



MYANMAR

Decent Work Check 2019

Iftikhar Ahmad

WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

The authors

Iftikhar Ahmad works as Labour Law Specialist with WageIndicator Foundation. He can be contacted at iftikharahmad@wageindicator.org

Acknowledgements

Many people contributed to the development of the Decent Work Check as a tool and to this Check for Myanmar. Those who contributed to the development of tool include Paulien Osse, Kea Tijdens, Dirk Dragstra, Leontine Bijleveld, Egidio G. Vaz Raposo and Lorena Ponce De Leon. Iftikhar Ahmad later expanded the work to new topics in 2012-13. Daniela Ceccon, Huub Bouma, and Gunjan Pandya have supported the work by bringing it online through building and operating of labour law database and linking it to WageIndicator websites. Special thanks are due to the Islamabad team, which works on Decent Work Checks since 2012. The team currently comprises Iftikhar Ahmad (team leader), Ayesha Mir, Ayesha Ahmed, Shabana Malik, and Aizaz Raof Ali.

Bibliographical information

Ahmad I (2019) *Myanmar Decent Work Check 2019*. Amsterdam, WageIndicator Foundation, February.

For an updated version in the national language, please refer to <https://mywage.org/myanmar>

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WageIndicator Foundation, 2019

Address: P O Box 94025, 1090 GA Amsterdam, The Netherlands

Email office@wageindicator.org.

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental principles and Rights at Work and Core ILO Conventions, are practiced, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects, which are deemed important in attaining "decent work". The work makes the rather abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and gives a score to the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Workers can compare their own score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

Decent Work Check is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work. WageIndicator teams, around the world, have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed - being a workers, self-employed, employee, employer, policy maker, labour inspector - there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer) and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work especially the effective enforcement of legislation in financially constrained states, rise of precarious employment and measuring the impact of regulatory regimes.

Currently, there are more than 100 countries for which a Decent Work Check is available here: www.decentworkcheck.org During 2019, the team aims to include at least 10 more countries, thus taking the number of countries with a Decent Work Check to 115!

Major Legislation on Employment and Labour

1. Minimum Wage Law (No. 7 of 2013)
2. Minimum Wage Rule (Notification No. 64 of 2013)
3. Shops and Establishments Act 2016
4. Payment of Wages Law 2016
5. Factories Act 1951
6. Leave and Holiday Act 1951
7. Employment and Skill Development Law, 2013
8. Notification 01/2015 concerning the signing of employment contracts, amended in August 2017
9. Notification no. 84/2015
10. Social Security Law 2012
11. Constitution of Myanmar, 2008
12. Penal Code 1861
13. Rights of Persons with Disabilities Law, 2015 (30/2015)
14. Ministry of Mines Notification No. 125 of 1996
15. Child Law 1993
16. Order No. 1/1999 of 14 May 1999
17. Labour Organisation Law, 2011
18. Labour Organisation Rules, 2012
19. Settlement of Labour Disputes Law

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Myanmar has not ratified any of the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Minimum Wage Law (No. 7 of 2013)
- Minimum Wage Rule (Notification No. 64 of 2013)
- Shops and Establishments Act 2016
- Payment of Wages Law 2016

Minimum Wage

Statutory minimum remuneration means the remuneration (including holiday remuneration) fixed by a minimum wages order. National Minimum wage is set for all the employees regardless of age, industry, experience and region. There is no salary cap system. The Minimum Wage Law (2013) defines wage as the basic salary excluding pension and gratuity payments, social security cash benefits, allowances (for travel, accommodation, meals, electricity charges, water service charges and duties, taxes, medical treatment and recreational purposes) and severance payments.

The Minimum Wage Law recommends creation of a national minimum wage committee comprised of relevant persons in government departments, representatives of employers and employees, to conduct research on the prevalent minimum wages across various industries for employees. The union, region and state committees are also formed in the similar manner. There exists a separate minimum wage committee for special economic zones. These committees submit their proposals to the National Minimum Wage Committee, which after considering these suggestions, recommends publishing of such notification 60 days prior to its formal approval and after taking into account any objection by the public. Minimum wage rates are prescribed after taking approval from the government and where there is no objection by public in this regard.

The categories of business (for which minimum wage rates are prescribed) are determined by the National Committee. Minimum wage is calculated on the basis of this research. The committee takes into consideration the needs of workers and their families; existing salaries; social security benefits; living cost and changes of such living costs; compatible living standard; employment opportunities in conformity with the needs for State's economy and development of production; gross domestic production value of the State and per capita income; hazardous to health and harmful to work, nature of the work; and other facts stipulated by the Ministry with the approval of the Union Government.

The employer is required to pay at least the prevailing minimum wage as dictated by the government committee and is also required to inform employees of the prevailing minimum wages and have it be prominently posted for employees. The employer can pay more than the prevailing minimum wage, also has to look after the wellbeing of his employees.

Violation of the law leads to the penalty. If an employer is unable to pay the minimum wage, he/she is punished with imprisonment for a term not exceeding one year or with fine not exceeding 500,000 kyats or with both. The wage payable during the three-

month training period is 50% of the applicable minimum wage. During the three-month probation period, the payable wage is 75% of the applicable minimum wage.

Source: Minimum Wage Law (No. 7 of 2013); Minimum Wage Rule (Notification No. 64 of 2013)

Regular Pay

The Minimum Wage Law and Payment of Wages Law defines wage as the fee, wage or salary entitled to be obtained by the worker for carrying out hourly work, daily work, weekly work, monthly work or any other part-time work of the employer. This expression includes overtime fee or bonus given by the employer for the good work or character, or other remunerations or benefits which may be determined as income. However, it does not include, among others the following: the travelling allowances, allowances for accommodation and meal, electricity charges, water service charges and duties and taxes, and medical treatment allowances and recreation allowances.

Wages are paid in local currency or foreign currencies stipulated by the Central Bank of Myanmar. Such payment may be paid in cash or cheque or deposited into the bank account of the worker with the agreement between the employer and the worker.

The employer must pay wages on working day at the end of the work or at the time agreed to pay to the worker for hourly, daily, weekly or other part time work, or temporary or piece work. The maximum wage period is one month. Wages must be paid at the end of the wage period if there are less than 100 workers. If there are 100 or more workers, wages must be paid within 5 days at the end of the wage payment period.

In the event of termination of contract or death of the worker, all dues must be cleared within two working days. In the case of resignation by the employee, all dues must be cleared at the end of wage payment period

An employer is not allowed to deduct wages of an employee except for the conditions provided under the law. All the deductions made by the employer may not exceed 50% of the wages of a worker except deduction from wages for the failure of a worker to perform his duty.

The Shops and Establishments Act states that wages must be paid to workers within seven days of the end of end of the wage payment period.

The Payment of Wages Act allows for in-kind payment of wages up to 50% of the total applicable wage provided that it is for the sake of the employees and their families and it is valued fairly and reasonably.

Employers are required to provide pay slips to the workers with following details: worker identification details, basic hours, overtime hours, overtime rate, details of

bonuses and deductions, signatures of both worker and employer. The format for the pay slip is provided under a Ministerial Notification.

Source: §16 of the Shops and Establishments Act 2016; §2(e) of the Minimum Wage Law (No. 7 of 2013); §01-10 of the Payment of Wages Law 2016

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Myanmar has ratified the Convention 01 only.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter times (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Factories Act 1951
- Leave and Holiday Act 1951
- Shops and Establishments Law 2016

Overtime Compensation

Working hours are regulated under the Factories Act 1951 and Shops & Establishment Act 2016. Under the Factories Act, the normal working hours are 8 hours a day and 44 hours a week. In the case of continuous work (like power plants), weekly working hours are 48 hours. The total working hours inclusive of overtime and rest breaks (30 minutes after every 5 hours of work) are 10 hours per day.

Under the Shops & Establishments Act 2016 (applicable to Shops, companies, trading centres, service enterprises and entertainment houses), the normal working hours are 8 hours a day and 48 hours a week. The total working hours inclusive of overtime and rest break (one hour) must not exceed 11 hours per day.

A worker may work overtime with his own consent. However, the total number of overtime hours may not exceed 12 hours in a week. In special cases, the overtime hours can be extended to 16 hours per week. Overtime must not extend beyond the midnight. The overtime hours for factory workers, who do not engage in continuous work, are 20 hours per week. As defined by the ILO, the term “necessarily continuous process” covers work in which the technical processes have to be carried on without interruption day and night (such as blast furnaces, coke manufacture, the refining of mineral oils, certain branches or operations in the chemical industry, cement manufacture, salt making, mining) or have to be kept going seven days a week due to the perishable nature of the product in question (such as dairy products in general), as well as public utility services (water, gas, electricity).

The normal working hours for oilfield workers are 44 hours per week however for continuous processes, the weekly hours are raised to 48 hours a week. Similarly, for mine workers, the normal weekly working hours are 40. The weekly working hours may be raised to 48 hours if a worker is required to work whole day due to requirements of work.

For shops and establishments, the overtime hours start after working 48 hours per week while for factory workers, the overtime hours start after working 44 hours per week except in the case of continuous processes. Mandatory overtime payments must be paid for every hour/day worked beyond the prescribed limits of 8 hours a day and 44/48 hours a week. A worker is entitled to 200% of basic salary for each hour worked overtime. Permission of Factories and the General Labour Law Inspection Department must be obtained for an approval of a constant overtime policy. Overtime is calculated on daily basis. Thus, even when a worker’s weekly working hours do not exceed 44 hours or 48 hours, overtime is counted if his daily working hours exceed 8 hours per

day. The overtime is calculated as follows: $[(\text{basic salary} * 12 \text{ months}) / (52 \text{ weeks} * 44/48 \text{ hours})] * 2$

The piece rated workers are eligible for twice their average earnings for the overtime hours. The average wage for piece rated workers is set by the Chief Inspector in consultation with social partners, i.e., workers and employer representatives.

Source: §11-12 & 17 of the Shops and Establishments Act 2016; §59, 62, 64 & 73 of the Factories Act 1951

Night Work Compensation

No provision could be located in law regarding premium pay for night work. The Shops and Establishments Law 2016 requires that every shop and commercial establishment must remain closed between 23:00 and 05:00. Public entertainments excluding theatres, entertainment shows and free entertainments must remain closed from 01:00 to 05:00.

Source: §7-8 of the Shops and Establishments Act 2016

Compensatory Holidays / Rest Days

Workers can be required to work on weekly rest days and public holidays. However, a worker must be provided his/her weekly rest day either three days before Sunday or after Sunday if he/she is made to work on weekly rest day. A worker cannot be made to work for 10 consecutive days without a weekly rest day. If a factory is granted exemption from provision of weekly rest days, such workers must be provided substitute holidays within the calendar month in which the holidays were due or within the next two calendar months.

No provision could be located on compensatory holidays for workers engaged in work on public holidays.

Source: §8 of the Factories Act 1951

Weekend / Public Holiday Work Compensation

If the working on weekly rest day is treated as overtime work, it is paid at double the normal rate (200% of normal hourly rate). Similarly, if workers are required to work on public holidays, they are entitled to 200% of the hourly pay and cost of living allowance.

Source: §17 of the Shops and Establishments Act 2016; §73 of the Factories Act 1951; §03(2) of the Leave and Holiday Act 1951

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days. In addition, for several industries, different Conventions apply.

Myanmar has ratified the Convention 14 only.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

Regulations on annual leave and holidays:

- Leave and Holiday Act 1951
- Shops and Establishments Act 2016
- Factories Act 1951

Paid Vacation / Annual Leave

Annual leave (generally referred to as Earned Leave) is regulated under the Leave and Holiday Act. An employee is entitled to annual leave after completion of 12 months of continuous service with an employer with a minimum of 20 working days per month. Length of annual leave ranges between 10-14 working days depending on the age of the worker. Annual leave is 14 consecutive days for workers under 15 years and 10 consecutive days for workers over 15 years. If a worker has worked for less than 24 days per month, his/her leave entitlement is reduced by one day. Establishments where work is not carried on continuously for 12 months may grant their workers annual leave proportionate to their period of service.

In accordance with the Leave and Holidays Act, an employee is paid his or her average wages or average pay (as the case may be) for a period of annual leave before annual leave begins.

Employers are required to fix the annual/earned leave schedule allowing workers to take annual leave within three months of annual leave entitlement. Annual leave can be accumulated and carried forward for a maximum period of three years. Payment in lieu of annual leave is allowed if a worker resigns before taking due annual leave or is discharged by the employer or dies before taking such leave.

Source: §4 of the Leave and Holiday Act 1951

Pay on Public Holidays

Every employee is entitled to all gazetted public holidays. There are about 24 public holidays. This includes 10 days leave for Myanmar New Year celebrations (April 12-21), which have been declared as public holidays by the State Peace & Development Council. Public Holidays are the following: Independence Day (January 04); Union Day (February 12); Peasants Day (March 02); Full Moon Day of Tabaung; Myanmar New Year (April 12); Thingyan Festival (April 13-16); Myanmar New Year (April 17-21); May Day (May 01); Full Moon of Kasong; Full Moon Day of Waso (Beginning of Buddhist Lent); Martyr's Day (July 19); Full Moon Day of Thadingyut (End of Buddhist Lent); Full Moon Day of Tazaungmone; National Day (November 13); Kaiyin New Year (December 18); and Christmas Day (December 25). Eid al Adha (one day) and Deepavali/Divali (one day) festival are also announced as public holidays (for minorities only) on the occasion in newspapers. These are however taken after agreement between the parties and workers do not have a statutory right to be paid for such holidays.

There is no statutory obligation to provide an alternative holiday when a public holiday coincides with a weekly day-off. However, if an employee works on public holiday coinciding with a weekly off day, the employee must be paid at double the normal rate for working on that day. Employers may agree to grant holidays without pay to the non-Buddhist employees on occasion of their religious festivals. Moon days are also liable to change every year.

Source: §3 of the Leave and Holiday Act 1951; Notification No 01/2007 dated 16 February 2007

Weekly Rest Days

Law requires a minimum one day off with pay per week. An employee, according to the Shops and Establishments Act, is entitled to at least one weekly holiday for which his/her wage is not deducted. Similar provisions are found in the Minimum Wage Law of 2013 which requires that every salary paid worker is entitled to a one-day paid weekly rest day.

In accordance with the Factories Act, Sunday is considered as a weekly rest day. Similar provisions are found in the new employment contract template. Another week day may be designated as weekly rest day if the nature of business so requires and is agreed between the parties.

Under the Leave and Holidays Act, workers are also entitled to 6 days of paid casual leave every year. The casual leave cannot be taken for more than 3 consecutive days at a time, except in the case of religious or compulsory social events. Casual leave cannot be carried forward and cannot be combined with any other type of leave (like annual leave or sick leave or maternity leave).

In line with the Employment Contract Template, workers are entitled to funeral leave without any deduction from their minimum wage. If the statutory leave entitlement has been exhausted, i.e., casual leave, workers may be given unpaid upon mutual agreement.

Source: §15 of the Shops and Establishments Act 2016; §60 of the Factories Act 1951; §14 of the Minimum Wage Law (No. 7 of 2013); §5-6 of the Leave and Holiday Act 1951; Employment Contract Template, 2017

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

Myanmar has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Employment and Skill Development Law, 2013
- Notification 01/2015 concerning the signing of employment contracts, amended in August 2017
- Notification no. 84/2015

Written Employment Particulars

The employment contract can be of fixed term or indefinite term. Law requires written employment contracts. Ministry of Labour, Immigration & Population published its official contract template in 2015 and requires employers to use this template. The contents of that template cannot be changed without prior approval of the Directorate of Labour.

On commencement of employment, it is compulsory to prepare the employment contract in writing. It must be written in both the Myanmar and English language. An employment contract must adhere to the provisions of the Employment and Skill Development Law 2013. The contract must be signed within 30 days from appointment, except where the employee is on probation or training i.e., pre-condition to appointment.

The employment contract must explicitly contain clauses on remuneration, termination, duration and social security benefits. It must also contain information about wages/salary, type of employment, location, working hours, days off, meal arrangements, medical treatment, termination provisions, and accommodation and transport arrangements, if any. The contract is then subject to approval by the local Labour Exchange. From July 2018 onward, enterprises are required to use the employment contract template provided by the Ministry of Labour. Amendment to the contact template can be made only with the approval of Ministry of Labour.

An employer who fails to sign an employment agreement with its employee can be punished, in accordance with the Employment and Skill Development Law, with imprisonment for up to six months, a fine, or both. Further, employment contracts that are not registered with the labour department are considered void.

In case the employer wants to unilaterally change the terms and conditions, the employer and employee must negotiate the desired changes and take necessary approval from the Directorate of Labour.

Source: §5 & 38 of the Employment and Skill Development Law, 2013; Notification 01/2015 concerning the signing of employment contracts, amended in August 2017

Fixed Term Contracts

Fixed term contracts are allowed for the tasks of permanent nature.

Law does not specify any limit for the fixed term contract. Also, there is no limit of renewals. Fixed term contract can be of unlimited time period. The official contract template allows for setting the term of contract to the employer. A fixed term contract can be renewed or amended or changed one month prior to its expiry by mutual agreement between the parties.

Probation Period

Probation period is not specified in the law. However, generally, probation period of a worker does not exceed 03 months. The official contract template fixes the term of a probation period as three months. The Employer may continue to employ the worker after the probationary period if the employee has shown satisfactory performance at his position. However, there is no requirement on the employer to give permanent employment after completion of probation period. An employer may engage a worker without probation period. There is also a provision for training/induction period of maximum 3 months for the new workers. Employers are required to conclude a separate training agreement however no separate agreement is required for probation.

Source: Employment Contract Template, 2017

Notice Requirement

An employment contract can be terminated on its expiry, closure of the factory or company (bankruptcy of the employer), force majeure events, breach of contract by either party, death of the employee, reduction of jobs because of unexpected problems not caused by the Employer (includes redundancy), and where the employee is convicted of criminal misconduct.

A contract of employment can be terminated by either party by giving one-month prior notice. In minor cases, a verbal warning is given for the first occurrence, a written notice for the second and a third warning signed by the employee (undertaking/bond) issued for the third or final violation of the agreed discipline. The employee may be dismissed without notice and severance pay for a further violation after these three warnings. In the case of gross misconduct, employment contract may be immediately terminated by the employer.

An employer may terminate or dismiss the worker (for important reasons) with one-month notice or paying in lieu of notice. If a worker wishes to resign during probationary period, he/she is required to give a seven-day notice to the employer.

In line with the Labour Organization Law, an employer may not dismiss a worker who opposes an illegal lock-out or for his membership in a labour organization for the exercise of organizational activities or participating in a legal strike.

Source: Employment Contract Template, 2017; §5 of the Employment and Skill Development Law, 2013; §44 of the Labour Organization Law 2011

Severance Pay

Severance Payment is regulated under the regulations of the Ministry of Labour. There is no severance pay in the following cases: termination of employment contract by mutual agreement, resignation, grave misconduct by the employee, and termination after warnings. If a contract of employment is terminated for other reasons (including redundancy), severance payment is as follows:

- No severance pay for less than 6 months of service;
- 15-day salary for six months to one year of service;
- one month's salary for one to two years of service;
- 45-day salary for two to three years of service;
- three months' salary for three to four years of service;
- four months' salary for four to six years of service;
- five months' salary for six to eight years of service;
- six months' salary for eight to ten years of service;
- eight months' salary for ten to twenty years of service;
- ten months' salary for twenty to twenty-five years of service; and
- thirteen months' salary for more than twenty-five years of service.

Source: Notification no. 84/2015

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981)
Recommendation 165: Workers with Family Responsibilities (1981)

Myanmar has not ratified the Convention 156.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Social Security Law 2012

Paternity Leave

The Social Security Law provides 15 days of paternity leave to the biological father for infant care after delivery. Paternity leave benefit is paid to the insured husband of an insured woman who takes maternity leave. The father must have at least six months of contributions in the 12 months before the date of childbirth or miscarriage. During paternity leave, insured worker is entitled to 70% of the average wage.

A lump sum of 50% of the maternity grant is paid to an insured father whose uninsured wife gives birth to one or more children at the same time.

Source: §28(a & b) of the Social Security Law 2012

Parental Leave

No provisions could be located in the law allowing parental leave for parents.

Flexible Work Option for Parents / Work-Life Balance

No provisions could be located in the law supporting work-life balance for parents or workers with family responsibilities.

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Myanmar has not ratified the Conventions 103 & 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Social Security Law 2012

Free Medical Care

The female insured worker has the right to take free medical treatment at the permitted hospital and clinic in case of pregnancy and confinement. It includes in-patient, out-patient, medicine, laboratory, and transportation in case of referral outside urban areas. The new born is also entitled to medical care during the first year.

Source: §25(a) of the Social Security Law 2012

No Harmful Work

Factories Act regulates the working on women and prohibits the employment of pregnant workers in hazardous working conditions. The pregnant workers must be assigned to do the light work only without any reduction in their wages or other benefits. After the seventh month of pregnancy, women workers may not be required to work overtime or night work.

The Factories Act further provides that the women workers who are unable to work during their menstrual period may notify their employers with a medical certificate. Employers are required to make necessary arrangements in that regard.

Maternity Leave

Female workers are entitled to 14 weeks of maternity leave. Whether or not covered by the Social Security Law, a pregnant worker is provided maternity leave of six weeks before delivery and eight weeks after delivery. Maternity leave can be extended for another four weeks in case of a twin delivery. In the event of miscarriage, the right to maternity leave is only six weeks. Workers are also entitled to paid seven days leave (in total) for prenatal examination. Workers are also entitled to 8 weeks of leave for adoption.

Source: §25(c & d) of the Social Security Law 2012

Income

Insured female workers are entitled to enjoy cash benefit relating to maternity leave after at least one year of employment at the relevant establishment and must have paid contribution for a minimum of six months within the said one year.

The benefit is 70% of the average wage during the prenatal and postnatal period (14 weeks). The maternity benefit is also 70% of the average wage in the event of miscarriage. The maternity benefit also includes maternity expenses depending on the children born. The maternity expense benefit is 50% of the average monthly wage in the

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event of single delivery, 75% of the average monthly wage in the event of twin delivery, and 100% of the average monthly wage in the event of triple delivery and above.

The above referred maternity and maternity expense benefits are granted only on presentation of a medical certificate by the worker.

Source: §26 & 27 of the Social Security Law 2012

Protection from Dismissals

The employment of an insured employee is secure during the period of maternity leave. The employer must not dismiss or terminate the insured worker from work or demote to lower wage level during the period which an insured is enjoying her maternity leave and its benefits. The employer may not reduce or deduct wages and fees of his worker due to liability for contribution payable under the Social Security Law.

Source: §66 of the Social Security Law 2012

Right to Return to Same Position

No guaranteed right to return to work is identified, beyond the prohibition on dismissing employees, and the invalidity of any notices of dismissal or discharge given to an employee, while the employee is in receipt of benefits under the Social Security Act.

Source: §66 of the Social Security Law 2012

Nursing/Breastfeeding Breaks

No provisions could be located in the law allowing breast feeding breaks to the nursing mothers at work. In line with the Factories Act, in every factory with more than 100 female workers having children under 6 years, the Ministry of Labour in cooperation with the employers, must establish a day-care centre. The enterprises may establish such day care centres individually or in cooperation with other establishments. If there are less than 100 female workers with children under 6, the employer may make appropriate arrangements.

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Myanmar has not ratified the Conventions 81 & 155.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Factories Act, 1951
- Shops and Establishments Act 2016

Employer Cares

Employers must comply with the occupational health and safety rules issued in accordance with the relevant laws and by the relevant labour departments. Employers must arrange for minimum safety standards to protect from natural disasters, force majeure, and manage and educate the employees regarding occupational health and safety.

According to the Shops & Establishments Act, it is obligatory for the employer that the premises of shop or establishment should be kept clean, free from any smell and be healthful; it is kept well-ventilated and provided adequate lighting; there is no excessive noise; no excessive temperature is maintained at any shop or establishment and fire prevention procedures are laid down. For workers, first aid kit should be kept at every shop or establishment.

In accordance with the Factories Act, the factories must be kept clean. They should effectively make arrangements for disposal of wastes; ventilation and temperature; dust and fumes; artificial humidification; lighting; no overcrowding; provision of potable drinking water; latrines and urinals; spittoons; protection from contagious and infectious diseases; and fire and chemical hazards. Machinery should be well maintained and upgraded.

In line with the Social Security Law, the employer has to coordinate with the Social Security Board or insurance agency in respect of keeping plans for safety and health in order to prevent employment injury, contracting disease and fatal accidents. The employer is bound to incur the costs of medical treatment for employment injury occurring from criminal action or omission of the employer, or occurring from employer's failure to keep occupational safety plans and protections.

Source: §24 of the Shops and Establishments Act 2016; §13-43 of the Factories Act, 1951; §53 of the Social Security Law 2012

Free Protection

Personal protective equipment must be provided. In accordance with the Factories Act, an employer is required to provide effective screens or suitable goggles for the protection of persons employed on, or in the immediate vicinity of, a process which involves risk of injury to the eyes from particles or fragments thrown off in the course of the process, or risk to the eyes by reason of exposure to excessive light or heat.

Source: §37 of the Factories Act 1951

Training

Employer shall conduct occupational training to enhance the skills of workers who are to be employed as well as workers who are presently employed in accordance with the requirements of the enterprise and the policy of the Skills Development Agency. The Factories Act requires that workers are familiar with the means of escape in case of fire and have been adequately trained in the procedure to be followed in such case

Source: §14 of the Employment and Skill Development Law 2013; §40 of the Factories Act, 1951

Labour Inspection System

Ministry appoints some persons as inspectors for the purpose of fulfilment of law requirements. Labour Inspector means any inspector assigned duty in the Factories and General Labour Laws Inspection Department

The inspector is authorised, within local limits, to enter to any workplace which is a shop or an establishment; examine the place and any prescribed record, register or document, electronic record or notice maintained therein; take photographs or video recording as he/she thinks necessary to record the conditions in a workplace and the processes carried on therein; and make such interrogations as he/she thinks fits.

The inspector may examine and inspect all records and documents, or documents recorded by the modern technology of a shop or an establishment as evidences, if it is necessary to do so. Provided that, no person shall be required under this Section to answer to answer any question or given any evidence tending to incriminate him or herself.

It is obligatory for the employer to arrange documents, registers, agreement contract, testimonials, forms and sample prescribed for the necessary examination of the inspector. The employer must produce the registration book, evidence of employer or the instruments relating to the business when the inspector asks to do so.

In case the inspector finds that a person contravenes or fails to observe any of the provisions of the law or any rules or directives made under the law, he/she may take lawsuit to such person under the permission of the Chief Inspector.

All labour laws provide for the functions of labour inspectors including the registering and licensing of enterprises, enforcing health and safety standards as well as minimum wage and compensation standards.

Source: §2, 4-6, 20 & 32-35 of the Shops and Establishments Act 2016; §10 & 11 of the Factories Act, 1951

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Myanmar has not ratified the Conventions 102, 121 & 130.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Leave and Holidays Act 1951
- Social Security Law 2012

Income

The Leave and Holidays Act provides up to 30 days of sick leave to every employee after at least six months of service. Employee must submit an application for medical leave supported by a medical certificate from a certified medical officer, doctor, or any other certified medical practitioner. The grant of such leave is subject to a waiting period of three days.

If the length of service is less than six months, he/she is entitled to sick leave without pay after the provision of medical certificate.

Cash benefits are provided to the employee after at least six months of employment with the employer. This cost is provided by the employer and cannot be recovered from the government.

If an employee does not utilize his/her sick leave within a year, the leave lapse. Any provision within a contract that is less favourable than those provided by the law is considered null and void.

According to the Social Security Law, an insured employee with at least four months of contributions in the last six months is entitled to sick leave. Provided that, a medical officer of the Social Security Board must certify the insured worker as incapable of work. Coverage is provided after the last day of covered employment for involuntarily unemployed persons registered as unemployed.

Social Security Law also provides for sickness benefits: 60% of the insured worker's average monthly wage in the four months before the incapacity began is paid from the first day of incapacity for up to 26 weeks for one illness. The benefit ranges from 1,000 kyats to 6,000 kyats. However, for recurrent sickness, chronic disease and suffering more than one disease or sickness of special importance, it has the right to take medical treatment up to 52 weeks or to a period specifically stipulated by the Social Security Board. A worker qualifies for sickness benefit on 6 months' work and 4 months of contributions.

Source: §6 of the Leave and Holidays Act 1951; §22 & 23 of the Social Security Law 2012

Medical Care

Medical treatment is provided free of cost to the insured workers during sick leave. The Social Security Board's dispensaries and hospitals, large employer dispensaries, and public hospitals provide medical services directly to patients. Insured persons registered with a dispensary are covered only for services provided by the dispensary (except for emergencies or upon referral from the dispensary). Medical benefits include medical care at the dispensary, emergency home health care, specialist and laboratory services at a diagnostic centre, x-rays, necessary hospitalization, physical therapy, prostheses, appliances, and medicine. While free medical care is provided in social security clinics and hospitals, workers are eligible for reimbursement of the expenses made in public hospitals when they are referred to those. The medical care is available for a duration of 26 weeks/6 months.

Medical care is also provided to the dependents; paediatric care is provided for an insured woman's child up to the age of one year.

Source: §22-23 of the Social Security Law 2012

Job Security

The employment of an insured employee is secure during the period of sick leave. The employer must not dismiss or terminate the insured from work or demote to lower wage level during the period which an insured is enjoying any of the sickness or maternity or temporary disability benefits owing to employment injury under the Law. The employer may not reduce or deduct wages and fees of his worker due to liability for contribution payable under the Social Security Law.

Source: §66 of the Social Security Law 2012

Disability / Work Injury Benefit

Work injuries may be classified on the basis of their consequences as those resulting in: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker.

In case of Permanent Disability, 70% of the insured worker's average monthly wage in the four months before the disability began is paid. 10% of the permanent disability pension is paid Constant-attendance supplement, if the insured requires the constant attendance of others to perform daily functions, as certified by a medical officer of the Social Security Board.

In the case of permanent partial disability, a percentage of the full pension is paid according to the assessed loss of capacity. If the loss of working capacity is less than 20%, a lump sum of five years of the permanent disability pension is paid.

In case of Temporary Disability, 70% of the insured worker's average monthly wage is paid in the four months before the disability began from the first day of incapacity for up to 12 months.

Medical officers of the Social Security Board assess the percentage loss of capacity and may reassess it at any time at the request of the board. The board can temporarily or permanently suspend benefits if the insured worker fails to attend requested medical examinations.

In case of death, survivor benefits are paid to the eligible survivors that are named by the deceased. If there are no named survivors, survivors include (in order of priority) the deceased's dependent widow(er), children, and parents. Survivor pension is paid in the following manner:

- Up to 60 months of contributions: 30 times the deceased worker's average monthly wage;
- 60-119 months of contributions: 50 times the deceased worker's average monthly wage;
- 120-239 months of contribution: 60 times the deceased worker's average monthly wage; and
- at least 240 months of contributions: 80 times the deceased worker's average monthly wage.

A pension is paid to a widower or dependent relatives who are elderly or have a disability. The pension for other survivors is determined by the Social Security Board, depending on the nature of the survivor's relationship with the deceased, personal income, working capacity, and other related conditions.

Funeral grant is also paid as a lump sum amount (up to a maximum of five times the average wage). It depends on the contribution months and average wages in the last four months.

Employment injury benefits are regulated by the Social Security Board. Employers are required to contribute 1% of the monthly payroll.

Workers who are not covered by the Social Security may resort to the Workmen's Compensation Act 1923 provisions. In the event of accidents, employers have to offer free medical examination to workers. Employers have to pay compensation to workers for personal injuries and diseases arising out of and in the course of employment. The only condition is that the occupational injury should not be directly attributable to the worker being under the influence of drinks or drugs, or worker's willful disobedience of the safety rules and employer's orders, or worker's willful removal or disregard of safety guard or other device which is provided for safety purposes.

Source: §30 & 55-59 & 62 of the Social Security Law 2012; §3 & 11 of the Workmen's Compensation Act 1923

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Myanmar has not ratified the Conventions 102, 121, 128, 130 & 168.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give "due regard to the working ability of elderly persons" and "demographic, economic and social criteria, which shall be demonstrated statistically". Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidation Benefit must at least be 40% of the reference wage.

Regulations on social security:

- Social Security Law 2012

Pension Rights

An employee is entitled to old age pension at the age of 60 years (for both males and females) with at least 180 months (15 years) of contribution. Both the employer and worker contribute to the financing of old age pension, regulated by the Social Security Board. For old age, disability and survivor's benefit, the contribution is 3% of the monthly payroll for the employer and 3% of the monthly earnings for the worker.

The amount of pension is 15 times the insured worker's average monthly wage in the total contribution period (15 monthly wages). It is paid as a monthly benefit or a lump sum. Employees with more than 180 months of contributions are entitled to the additional amount.

If the contribution is paid for at least 12 months but less than 180 months, 40% of the collected contributions plus accrued interest is paid. If contribution is paid for less than 12 months, worker has the right to receive the amount in lump sum.

Source: §32 & 35 of the Social Security Law 2012

Dependents' / Survivors' Benefit

Dependent's Benefit is paid to the eligible survivors if the deceased received or was entitled to receive an old-age or disability pension at the time of death.

Eligible survivors include persons named by the deceased. If there are no named survivors, survivors include (in order of priority) the deceased's dependent widow(er), children, and parents.

The amount of Dependent's benefit is equal to the old-age or disability pension the deceased received or was entitled to receive which is paid as a monthly benefit or a lump sum.

The amount of pension is 15 times the insured worker's average monthly wage in the total contribution period (15 monthly wages). It is paid as a monthly benefit or a lump sum. Employees with more than 180 months of contributions are entitled to the additional amount.

If the contribution is paid for at least 12 months but less than 180 months, 40% of the collected contributions plus accrued interest is paid. If contribution is paid for less than 12 months, worker has the right to receive the amount in lump sum.

Source: §36 of the Social Security Law 2012

Unemployment Benefits

Unemployment benefit is paid to the employee having at least 36 months of contributions, is registered at a local labour exchange office, and is capable of and available for work. Unemployment must not be due to voluntary leaving, misconduct, or due to refusal of a suitable job offer. Both the parties contribute to the unemployment benefit fund. Employer contribution is 1% of the monthly payroll while employee contribution is 1% of the monthly earnings. The benefit is payable in instalments or in lump sum.

50% of the insured worker's average monthly wage in the last year is paid as unemployment benefit for up to two months. An additional month of the benefit is paid for each 12-month period of contributions exceeding 36 months, up to four additional months. Thus, the maximum duration of unemployment benefits is 6 months

Up to 10% of the unemployment benefit is paid if the insured person has a dependent spouse.

Social Security Law refers to the cases in which unemployment benefit may be terminated, some of the case include rejecting a suitable job offer without sufficient cause, refusal to attend the vocational course, leaving the country for work, etc.

Source: §37-40 of the Social Security Law 2012

Invalidity Benefits

The benefits are paid to the employee assessed as incapable of any work and have at least 180 months of contributions.

The amount of pension is 15 times the insured worker's average monthly wage in the total contribution period (15 monthly wages). It is paid as a monthly benefit or a lump sum. Employees with more than 180 months of contributions are entitled to the additional amount.

If the contribution is paid for at least 12 months but less than 180 months, 40% of the collected contributions plus accrued interest is paid. If contribution is paid for less than 12 months, worker has the right to receive the amount in lump sum.

Source: §32 & 33 of the Social Security Law 2012

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Myanmar has not ratified both the Conventions 100 & 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Constitution of Myanmar, 2008
- Penal Code 1861
- Rights of Persons with Disabilities Law, 2015 (30/2015)
- Ministry of Mines Notification No. 125 of 1996
- Factories Act 1951

Equal Pay

The Constitution of Myanmar guarantees, "Women shall be entitled to the same rights and salaries as that received by men in respect of similar work."

Source: §305 of the Constitution of Myanmar, 2008

Sexual Harassment

There is no specific legal provision providing protection from harassment. However, harassment can lead to criminal and/or civil actions.

Section 354 of Penal Code criminalizes assault intended to "outrage [a woman's] modesty", which is punishable by a sentence of up to two years and a possible fine. Section 509 of Penal Code provides for imprisonment and/or fine to anyone making sounds, exhibiting objects or gestures, or acting in a way to insult a woman's modesty.

Section 354 of the Penal Code states the following: Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. On the other hand, section 509 of the Penal Code states, "Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

Source: §354 & 509 of the Penal Code 1861

Non-Discrimination

The Constitution of Myanmar guarantees each person to enjoy equal rights before the law. The State must not discriminate any citizen on the basis of race, birth, religion, official position, status, culture, sex and wealth. The constitution further states, "The Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. However, nothing in this Section shall prevent appointment of men to the positions that are

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suitable for men only."

The Rights of Persons with Disabilities Law prohibits discrimination on the basis of disability. Employers are required to select and employ persons with disabilities who are registered at the relevant township Employment Exchange Offices. National Committee on the Rights of Disabled People and Duties and Responsibilities, a body formed to ensure implementation of law with representation from government and disability organizations, fixes employment quota for persons with disabilities (though no such order stipulating such quota could be located). Where it is not possible for the employer to meet the employment quota, the law requires payment of certain amount of money to the Fund established for the rights of persons with disabilities.

Discrimination can lead to criminal and/or civil actions.

Source: §347- 348 & 352 of the constitution of Myanmar, 2008; §35-36 of the Rights of Persons with Disabilities Law, 2015 (30/2015)

Equal Choice of Profession

Women cannot do same job as men. They may not be employed for underground work of any mine except for health and social services. Factories Act prohibits employment of women and children in any part of a factory in which a cotton opener is at work.

No restrictions could be found for any other profession.

Source: §93 of the Ministry of Mines Notification No. 125 of 1996; §29 of the Factories Act 1951

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Myanmar has ratified the Convention 182 only.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Constitution of Myanmar 2008
- Shops and Establishments Act, 2016
- Child Law 1993
- Factories Act 1951

Minimum Age for Employment

Minimum age of employment is 13 years. According to the Factories Act 1951, child under the age of 13 years is prohibited from working. A child, between the ages of 14 and 17, is not allowed to work in any factory without fitness certificate from the certified practitioner. They may work for a maximum of four hours a day and should not be permitted to work between the 18:00 and 06:00. The period of work for all children is limited to two shifts which do not overlap, and both of which may not exceed five hours inclusive of intervals. Sunday is a weekly holiday for child workers and there are no exemptions from these provisions.

According to the Shops and Establishments Act, the minimum age of employment is raised to 14 years. The working hours for workers aged 14-16 years are 4 hours' maximum per day and must not exceed this limit. Overtime and night work (18:00 to 06:00) is prohibited for workers under 16 years.

A young worker aged 16-18 years may, with the recommendation of a doctor, be allowed to work where it is safe and there is no impact on the mental and physical development. However, this person must have finished proficiency training for the relevant job, is able to understand and follow the directives for health and safety at the workplace, and is fit and healthy.

Child Law states that every child has the right to engage in work in accordance with law and of his own desire; and the right to employment, rest and leisure and other rights prescribed by law. Furthermore, it states that the Ministry of Labour must protect and safeguard in accordance with the law to ensure the safety of children employees at the place of work and prevention of any infringement or loss of their rights.

The Constitution guarantees the implementation of free, compulsory primary education system. The compulsory education age is however 10 years.

Factories Act requires certifying surgeons to issue eligibility certificates for engaging in work to children of at least 14 years of age (to be engaged as child worker on restricted basis) and 16 years of age (as adult worker). The certificate is valid for a period of 12 months

Source: §28 & 366 of the Constitution of Myanmar 2008; §13-14 of the Shops and Establishments Act, 2016; §24 (a & b) of the Child Law 1993; §75-83 of the Factories Act 1951

Minimum Age for Hazardous Work

In accordance with the Shops and Establishments Act, minimum age of employment for hazardous work is 18 years. A person who has not attained the age of 18 must not be required or allowed to work the prescribed dangerous work or in the dangerous workplace.

The Child law prohibits employing or permitting a child to perform work which is hazardous to his/her life or which may cause disease or which is harmful to the child's moral character.

The Shops and Establishments Act prohibits overtime hours and night work (18:00 to 06:00) for any person of/under 16 years of age. Similar provisions on working hours and prohibition on night work is found in the Factories Act.

Source: §13-14 of the Shops and Establishments Act 2016; §65(a) of the Child Law; §24-29, 59-60 & 75 of the Factories Act 1951

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Myanmar has ratified the Convention 29 only.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Penal Code 1861
- Order No. 1/1999 of 14 May 1999

Prohibition on Forced and Compulsory Labour

Constitution of Myanmar prohibits the enslaving and trafficking in persons. It further prohibits forced labour except hard labour as a punishment for crime duly convicted and duties assigned by the Government in accordance with the law in the interest of the public.

Order No. 1/1999 of 14 May 1999 prohibits Forced and compulsory labour. However, in accordance with a supplementing order prohibition does not apply to requisition of work in cases of emergency due to fire, flood, storm, earthquake, epidemic disease, war or famine, posing an imminent danger to the public.

Forced labour is a criminal offence under the Penal Code. According to the Penal Code, "Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment, of either description for a term which may extend to one year, or with fine, or with both."

Source: §358 of the Constitution of Myanmar 2008; §374 of the Penal Code 1861

Freedom to Change Jobs and Right to Quit

Workers have the right to change jobs after serving due notice of one month to their employer.

For more information on this, please refer to the section on employment security.

Inhumane Working Conditions

Working time may be extended beyond normal working hours of eight hours a day and forty-four (or forty-eight) hours a week. However, the total number of overtime hours may not exceed 12 hours in a week but in emergency case it may extend to 16 hours per week. Moreover, overtime must not extend beyond the midnight. For factories, 20 hours per week for non-continuous work are allowed as overtime hours.

For more information on this, please refer to the section on compensation.

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize:
Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Myanmar has ratified the Convention 87 only.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Constitution of Myanmar 2008
- Labour Organisation Law, 2011
- Labour Organisation Rules, 2012
- Settlement of Labour Disputes Law

Freedom to Join and Form a Union

The Constitution provides the right to form associations and organizations however this right must be contrary to the laws enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality.

A person of working age may join a labour organization of respective trade he/she is employed in. Anti-union discrimination is also prohibited.

Under both the Labour Organization Law and the Settlement of Labour Disputes Law, trade unions are referred to as labour organizations and defined as the Basic Labour Organization, Township Labour Organization, Region or State Labour Organization, Labour Federation and Myanmar Labour Confederation formed under this Law. Employers are required to recognize the labour organizations representing workers in their respective trades.

The Executive Committee of any Labour Organization (other than Myanmar Labour Confederation and the Labour Federation) has to submit the relevant forms along with the organization rules to the relevant Township Registrar to register as labour organization according to its category of trade or activity. If the organization is a Basic Labour Organization (workplace/company or occupational), it also has to attach a form signed by its founding members, stating that the members have agreed on the relevant rules. If the organization is a Township Organization or State/Regional Organization, this has to be signed by the Executive Committee members.

The application for registration must be signed by the chairman of the executive committee. If the labour organization is the Basic Labour Organization, the following must be included on the form: the trade or activity of such organization; the number of workers in the trade or activity of such organization; and the names of workers who support the formation of such organization.

If the labour organization which submits the application is the Township, Region or State Labour organization, the form must include the following: the name of the organization; the number and percentage of relevant labour organizations which support such labour organization; the recommendation of the supporting labour organization; and the Constitution or rules of the labour organization signed by the executive committee members.

Once the Township Registrar has completed verifying the application, it is submitted to the Chief Registrar within 30 days of receipt of the application. The Chief Registrar then examines the application and decides whether or not to accept or refuse the application.

If the application is refused, the labour organization in question may resubmit the application or appeal to the Supreme Court within 90 days from the day the decision to refuse the application was made. All registered organizations are published in the Official Gazette.

For a basic labour organization, at least 30 members (and 10% of the workers in that trade) are required for registration. A township labour organization may be formed with at least 10% of the basic labour organizations in that trade, region or state level organization may be formed with at least 10% of the township labour organization, and a labour federation may be formed only if it is recommended by at least 10% of the region or state labour organizations. Myanmar Labour Federation can be formed only if it is supported by at least 20% of the labour federations.

Source: §354 (c) of the Constitution of Myanmar, 2008; §2(h), 09-11, 29 & 44(d) of the Labour Organisation Law, 2011; §11-18 of the Labour Organisation Rules, Notification No. 1 of 29 February 2012; §2 (b) of the Settlement of Labour Disputes Law (Law No. 5/2012)

Freedom of Collective Bargaining

Collective Bargaining means the process carried out to enable negotiation and conclusion of collective agreement by employer or employer organizations and labour organizations for the determination of conditions of employment and the terms and conditions, their labour relations or the measures for the prevention and settlement of disputes. Collective Agreement is the bilateral written agreement concluded relating to the provisions on the workplace and employment conditions of workers prescribing terms and conditions relating to the relations between employers and workers as well as among their respective organizations, recognition and carrying out the legal entity of labour organizations and promoting the guarantees for protecting workers against social risks."

Settlement of Labour Disputes Law provides that the function of the Coordinating Committee is to promote the good relationship between the employer and worker or labour organization, negotiation and coordination on the conditions of employment, terms and conditions and occupational safety, health, welfare and productivity."

In addition, although this is not an express duty to bargain in good faith, the Labour organization Law states that the employer has a duty to "assist as much as possible if the labour organizations request for help for the interest of his workers. Workers that are excluded from collective bargaining include the Defence Services personnel, members of the Myanmar Police Force or member of the armed organizations under

the control of the Defence Services.

No provision could be found regarding registration, duration, extension, validity and amendment of collective agreement.

Source: §2 & 5 of the Settlement of Labour Disputes Law (Law No. 5/2012); §31 of the Labour Organisation Law, 2011 (No. 7 of 2011)

Right to Strike

The Constitution provides the right to assemble peacefully (without arms) and holding procession.

Strike means collective action taken by decision of some or all workers resulting in a suspension of work, a refusal to work or to continue to work, or a slow-down or other collective actions that are designed to limit production or services relating to social or occupational matters in any dispute. This expression does not include workers' exercise of their right to remove themselves, having reasonable justification to believe that the work situation presents a sudden and serious danger to their life or health.

The labour organization desirous to go on strike in a public utility service, by the desire of the majority of the member workers inform the relevant employer and the relevant conciliation body in accordance with the directive of the relevant labour federation by mentioning the date, place, number of participants, manner and the time of strike at least 14 days in advance. The labour organization which is not working in the public utility service has to inform the relevant employer and the relevant conciliation body in accord with the stipulation with the permission of the relevant labour federation by mentioning the date, place, number of participants, manner and the time of strike at least three days prior to the day of strike. Furthermore, unions at occupational and enterprise level have to attain authorization from the federation union prior to initiating a strike.

In doing so, the employers and the labour organizations shall seek to reach agreement on the number and kind of posts that need to be filled in the event of a strike and the persons who will be required to remain at work (provision of minimum service). If they fail to reach agreement, the minimum service shall be determined by the competent court.

The relevant labour federation must reply to the relevant labour organization in time whether it is permitted or not relating to the submission of any labour organization to go on strike.

The strike is considered illegal if it is involved with any of the followings: (a) being the following essential services, those whose interruption is liable to endanger the life, health or security of the people in any segment of the population: (i) water

services; (ii) electricity services; (iii) fire services; (iv) health services; (v) telecommunications services.

The employer may impede a worker's right to strike. Similarly, trade unions cannot force workers to participate in a strike if they do not want to do so. Dismissal of worker during a legal strike or illegal lockout is prohibited under the law.

Source: §354 (b) of the Constitution of Myanmar, 2008; §2(g) & 38-50 of the Labour Organization Law 2011; §42 of the Settlement of Labour Disputes Law (Law No. 5/2012)

DECENT WORK QUESTIONNAIRE

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Check

DecentWorkCheck Myanmar is a product of WageIndicator.org
and www.mywage.org/myanmar/home



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>





05/13 Family Responsibilities

15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>





06/13 Maternity & Work

18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>





* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |













09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



10/13 Fair Treatment

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |




* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

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Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Myanmar scored 39 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.