



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



LABOUR LAW IN MYANMAR

20th February 2025

**HOW RISKY IS IT FOR EMPLOYERS NOT TO COMPLY WITH
LABOUR LAWS?**

**OR: THE DIFFICULT WAYS FOR EMPLOYEES TO TAKE
ACTION AGAINST UNFAIR LABOUR PRACTICES**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Where to go: Court or labour arbitration?

- **Settlement of Labour Dispute Law** differentiates between **disputes concerning a right** (= individual dispute) and **disputes concerning a benefit** (= collective dispute)
- **Disputes concerning a right:** Conciliation Body shall advise the worker to go to court or the relevant department (sections 12 (b), 23 Burmese/English)
- **Disputes concerning a benefit:** Township Conciliation Body → Regional/State Arbitration Body → Arbitration Council



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Where to go: Court or labour arbitration?

- Supreme Court decided in General Civil Application 216/2016 dated 28 August 2017 ([Burmese](#)):

“The Yangon Region Arbitration Body and the Arbitration Council (Panel) decided to resolve the **individual dispute** [...] by **exercising powers not conferred by law**. Their decisions must be cancelled by a writ of certiorari (အမှုခေါ်စာချွန်တော်အမိန့်).”



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Where to go: Court or labour arbitration?

- Nevertheless, the Arbitration Bodies and the Arbitration Council **still hear numerous disputes concerning a right (individual disputes)**, as is shown by many recent Arbitration Council decisions published on the Ministry of Labour's website ([Burmese](#)).
- Employers currently cannot challenge Arbitration Body and Arbitration Council decisions by applying to the Supreme Court for a writ of certiorari (အမှုခေါ်စာချွန်တော်အမိန့်) as such applications are suspended during the state of emergency ([Burmese](#)).



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

**FINANCIAL CONSEQUENCES IF FIXED-TERM LABOUR
CONTRACTS ARE NOT RENEWED**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Administrative practice on fixed-term contracts

- Labour laws **are silent** on contract renewal, resignation, termination and dismissal.
- However, **labour authorities** (Township Labour Offices, the Factories and General Labour Laws Inspection Departments, the Regional/State Arbitration Bodies and the Arbitration Council) have developed **administrative practice** that guides the process.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Administrative practice on fixed-term contracts

- This administrative practice is reflected in:
 - Labour contract template issued in 2015 ([English](#)) by the Ministry of Labour, Employment and Social Security
 - Labour contract template issued in 2017 ([Burmese/English](#)) by the Ministry of Labour, Immigration and Population
 - Ministry of Labour, Employment and Social Security Notification 84/2015 ([Burmese/English](#))



Administrative practice on fixed-term contracts

- The 2017 template replaces the 2015 template. However, we understand that **administrative practice has not changed.**
- Clause 15 (a) 2015 template: “The contract can be terminated for [...] expiration of contract.”
- Clause 5 (b) 2017 template: “The employer shall not refuse renewal without sufficient reason.”



Administrative practice on fixed-term contracts

- In any case, labour authorities are of the opinion that it **amounts to a termination on the part of the employer** if the employer does not renew a fixed-term contract.
- Consequently, the employer must, if he does not want to renew a fixed-term contract:
 - Give 1 month notice or pay 1 month salary instead
 - Pay severance allowance according to MoL Notification [84/2015](#)



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Administrative practice on fixed-term contracts

- This approach by the labour authorities is understandable as **most labour contracts in Myanmar are fixed-term contracts**. The MoL's labour contract template itself is for a fixed-term contract.
- Without this administrative practice, employees would almost never be entitled to the severance allowance.
- In practice, there is **no difference** in Myanmar between a fixed-term labour contract and a labour contract for an unlimited term.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Administrative practice on fixed-term contracts

- **Issue:** Fixed-term labour contracts for seasonal and project work



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

LENGTH AND EXTENSION OF THE PROBATIONARY PERIOD



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Probationary period

- **Probationary period:** It is possible to employ an employee for a probationary period. The employment ends automatically if the probationary period is unsuccessful.
- **Maximum probationary period:** 3 months (para. 6 (h) National Committee for Setting the Minimum Wage Notification 1/2018 [Burmese/English](#)). May not be prolonged above 3 months.
- **Minimum salary** during the training period: 75% of the minimum wage (section 43 (I) Minimum Wage Rules [Burmese/English](#)).



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

DIFFERENCE BETWEEN OVERTIME WORK AND WORK ON A WEEKLY REST DAY OR PUBLIC HOLIDAY

COMPENSATION FOR OVERTIME WORK AND WORK ON A WEEKLY REST DAY OR PUBLIC HOLIDAY WITH TIME OFF INSTEAD OF MONEY

HOW TO INCLUDE TERMS AND CONDITIONS IN THE LABOUR CONTRACT OR EMPLOYMENT MANUAL THAT SEEM TO BE SENSIBLE BUT ARE NOT PROVIDED FOR IN MYANMAR'S LABOUR LAWS



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Overtime

- **Overtime work:** Work on a workday (= any day which is not a weekly rest day or a public holiday) outside the official working hours.
- **Official working hours:** 8 hours per day and 48 hours per week (section 11 (a) Shops and Establishments Law [Burmese/English](#)) or 8 hours per day and 44 hours per week (sections 59, 62 Factories Act [Burmese/English](#)).



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Overtime

- **Example:**

If a labour contract provides for a 40-hour week from Monday to Friday and the weekly rest day is Sunday, the employer can ask the employee to work on a Saturday (with the agreement of the employee).

This would not count as “overtime” (rule 9 Shops and Establishments Rules [Burmese/English](#)).

However, it would be best to clarify this in the employment manual.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Overtime

- **Overtime pay:** Twice the basic salary per hour (rule 20 Payment of Wages Rules [Burmese/English](#))



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Work on a weekly rest day

- **Weekly rest day in an establishment other than a factory:** To be determined by the employer (section 15 (a) [Shops and Establishments Law](#)), best in the employment manual
- **Weekly rest day in a factory:** Sunday (section 60 (1) [Factories Act](#))



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Work on a weekly rest day

- **Compensation for work on a weekly rest day:**
 - **Either:** One day off within 3 days preceding or following the weekly rest day (rule 7 Leave and Holidays Rules [Burmese/English](#), section 60 (1) (a) [Factories Act](#))
 - **Or:** Payment of twice the basic salary (we think per day), [form 5](#) Leave and Holidays Rules



Work on a public holiday

- **Public holiday:** Holiday as published in the Myanmar Gazette
- **Compensation for work on a public holiday:** Twice the basic salary per day, section 3 (2) Leave and Holidays Act
Burmese/outdated English



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Application to managers

- **The law does not distinguish between workers in junior positions and highly paid managers: Every employee is entitled to the same benefits if working overtime, on a weekly rest day or on a public holiday, which means most of the time: monetary compensation instead of time off.**
- **Furthermore, there is no concept in Myanmar labour law that would state that overtime and other extra work by senior managers is sufficiently compensated by their regular salary.**



Application to managers

- We think, however, that the following could be stated in the employment manual (shortened example):

“Our regular salaries for employees above category XXX have been calculated to compensate them for work outside ordinary office hours if this is, in extraordinary circumstances, required by the nature of our operations. If employees in these categories feel that they worked more than what could reasonably be expected to be covered by their salary, they are encouraged to take time off (with the agreement of HR) at times when this does not interfere with our operations.”



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Application to managers

- **The bottom line is that the employment manual must not contravene Myanmar's labour laws.**
- **It is, however, perfectly fine for an employer to state what he expects from his employees, if it is clear that employees are not forced to relinquish any rights that they have under Myanmar's labour laws.**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

**THE LIMITED NUMBER OF DISCIPLINARY SANCTIONS IN
MYANMAR: DISMISSAL FOR ORDINARY VIOLATIONS,
DISMISSAL FOR SERIOUS VIOLATIONS, FINES**

**PROVIDING FOR DEDUCTIONS FROM THE SALARY IN
LABOUR CONTRACTS AND EMPLOYMENT MANUALS**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Administrative practice on disciplinary sanctions

- **Disciplinary dismissal:**
 - Clauses 13, 15 (b) (2) labour contract template 2017 ([*Burmese/English*](#))
 - Work rules template published by the Ministry of Labour, Employment and Social Security in [2015](#)



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Administrative practice on disciplinary sanctions

- **Ordinary violations:**

- Dismissal on the spot without notice and without severance allowance for the 4th ordinary violation
- 1st ordinary violation: written warning; 2nd ordinary violation: written warning; 3rd ordinary violation: signed undertaking not to offend again
- To delete any ordinary violation from the record after 12 months if there is no subsequent violation



Administrative practice on disciplinary sanctions

- **Ordinary violations:**

- Define “ordinary violations” in the employment manual or an annex to the labour contract



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Administrative practice on disciplinary sanctions

- **Serious violation:**

- Dismissal on the spot without notice and without severance allowance
- Define “serious violations” in the employment manual or an annex to the labour contract



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Fines

- The deduction of fines from the salary is regulated in sections 10, 11 Payment of Wages Law ([Burmese/English](#)) and rule 7 Payment of Wages Rules ([Burmese/English](#))
- Allowed only (i) as compensation for damage intentionally or negligently caused by the employee, or (ii) if the labour contract explicitly provides for sanctions with a fine (not sufficient if fines are only provided for in the employment manual)



Fines

- The employer:
 - Must seek prior approval from the Factories and General Labour Laws Inspection Department (“**FGLLID**”) prior to making a deduction
 - May not deduct more than 5% of the monthly salary
 - Must apply fines deducted under **(ii)** “for worker benefit”
 - Must report on the deductions to the FGLLID



Other sanctions

- Myanmar's labour laws provide for no other sanctions apart from (i) dismissal for ordinary or serious violations and (ii) the deduction of fines
- Other sanctions (e.g., demotion to a lower paying job, reduction of the salary, temporary removal from work without pay) must be explicitly provided for in the labour contract which is subject to review by the relevant Township Labour Office
- If other sanctions are only provided for in the employment manual, they are (probably) not enforceable



Other sanctions

- **The employment manual may, however, provide for the following disciplinary measures apart from dismissal and fines:**
 - **Additional training to avoid future mistakes (because an employer may generally order employees to undergo training)**
 - **No or reduced bonus, no or reduced salary increase (because bonus payments and salary increases are voluntary)**



Other sanctions

- Instead of giving warnings for the first 3 ordinary violations and dismissing the employee on the spot without notice/severance allowance for the 4th violation, the employer may dismiss an employee already for the 1st, 2nd or 3rd violation by giving 1 month notice and paying the severance allowance according to MoL Notification [84/2015](#).



**NO MANDATORY RETIREMENT AGE IN PRIVATE BUSINESSES
AND ORGANISATIONS**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

No mandatory retirement age

- A mandatory retirement age (62 years) only exists for civil servants (i.e., government employees)
- This is understandable as there is a pension system for retired civil servants. There is currently no pension system for retired employees in the private sector.
- It is not legal to write in a labour contract or employment manual: “The employment shall automatically end on the employee’s 62nd birthday.”



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

No mandatory retirement age

- If an employer wishes to get rid of older employees, he has to terminate the employment by giving 1 month notice and paying the severance allowance according to MoL Notification [84/2015](#).



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

HOW TO HANDLE THE WITHDRAWAL OF EMPLOYEES DUE TO A WORSENING SECURITY SITUATION



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Examples (shortened) from employment manuals

- The employee may resign any time without observing a notice period if he feels unsafe due to a worsening security situation. In this case, the employer shall pay the employee's salary up until the day of resignation but shall not be obliged to make any further payments.
- If, however, the employee gives at least XXX days notice and assures minimal disruption by handing over his work, the organisation will pay him YYY months of salary to help him with his income situation.



Examples (shortened) from employment manuals

- **The country head shall continuously assess the security situation at all places of operation. If he determines that the situation has too much deteriorated, he shall:**
 - **Require employees to work from home where this is safely possible without disrupting operations;**
 - **allow employees to relocate to safer areas where this is possible without disrupting operations and endangering the organisation's finances;**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Examples (shortened) from employment manuals

- determine whether to end operations in the relevant place;
- if operations are ended, terminate the employment of those employees who cannot work from home or relocate to a safer area by giving 1 month notice (or paying the corresponding part of the salary if the notice period is shorter) and paying the statutory severance allowance.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

**HOW TO REACT TO A (TEMPORARY?) DROP IN FUNDING OR
BUSINESS DOWNTURN**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Measures other than termination

- **Other than termination of the employment (with 1 month notice + severance allowance), Myanmar's labour laws provide for no counter-measures that an employer may take unilaterally (without agreement of the employees concerned) to a business downturn that might only be temporary.**
- **However, during the Corona pandemic, many employers resorted to cost-cutting measures such as reducing working hours, reducing salary, or putting employees on unpaid leave, often without the agreement of the employees.**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Measures other than termination

- **Employees often do not seem to have challenged such unilateral changes of their labour contract in the courts or in labour arbitration as they seem to have been glad to have kept their jobs.**
- **Ideally, an employer would proceed as follows to implement temporary cost-cutting measures:**
 - **Inform the employees concerned of the situation;**
 - **solicit their agreement to the temporary cost-cutting measure (e.g., unpaid leave);**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Measures other than termination

- be clear that the jobs of those who do not agree cannot be conserved and will have to be terminated (with 1 month notice + severance allowance).
- As a measure to mitigate the situation immediately (but this will only cover a few days), an employer may order employees to take any accrued earned leave now.



Measures other than termination

- **The agreement between the employer and the employees on the temporary cost-cutting measure (e.g., unpaid leave) should cover the following topics:**
 - **Length of the unpaid leave**
 - **If the situation has not improved by the end of the unpaid leave, the last month of the unpaid leave shall count as notice period and the employer may terminate the labour contract without further notice.**



Measures other than termination

- In this case, the severance allowance shall be calculated based on the basic salary of the month preceding the unpaid leave. Furthermore, the agreement should state whether the unpaid leave period counts towards the service time for purposes of calculating the severance allowance.
- If the situation improves during the unpaid leave period, the employee shall immediately return to his position.



Measures other than termination

- **Employees shall not be obliged to work and the employer shall not be obliged to pay salary during the unpaid leave period.**
- **Are employees allowed to work for other employers during the unpaid leave period to help them with their income situation?**
- **Are employees entitled to paid casual leave and/or medical leave during the suspension period?**



Measures other than termination

- Does the unpaid leave period count as “months worked” for purposes of calculating earned leave entitlements?
- What benefits will the employer provide if a female employee is expected to give birth during the unpaid leave period?



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Measures other than termination

- If there are other benefits provided in the organisation's internal employment manual, will these benefits be available during the unpaid leave period?
- Duty of employees to keep business matters confidential to also apply during the suspension period.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Measures other than termination

- Employees shall not be obliged to work and the employer shall not be obliged to pay salary during the unpaid leave period.
- Should employees observe a notice period if they wish to resign during the unpaid leave period?



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Contact

Sebastian Pawlita, Managing Director

Lincoln Legal Services (Myanmar) Ltd.

**No. 35 (D), Inya Myaing Road, Golden Valley, Bahan
Township, Yangon Region**

Phone: +95-9-262546284

E-mail: sebastian@lincolnmyanmar.com

Homepage: www.lincolnmyanmar.com



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED