 86

7.10 Indemnity for Unspecified Duration Contract Termination

If an employee is dismissed for a reason other than serious misconduct, the organization is required to pay an indemnity on the following scale:

- 6 months to 1 year of service: 7 days wages,
- 1 year or more of service: 15 days wages per year of service.

When calculating length of service greater than one year, any service in excess of six months shall be counted as a full year. The total indemnity cannot be greater than six months of wages. No indemnity is owed if the employee resigned voluntarily, without being pressured by the employer.

Art. 89

7.11 Damages

Termination of a labor contract, by either party, without valid reasons, entitles the other party to seek damages.

If an organization dismisses an employee without valid reason, then the employee is entitled to damages equal to, and in addition to, the amount of the indemnity received for termination (see 7.10).

If an employee breaches an UDC in order to take new employment, and it can be shown that the new employer encouraged the breach, then they are jointly liable for damages.

Art. 91-92

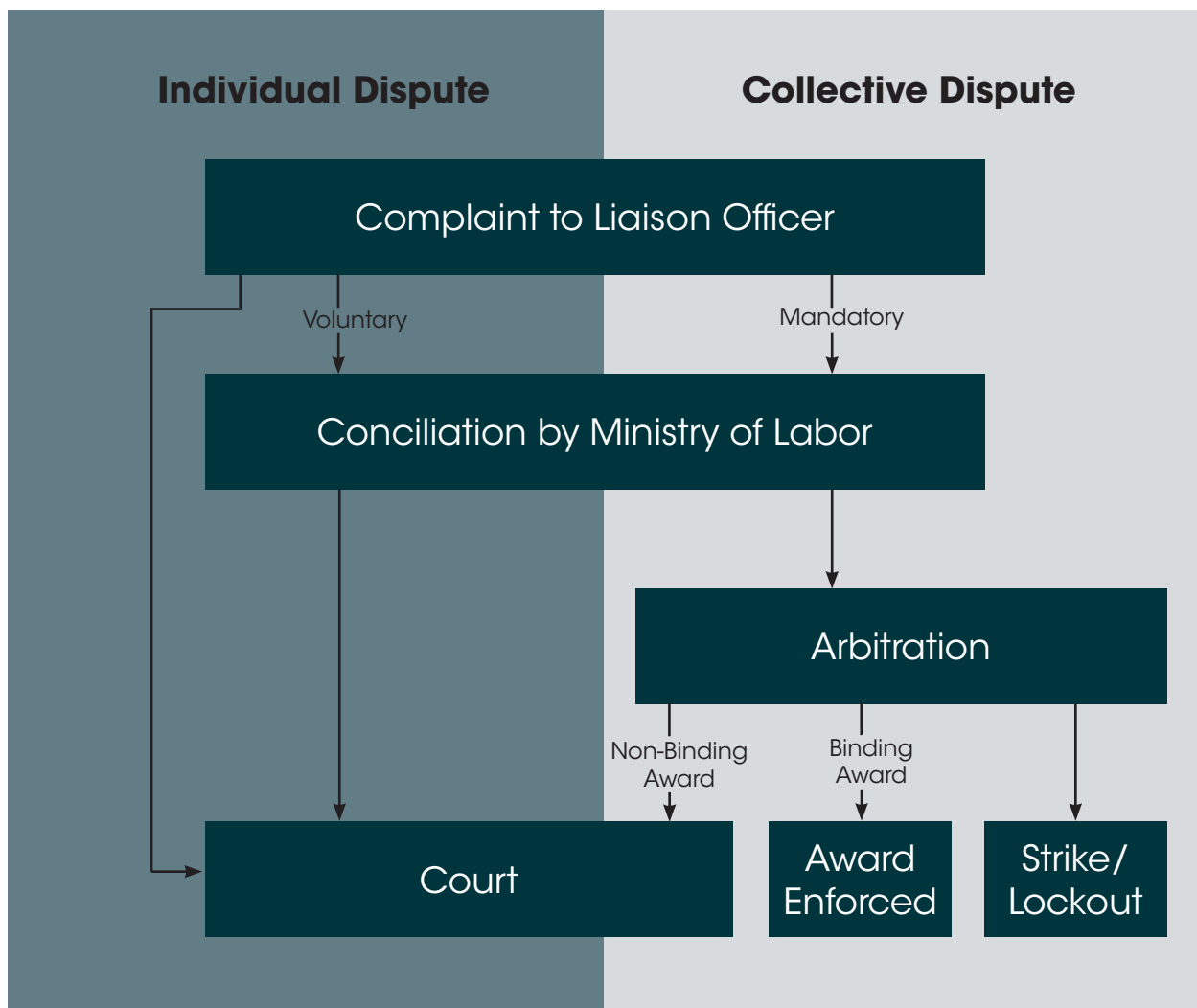
CHAPTER 8: DISPUTE RESOLUTION

8.1 Individual & Collective Disputes

No matter how well an organization is managed, an employee dispute is likely to occur eventually. Organizations can prepare for such disputes by establishing grievance and resolution procedures in advance. Unless otherwise agreed, the dispute must be resolved according to the procedures established by the Labor Law. These procedures differ depending on whether it is an individual or collective dispute.

An individual dispute is defined as a disagreement arising between the organization and one or more employees individually over terms of their labor contract, working conditions, or other employment matters. A collective dispute, on the other hand, involves many employees over a matter that could jeopardize the effective operation of the enterprise or social peacefulness. If a union represents the aggrieved employees, it will generally be considered a collective dispute.

Art. 300, 302



8.2 Liaison Officers

Each organization is required to appoint a liaison officer to address employee complaints. The liaison officer should be a neutral and independent person. His role is to serve as the first point of contact for aggrieved employees. If the officer cannot solve the issue himself, he must inform the employer, who then meets with the employee. If the parties do not reach an agreement, they should notify the Labor Inspector for conciliation.

Circular 21/99

8.3 Individual Conciliation

In the event of an individual dispute, either party may request a conciliation hearing with the Labor Inspector. Conciliation of individual disputes is purely voluntary. However, if either party makes a request for conciliation, the other party must attend the hearing.

During the conciliation hearing the parties have the right to represent themselves, or be represented by outside counsel. The Labor Inspector will apply the Labor Law, the organization's internal regulations, and relevant contractual provisions in an attempt to resolve the dispute. If an agreement is reached, the results will be written in a report and certified by the Labor Inspector, and will be enforceable by law.

If no agreement is reached by the parties, the dispute may be referred to the Courts for further proceedings.

Art. 300 – 301

8.4 Collective Conciliation

Parties to a collective dispute must notify the Ministry of Labor, which will then attempt to conciliate. Conciliation of collective disputes is mandatory. During conciliation, lockouts and strikes are strictly prohibited.

If the parties reach an agreement through conciliation, it is legally binding and cannot be challenged in court. If the parties cannot reach an agreement, the Ministry of Labor will refer the parties to the Arbitration Council.

Art. 302-308

8.5 Arbitration

The Arbitration Council of Cambodia is an independent, national institution with quasi-judicial authority to resolve collective labor disputes. If conciliation fails, the Ministry of Labor will refer the dispute to the Council. At the outset, the parties can choose whether the arbitration will be legally binding or not. If both parties agree for it to be binding, the Council's decision will be immediately enforceable. If either party chooses it to be non-enforceable, then either can challenge the decision in court.

More information about the Council can be found at <http://www.arbitrationcouncil.org>

Art. 309-317; Prakas 099/04

8.6 Strikes & Lockouts

Employees can strike, and employers can lock them out, only as a last resort. The parties must first go through the conciliation and arbitration process, described above. The law sets forth the procedures a union must follow before going on strike. It also protects the rights of employees to strike peacefully, including protection from retaliation by the employer.

Similarly, non-striking employees are also protected, and cannot be threatened by strikers. Employers can also lockout, or close the enterprise to employees, as part of a labor dispute.

Art. 318-387

8.7 Civil Litigation

The Courts of Cambodia have jurisdiction to hear labor disputes. Individual disputes, after referral to the liaison officer, can be brought directly to court. Collective disputes, on the other hand, must first go through conciliation and arbitration, before being brought to court. Due to inefficiencies in the Cambodian court system, it may be better to avoid the judicial system and resolve the dispute out of court.

CHAPTER 9: WORK-RELATED ACCIDENTS

9.1 Definition of Work-Related Accidents & Sickness

Work-related accidents are defined as any accident which happened:

- While working,
- During working hours, or
- During the direct commute between the home and work, so long as the trip was not interrupted nor a detour made for personal or non-work related purpose.

In determining whether it is a “work-related accident”, its cause is irrelevant, as is whether the employee is at fault. When it comes to compensation, however, the employee’s fault can be considered. Occupational illnesses are also considered work-related accidents, and are treated the same by the law.

Art. 248

9.2 Duty to Prevent Work-Related Accidents

Employers must take “all appropriate measures” to prevent work-related accidents. Though the law does not specify what these measures might be, they should be reasonable in light of the degree of risk and the costs of mitigation.

Art. 250

9.3 Duty Following a Work-Related Accident

Immediately following a work-related accident, the employer must:

- Provide emergency first aid,
- Remain at the scene of the accident,
- Notify the Ministry of Labor within 48 hours of the accident,
- Provide the investigating committee with relevant documentation,
- Permit witnesses to report to authorities,
- Pay for an investigation of the accident, and
- Take remedial steps to prevent similar future accidents.

Prakas 243/02

9.4 Compensation for Work-Related Accidents

Employers must pay the medical expenses and compensate employees - and potentially their surviving families - for injuries resulting from work-place accidents. Employees who intentionally cause an accident receive no compensation. Further, a court can reduce the compensation if it is proved that the accident resulted from an inexcusable mistake by the victim. Conversely, it can increase the compensation if the accident resulted from an inexcusable mistake by the employer.

Temporary disabilities of four days or less are compensated at the regular daily wage rate. Temporary disabilities of more than five days are compensated at the same rate, but only if the employee provides a physician's letter certified by the Ministry of Labor.

For permanent disabilities, a doctor must assess the percentage of incapacitation. The employee will then receive an annual compensation proportional to the degree of incapacity.

Surviving family of employees who died in the workplace are entitled to the funeral costs and an annual annuity. The annuity is based on the employee's annual salary and the number of dependent family members, and is capped at 85% of salary.

Compensation for permanent disabilities and death can be paid as a lump sum, as agreed by the parties, rather than an annuity.

Disability	Compensation
Temporary: 1-4 days	Regular Wages
Temporary: 5 days or more	Regular Wages, with the submission of a physician's letter certified by the Ministry of Labor
Permanent 0-20% incapacity	No compensation beyond that owed for temporary disability
Permanent 20-50% incapacity	$1/2 \times [(annual\ actual\ earnings) \times (\% \text{ incapacity})]$ + 40% if constant care from another person required
Permanent 50-100% incapacity	$(annual\ actual\ earnings) \times [(25\%) + (1.5 \times (\% \text{ incapacity} - 50\%))]$ + 40% if constant care from another person required
Death	Funeral costs of at least 90 times average daily wage + Annual Annuity as % of employee's wage and proportional to the number of dependant relatives.

Art. 252-255; Prakas 243/02

CHAPTER 10: RECORD KEEPING, DOCUMENTATION & POSTING

10.1 Declaration of Opening & Closing an Organization

Upon opening, employers must make a declaration to the Ministry of Labor. If the organization has eight or more employees, the declaration must be made prior to the organization opening. If fewer than eight employees, the declaration must be made within 30 days of opening. The Labor Inspector can perform surprise inspections on any organization, and fine them for failing to make the declaration.

As part of the declaration, the employees must elect a representative, and inform the Labor Inspector of their choice.

A declaration of closing must be made within 30 days of an organization's closing.

Art. 17-19

10.2 Establishment Register

The organization must maintain a register that includes the name of the organization, type of activity engaged in, and contact information. Registers must be kept for three years, and must be presented to the Labor Inspector upon demand.

Art. 20; Prakas 267/01

10.3 Payroll Ledger

The organization must maintain a payroll ledger that contains information about each employee, including work performed, wage rate, and leave taken. Before a ledger is used, all pages must be numbered, and initialed by the Labor Inspector in order to be valid.

With approval from the Labor Inspector, an organization may decide to make a payroll ledger by a different method, as long as it contains the same basic information. In the event of a dispute over wage payments, the employer carries the burden of proving payments were made.

Art. 39-41; Prakas 269/01; AC 62/08

10.4 Employment Card & Workbook

Both Cambodians and foreigners are required to have an employment card and an employment workbook in order to secure employment in Cambodia. The cost of the employment card, set by the Ministry of Labor, is the responsibility of the employee.

In each employee's employment workbook, the organization must record the hiring and dismissal dates, as well as salary information. Any entry made in the employment workbook must be presented to the Labor Inspector for approval within 7 days of the entry.

Art. 32, 37, 261; Prakas 56/01, 147/01, 162/01; Notice 13/97, 21/03

10.5 Declaration of Movement of Personnel

Hiring and dismissal of employees must be declared to the Ministry of Labor within 15 days.

Art. 21

10.6 Internal Regulations

All organizations with eight or more employees must establish internal regulations to implement the Labor Law. All internal regulations must be in accordance with the laws of Cambodia.

Internal regulations must be implemented within 90 days of the organization's establishment, and must be approved by the Labor Inspector. The internal regulations must be posted in an area that is easily accessible to the workers. To amend the regulations, the employer must consult with the workers' representative and then seek the approval of the Labor Inspector.

Internal regulations must include:

- Process of hiring
- Wage and benefit calculation methods
- Any perquisites and benefits available to employees
- Schedule of working hours, including allotted breaks
- Holidays
- Notice periods
- Health and safety measures
- Worker obligations and associated sanctions

Art. 22-25, 29, 30, 284; Prakas 313/00; Notice 14/02; AC 141/08

10.7 Posting

An easily-accessible bulletin board must be installed in the workplace and contain current copies of the following:

- The organization's internal regulations,
- Annual Prakas of paid public holidays,
- Minimum wages (if set by the Labor Law),
- Health and safety rules, and
- Reports on conciliations of disputes.

Art. 29, 109, 296, 315; Circular 40/98

CHAPTER 11: HEALTH & SAFETY PRECAUTIONS

11.1 Working Environment

A clean, safe work environment must be maintained at all times in order to ensure the health of employees. Specific air, heat, lighting and noise standards are set forth by law. As these standards were drafted to protect factory workers (though they apply to all employers), a relatively comfortable office space will almost certainly meet the requirements. Further health and safety laws may apply to organizations engaging in specific activities - such as operating food service, operating machinery, or storing toxic chemicals.

Art. 229-230

11.2 Sanitation and Hygiene

Separate male and female toilets must be provided according to the number of employees of each gender:

Number of Employees (Male or Female)	Minimum Number of Toilets
1 to 15	1
16 to 35	2
36 to 55	3
56 to 80	4
81 to 110	5
111 to 150	6
151 to 1000	1 additional for each 50 employees
1001+	1 additional for each 70 employees

Organizations with more than 100 female employees must have at least one Western-style toilet installed per 50 female employees.

Additionally, toilets must be in a well lit, enclosed space that can be locked from the inside. The walls and floor must be in good repair, and free from any leaks, or rain water. Soap and clean water must be provided at each toilet, and they must be cleaned at least once per day.

Prakas 052/00

11.3 First Aid & Infirmary

An organization with up to 20 employees must provide a first aid kit, and a nursing assistant on-site.

An organization with 20-49 employees must provide a bandaging room and a nurse on-site.

An organization with more than 50 employees must set up an infirmary located at, or within close proximity of, the workplace. The infirmary must be staffed by medical professionals, in proportion to the number of employees. It must be open during regular business hours.

The infirmary should be at least 20 square-meters and must be furnished with:

- One desk,
- Three chairs,
- One filing cabinet,
- One medicine cabinet,
- Two beds, including mattresses and linens. If there are more than 200 employees, the infirmary must provide beds equal to 2% of the workforce, up to 20 beds maximum, and
- Sterilization equipment.

Art. 242-244; Prakas 330/00; Prakas 139/01

11.4 Drinking Water & Alcohol

Clean drinking water and cups must be provided to employees during working hours. Alcohol cannot be consumed, or brought to the workplace, during business hours.

Prakas 054/00

11.5 Seating

Suitable seating must be provided at each workstation. If the employee's work cannot be performed sitting down, seating must still be provided at a nearby location that can be used by the employee when necessary.

Prakas 053/00