

Technical Update

June 2019

1. Labor – Duration of Fixed Duration Contract and Probationary Period

Ministry of Labor and Vocational Training (MLVT) – Instruction No. 050 dated 17 May 2019 on the determination of types of employment contracts

a) Fixed Duration Contract (FDC)

FDC can be made for a specific duration not exceeding two (2) years. It can be renewed one or more times, as long as the renewal period does not exceed two (2) years. Therefore, the maximum period of an FDC can be up to four (4) years including the initial period and the renewal period.

Instruction No. 050 provides examples to further clarify the calculation of the total maximum period of an FDC as follows:

1. If the first FDC's period is six (6) months, the total maximum period of such FDC is two (2) years and six (6) months.
2. If the first FDC's period is one (1) year, the total maximum period of such FDC is three (3) years.
3. If the first FDC's period is two (2) years, the total maximum period of such FDC is four (4) years.

If the renewal period of an FDC exceeds two (2) years, such FDC will automatically become an Undetermined Duration Contract (UDC).

At least one (1) month break in between FDCs is required to maintain the FDC status; otherwise, the subsequent FDC shall be considered as a renewal of the former FDC which, together, form a UDC.

b) Probationary period

The probationary period is for the employer to judge the capacity, skill, talent, and commitment of the employee, and for the employee to understand the working conditions. So, the probationary period is not counted for the calculation of severance payment under an FDC or seniority payment under a UDC.

The probationary period cannot last longer than three (3) months for regular employees, two (2) months for specialized workers, and one (1) month for ordinary

workers/non-specialized workers. The probationary period cannot be extended or renewed even if there is mutual consent.

2. Labor – Back Pay of Seniority Payment for the Garment, Textile and Footwear Sector

MLVT – Instruction No. 057 dated 10 June 2019 on the back pay of seniority payment for enterprises in the garment, textile and footwear sector

On 10 June 2019, the MLVT issued an instruction on the back pay of seniority payment for enterprises in the garment, textile and footwear sector before its first-time implementation. This instruction provides clarity on (1) how to count seniority; (2) how to calculate the back pay of the seniority payment, together with formulas and an example; (3) how to settle the payment of the back pay of the seniority payment; (4) applicable compensation for termination of workers/employees; and (5) the overall principles.

The Instruction sets out as follows:

- Working seniority for calculating the seniority payment must be counted from the signing of the employment contract by excluding probationary period.
- The worker/employee who has passed probation and who has worked for at least 21 days must be considered as working for one month and will be entitled for seniority payment.
- The actual wage that is used as the basis for calculating the back pay of seniority payment is the actual wage that excludes other benefits such as benefits of healthcare, occupational risk and overtime.
- For retired or deceased employees from 2019 onwards, the employer must settle the total payment of the remaining back pay of the seniority payment to the employee or the heirs of the deceased employee
- The period of maternity leave, work-related accident and sick leave must be included in the working seniority for calculating the seniority payment.

- This back pay of seniority payment must be settled with the second wage payment that employees receive in June and December. So in every second payment of wages in June and December, the employees/workers in the garment, textile and footwear sectors who have seniority before 2019 must receive:
 - Second wage payment
 - Payment of new seniority in each semester equal to 7.5 days
 - Back pay of seniority payment, if applicable



3. Labor – New Seniority Payment from 2019 onwards

MLVT – Instruction No. 058 dated 10 June 2019 on the new seniority payment from 2019 onwards

Similar to Instruction No. 057, the MLVT issued another Instruction No. 058 on the new seniority payment from 2019 onwards, which provides further clarity on the new seniority payments applicable for owners or directors of enterprises/establishments, professional organizations and workers/employees who are under the scope of the Labor Law.

- The seniority of workers/employees for calculating the seniority payment shall be counted from the signing date of the employment contract by excluding the probationary period.
- The worker/employee who has passed probation and who has worked in the enterprise/establishment for at least 21 days shall be considered as having completed work for one month and will be entitled to seniority payment.
- Wages and other benefits taken as a basis for calculating seniority payment from 2019 onwards are wages and other benefits before tax.
- For workers/employees who retire or die from 2019 onwards, the employer must provide the worker/employee or his/her heirs as follows:
 - The remaining payment of back pay of seniority payment
 - The seniority payment in any semester that the worker/employee has retired or died, equal to 7 days of wages and other benefits if the worker/employee has remaining seniority from 1 month to below 6 months
- The period of maternity leave, work-related accident and sick leave must be included in the seniority period. However, occupational risk and health care benefits received during these leaves must not be counted for calculation of seniority payment.
- From 2019 onwards, in every second wages payment in June and December, the workers/employees must receive as follows:
 - Second wage payment
 - Payment of new seniority for that semester equal to 7.5 days
 - Back pay of seniority payment before 2019, if any.

4. Health- Registration of Medicines, Medical Equipment and Cosmetic Products via the Online System

Ministry of Health (MoH) – Notification of 20 June 2019 on the registration of medicines, medical equipment and cosmetic products via the online system

- Ensure transparency to customers
- Create convenience and faster service to customers
- Provide quick access to updated information to the competent authorities and customers
- Reduce time costs and expenses of customers
 - Ensure the security and confidentiality of customer information
 - Give the authorities the competence to control pharmaceutical products.

Moreover, the MoH will implement the QR Code system on the boxes of pharmaceutical products, medical equipment and cosmetic products, which will ensure all the specific information of the product such as registration or notification number, source of product, date of manufacture, expiry date and name of the import and distribution company. This system will help the pharmaceutical inspectors as well as product users to identify the fake or unregistered products in the Cambodian market. For the QR Code system, the MoH will discuss more with the private sector and set the exact date for the implementation.

As a committed tax and corporate consultant, we welcome the opportunity to discuss the applicability of these regulations to your business at your request.

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