



# Myanmar Labour Law FAQs for employers

July 2018

Understanding labour laws may not be an easy task. Employers doing business in Myanmar often ask the ILO if we think they are complying with Myanmar's labour laws. Inquiries range from the calculation of overtime to minimum wage, or legal employment age. The ILO has collected some of the most frequently asked questions received, and seeks to provide general guidance. However, before you take any action, the ILO recommends you first seek advice from your human resource provider, lawyers or an employers' organisation.

## Working age

### Q.1 What type of work can workers below the age of 18 do legally under the Myanmar laws?

First of all, under Myanmar laws, there are different types and nature of work which can be legally allowed for children of different ages. Please see the table below.

Sectors/ workplaces	Minimum age for admission to employment or work, and requirements and conditions	Types or conditions of work NOT allowed for young/adolescent workers
<b>In factories</b> (manufacturing, processing, energy, publishing, etc)*	<p><b>A young/adolescent worker who is 14 or 15 years</b> may be allowed to work in any factory if –</p> <ul style="list-style-type: none"> <li>(a) a certificate of fitness granted under section 77 is kept in the custody of the manager of the factory; and</li> <li>(b) such child or adolescent carries while he is at work a token referring to such certificate</li> </ul> <p><b>Young/adolescent workers aged 14 and 15 years</b> can work 4 hours a day, except between 6 p.m. and 6 a.m.</p>	<p><b>No children below 14 years</b> are allowed to work in factories.</p> <p>Employment of <b>young persons under 18 years</b> is prohibited for <b>work with dangerous machinery</b></p> <p>Employment of “<b>young/adolescent workers</b>” <b>between 14 and 15 years</b> is prohibited:</p> <ul style="list-style-type: none"> <li>- in any part of a factory in which <b>a cotton opener is at work.</b></li> <li>- in the “<b>worst forms of labour</b>” including in hazardous conditions, conditions harmful</li> </ul>

Sectors/ workplaces	Minimum age for admission to employment or work, and requirements and conditions	Types or conditions of work NOT allowed for young/adolescent workers
	<p><b>Young/adolescent workers aged 16 and 17 years</b>, who have completed the relevant vocational trainings, who are certified as medically fit for work, are allowed to work in trades which are safe and which do not affect the development and moral of such persons.</p>	<p>to his/her health, conditions deterring his/her education and in such a way his/her moral and dignity would be affected”</p> <p><b>Young/adolescent workers aged 14 and 15 years</b> are not allowed to do <b>night work</b> between 6 p.m. and 6 a.m.</p>
<p><b>Shops and establishments</b> (wholesale or retail, banking, travel agency, hotels, private clinics, private education institution, entertainment places, etc)*</p>	<p><b>A young/adolescent worker above 14 years</b> is allowed to work but no more than 4 hours a day.</p> <p><b>Young persons between 16 and 18 years</b> who have completed the relevant vocational trainings, know and abide by the directives relating to the occupational safety and health and to be certified by the registered medical practitioner to be fit for work, are allowed to work in the trades which are safe and do not affect their development and morale</p>	<p><b>No person under the age of 14</b> shall be required or permitted to be employed in a shop or establishment.</p> <p><b>No person below the age of 16</b> shall be required to work <b>overtime</b> exceeding the working hour or <b>night work</b> between 6 p.m. and 6 a.m.</p> <p><b>No persons under 18 years</b> are allowed to perform the prescribed <b>dangerous work</b> or in the <b>dangerous workplace</b></p>

Note \*: Please see “Appendix 1” of the *ILO Guide to Myanmar Labour Law 2017* (page 51 of [English edition](#); page 52 of [Myanmar edition](#)) which clearly provides which sectors or workplaces are covered or NOT covered by what laws.

## Employment contract

**Q.2 In August 2017, the Government issued a new employment contract (Notification No.140/2017). What can you add to this new employment contract? What is binding?**

The basic contents of the employment contract should be in accordance with the facts provided in Section-5(b) of the Employment and Skills Development Law 2013 and also with the Sample Contract issued by the Notification No.140/2017 of MOLIP.

In addition to this, if there are some special clauses **mutually agreed by the employers and workers** and these special clauses are not contrary with any existing labour laws, rules and regulations, these may be added and these are legally binding.

**Q.3 When hiring workers, if there is a collective bargaining agreement (CBA) in my business, how should it be communicated to a new hire? Should the contract just be adapted according to the CBA and should an employer just give a copy of the CBA to the new hire or, should an employer also explain the contents of the CBA etc.?**

The employment contract should first be in line with the minimum requirements of an employment contract provided under the Employment and Skills Development Law 2013. If provisions of CBA are not contrary to any existing law, these provisions of CBA should be included in the employment contract. It would also be good practice to ensure the new hire is aware of the terms of the CBA as well, so that any issues can be discussed and issues dealt with.

## **Hiring requirements for people with disabilities**

**Q.4 Is the quota set and enacted?**

Yes, the Law relating to the Disabilities' Rights 2015 makes provision for the introduction of a quota but the level and implementation arrangements have not yet been issued.

**Q.5 In case that the quota is not met, is it mandatory that management pays to the funds established for the rights of the people with disabilities?**

It will be mandatory as provided that in Section-36 (e) of the Law relating to the Disabilities' Rights 2015, but the implementation arrangements have not yet been issued

## **Minimum Wage**

**Q.6 National Committee for Minimum Wage sets the minimum wage. Does the minimum wage need to be revised every two years or three years?**

The minimum wage should be revised at least every two years, provided in Section-5(h) of the Minimum Wage Law 2013. In practice, it seems that the review process starts every two years, but it does not necessarily mean that the final decision is made every two years.

The review of the minimum wage started in April 2017 with the establishment of the new National Committee for the Review of the Minimum Wage. The National Committee included representation of both employers and workers organisations and independent experts. The National Committee then implemented a round of negotiations and consultations nationwide, and announced its recommendation in late December 2017. Ultimately, the National Committee announced the new minimum wage rate on 14 May 2018 with the approval of the Government. The new minimum wage became effective as of the day of announcement. The new minimum wage is 4,800 Kyats per day

(600 kyats per hour) and it applies to all regions and states of the country and all sectors and businesses, except small and family-run businesses with less than 10 employees.

**Q.7 Do employers have an obligation to notify workers on new minimum wage?**

Yes, according to Section 13(a) of the Minimum Wage Law.

**Q.8 What exactly is “minimum wage”? The Minimum Wage Law only defines “wages” which include “the fee or salary entitled to be obtained by the worker for carrying out of hourly work, daily work, weekly work, monthly work or any other part-time work of the employer. This expression includes over-time fee or bonus given by the employer for the good work or character, or other remunerations or benefits which may be determined as income.”**

While the law does not clearly define what “minimum wage” is, it should be considered as the “base wage” that a worker receives for carrying out hourly, daily, weekly or monthly work or in any other part-time work. “Base wage” does not include bonuses, overtime fees or allowances.

**Q.9 Special Economic Zones (SEZs) – can they negotiate a lower rate than national level?**

Under the SEZ Law, the SEZ Management Committee can set its own minimum wage based on the work activities and has to propose any special rate to the National Minimum Wage Committee under Clause (m) of the Agreement made by the National Minimum Wage Committee meeting on December 29, 2017. In practice, no special minimum wages have been established in any SEZs so far.

## **Payment of wages**

**Q.10 Is there a set of requirement for how the wage rates, pay days etc should be posted in the workplace?**

There is no provision to legally require employers to post the wage rates, pay days etc, in a workplace. But these items should be included in the employment contract.

## **Overtime compensation**

**Q.11 In my factory, I ask my worker to work between 10 and 12 hours a day. Is that legal?**

If the net working hours are 8 hours and the rest hours are 2 hours (total 10 hours), it is legal. It is also legal if the hours beyond 8 net working hours a day are considered and paid as overtime and within the legal limits which are 3 hours per day from Monday to Friday for workers not engaged in continuous work in a factory and 5 hours for a Saturday. In shops and establishments, legal limit for overtime is 12 hours per week (or 16 hours in exceptional cases).

**Q.12 After how many hours of work do we consider the extra work as over time?**

In factories, for workers who do not engage in continuous work, overtime hours are hours above 8 hours per day or 44 hours per week. For adult male workers in a factory who are engaged in continuous work, overtime hours are hours above 48 hours per week.

In shops and establishments, overtime hours are hours above 8 hours per day or 48 hours per week.

**Q.13 I understand that workers in shops and establishments shall not do more than 12 hours of overtime for any one week. However, if there are special matters which require overtime work, such overtime work should not exceed 16 hours for any one week. Moreover, overtime work shall not extend beyond midnight. But is it acceptable if the factory has different shifts and the overtime is conducted beyond mid-night?**

Yes, it is acceptable. However, the plan for the shifts and the working intervals shall be disclosed at any time, according to Section-67(7) of the 1951 Factories Act. And also the overtime should not exceeded 3 hours per day and 20 hours per week.

**Q.14 Regarding compensations for Sundays/Public holidays. What does double the normal rate “plus a cost-of-living allowance” mean in the Leave and Holidays Act (Sec.3)?**

The cost of living allowance means “subsistence allowance” and it is not the same as “accommodation and transportation allowances”.

**Q.15 Which formula shall employers use to calculate overtime payments?**

Regarding overtime (OT) calculation, according to the Factories Act, the OT compensation for daily wage workers should be double the ordinary wage rate (not including allowances). And the Directive (Standing Order) provides for the OT calculation formula as follows: (daily wage x 6 days / 44 hours) x 2.

According to FGLLID, “if a worker is being paid the minimum wage rate (i.e. base wage), the OT calculation should be (2 x daily wage/8 hours); but if a worker is receiving more than the minimum wage rate, the calculation should be in accordance with the formula that is provided in their Standing Order” (meaning: (daily wage x 6 days) x 2).

Ministry of Labour is currently drafting the Payment of Wages Rules, and it is expected to include the OT calculation formula.

## **Deductions from absence of work**

**Q.16 Deductions for absence from work shall not exceed 50% of the worker’s monthly salary, except for the deductions due to the worker’s default to carry out his/her duty (Payment of Wages Law, sec.7-11). What does “default to carry out” mean – does this mean if a worker is sick for 75% of working days, then factory can deduct 75% of wages or they cannot?**

“Default to carry out” covers losses due to act or omission of the worker’s negligence, dishonesty and breach of work regulations under employment contract, provided in Section-11 of the Payment of Wages Act 2016. In case of sickness or medical reasons, these are not included in that provision.

## **Public holidays and Leave**

**Note that in Myanmar labour laws, there is only Earned Leave, instead of Annual Leave.**

**Q.17 During annual leave, workers must be paid their “average wages” according to the Leave and Holidays Act – what is the definition of “average wages”?**

There is no express definition of “average wages”, but it should be assumed as the daily wage based on the standard working hours per day.

**Q.18 Under the Leave and Holidays Act, workers forfeit one day of earned leave for every month in which they do not work at least 24 days - how is that defined?**

If a worker did not work at least 24 days in a certain month, the worker will lose one annual leave for that month, meaning that the total annual leave entitlements will be reduced from 10 days to 9 days that year. But the days that a worker did not work because of illness, injury, authorized absences or by voluntary suspension of work, lock-outs, or legal strikes totalling up to 30 days, will be counted as worked days.

**Q.19 “Workers who resign or are terminated before using their leave must be paid for unused leave based on average daily earnings over the last 30 days. Payment for unused leave must be made to workers within two days.”**

Yes, it is stated in Leaves and Holidays Act 1951.

**Q.20 Can the workers earn this type of payment at the beginning of the year? Normally, workers don’t want to use the leave and get paid for those days at the beginning of the year.**

No. Payment for unused leave must be made only after the termination of the contract. If the employment continues, unused leave may be carried over for up to three years if the employers and workers so agree.

**Q.21 Casual leave - Does it have to be earned?**

No, it does not have to be earned. All workers are given 6 days of paid casual leave per year. Workers may use three days at one time, but cannot combine casual leave with other kinds of leave such as earned annual leave. Unused casual leave is lost at the end of the year and the employer does not need to pay for unused casual leave.

**Q.22 All workers earn 10 days of paid leave per year after their first 12 continuous months of work – if the worker doesn't stay for 12 months, does s/he still get annual leave?**

Normally, such kind of leave is called “earned leave”, not annual leave. If workers don’t stay for 12 months, they may get “earned leave” in proportion to the days worked.

**Q.23 For temporary workers - how should their leave entitlements be decided proportionally?**

Their leave entitlements shall be decided in proportion to the length of their employment.

## **Occupational safety and health (OSH)**

### **First Aid**

**Q.24 Does a factory with more than 250 workers need to have both a First Aid room with a medical officer and a Clinic?**

According to Section 47(3) of the 1951 Factories Act, a factory with more than 250 workers shall provide and maintain EITHER a first aid room OR a clinic containing prescribed equipment. Such clinic may be kept under the supervision of a medical officer and nursing staff if it is so prescribed.

### **Maternity benefits and childcare**

**Q.25 One of my employees is pregnant. Do I need to provide maternity leave, and for how long?**

Workers covered under the Leave and Holiday Act are entitled to 6 weeks of paid maternity leave before birth and 8 weeks of paid maternity leave after birth (and 4 additional weeks in the case of multiple births). Workers who are registered with the Social Security Board (workers working in companies with 5 workers or more or workers who pay voluntary contributions) will receive maternity benefits from the social security scheme.

Additionally, pregnant workers who have worked at least 1 year and paid at least 6 months of contribution to the social security scheme are entitled to:

- 70% of one year’s average wages during maternity leave
- A lump sum bonus equivalent to 50% (for a single child), 75% (for twins), or 100% (triples or more) of the average monthly wage upon delivery.

**Q.26 Is Section 50 (1) of the Factories Act below a mandatory requirement?**

*In every factory with more than 100 female workers who are mothers of children under 6 years old, the Ministry concerned must provide a day-care center with the assistance of the employers. They may do so individually, or in cooperation with other establishments. If there are less than 100 female workers with children, the employer may make appropriate arrangements according to his or her ability.*

Yes, it is a mandatory requirement for the Government to provide a day-care center for a factory that employs more than 100 female workers who are mothers of children under 6 years old. As the employer, your responsibility is to assist the Government, either in your own capacity or in cooperation with other establishments. Please consult with the Ministry of Labour for further information.

## **Termination of employment/ Dismissal**

**Q.27 What does the law say about lay-offs? Does a factory need to show decline in orders as a “sound” reason to terminate contracts to any government office? And if approved do the legal requirements for severance pay apply?**

The law doesn't say anything about lay-offs. However, the conditions of lay-offs should be mentioned in mutually agreed Employment Contract (Dismissal on dishonesty, theft, mischief, etc.). Mostly, when a factory dismisses workers, either in oral or in written, a reason to dismiss should be provided to the workers. If there is a dispute on the dismissal, the factory should be prepared to show the reason(s) at the WCC, TCB, AB etc. if it wishes to establish a fair reason to lay-off workers.

Once the dismissal is approved, “Notification-84/2015” of the Ministry of Labour provides for certain rules on severance pay. When a worker is terminated from employment, the employer must pay severance on the basis of his or her last salary, not including overtime premium. Severance pay ranges from ½ month to 13 months, depending on the length of service.

**Q.28 Prohibited reasons for termination – how is “exercise of organizational activities” defined and when can a worker be said to go beyond that?**

Generally, the exercise of organizational activities are defined in Sections 16 to 28 of the Labour Organization Law. For instance, the functions and duties of the executive committee, the rights and responsibilities of the labour organizations, establishing and expending of funds, etc. If a worker exercises the functions that are not included in the expressed provisions, then a worker can be said to go beyond that.

## **Responsibilities of employer under Labour Organisation Law**

**Q.29 Section 30 of the Labour Organisation Law provides that the employers “shall allow the worker who is assigned any duty on the recommendation of the relevant executive committee (of a BLO) to perform such duty not exceeding two days per month...Such period shall be deemed as if the worker is performing the original duty of this work”. Should this “up to 2 days per month time-off for trade union duties and activities” be given to one worker only, or more than one worker, whoever are assigned duty on the recommendation of the relevant executive committee?**

It means “whoever” is assigned duty on the recommendation of the relevant executive committee, but “the period is only 2 days”. For example, the first task is assigned to worker A for a day; another task is later assigned to worker B for a day. In that month, the two days period is already consumed.

## **BLO executive committee**

**Q.30 What exactly does the law say about BLO executive committee's duty to provide skills training to improve productivity? And what is their responsibility to enhance productivity in the factory?**

According to the Labour Organization Law (LOL), one of the functions of the BLO executive committee is to provide job training and skill-training with a view to the emergence of workers with improved qualification which supports the development of productivity.

## **Workplace coordinating committees (WCC)**

**Q.31 How many worker representatives and employer representatives should sit on the Workplace Coordinating Committee (WCC)?**

Section 3 of the Settlement of Labour Disputes Law (SLDL) states that each and every basic labour organisation can nominate 2 worker representatives. So, the number of worker representatives on a WCC will vary according to the number of BLOs that exist in that workplace.

In doing so, section 4 of the Settlement of Labour Dispute Rules (2012) provides for additional guidance:

- A BLO will nominate all two worker reps to the WCC if: a) all of the workers in the establishment are the members of that BLO; or b) more than 50% of the total workforce are the members of that BLO;
- If there is one or more BLOs in the workplace but their members are less than 50% of the total workforce, then the WCC should be represented by the total number of BLO(s) plus the same number of non-union workers (e.g. if there are two minor BLOs, then these two BLOs can nominate one rep each, and non-unionized workers can elect 2 reps).

Whatever the final number of worker representatives sit on the WCC, an equivalent number of employer representatives should sit on the WCC.

**Q.32 Section 3 (b) of SLDL says, "if there is no labour organization, workers can elect two reps to sit on the WCC. What is the election procedure?**

The law does not provide for election procedure. It is up to the workers to establish their own procedure to elect the workers who can properly represent the rights and interests of the workers in that establishment.

## **Strikes and lock-outs**

**Q.33 Section 2(i) of SLDL says that workers have the right to stop work and remove themselves when they believe that a work situation puts them in danger, and this is not considered to be a**

**strike. During such work stoppages, does an employer still have to pay the salary in a situation of no production?**

There are no express provisions in either the LOL or in the SLDL. However, it is an implied obligation of the employers to pay salary during such kind of work stoppage. Because, the only relevant provision is Section-54 of SLDL says that as a strike suspends the employment agreement temporarily, the employer shall not be liable to pay salary or allowances during such a period to the worker, who goes on strike. This means that if the work stoppage is considered to be strike, the employer doesn't need to pay, but otherwise, the employer needs to pay salary.

**Q.34 BLO's only need approval from the labour organisations federation to go on strike, not from any government office?**

Yes, NO approval is needed from the government offices.

## **Skills Training**

**Q.35 I heard that the investor shall provide necessary trainings in order to improve the skills of the citizen employees and staff, which should be tailored to the types of work for which they are employed. Is this requirement only applicable for the workers who are working at SEZ?**

No, it is also mentioned in the Employment and Skills Development Law 2013 as well and is generally applicable.