

Legal Alert

Seniority Indemnity in Cambodia:
Key Compliance Issue for Employers and HR Professionals

Seniority indemnity remains a significant legal compliance obligation under Cambodian labor law. Although the regulations have been in place for several years, in our experience assisting clients, questions and discussions on this subject matter continue to arise for employers and HR professionals. This legal alert provides a concise refresher of the key rules in hopes that it will support your enterprise or organization in meeting the obligation.

Regulatory Background

The legal entitlement of seniority indemnity for employees on an Undetermined Duration Contract (UDC) did not exist until the amendment of the Labor Law in 2018. Prior to this, a different scheme called 'indemnity for dismissal' was in place under Article 89 of the Labor Law (prior to amendment) and was conditional and payable to UDC employees upon the contract termination, except in cases of serious misconduct.

Due to certain instances of enterprise closing without proper compliance with the indemnity for dismissal obligations, the Ministry of Labor and Vocational Training initiated the amendment to the Labor Law to address the problem. This resulted in the 'indemnity for dismissal' scheme being replaced with the current 'seniority indemnity' under Article 89 (New) of the Amendment to Labor Law 2018.

1. What is Seniority Indemnity?

Seniority indemnity is a type of entitlement for the employees hired under the UDC covered by the scope of Labor Law, as set out under Article 89 (New) of the Amendment to Labor Law 2018. For the avoidance of doubt, seniority indemnity is not reserved for Fixed Duration Contract employees.

There are two types of seniority indemnity:

- On-going seniority indemnity: the entitlement that accrues for the employment service starting from 2019 onward.



- Back pay of seniority indemnity: the entitlement that had accrued for the employment service prior to 2019 (going back to 2008), which is subject to sector-specific rules of payment.

2. Who is Entitled to Seniority Indemnity?

In accordance with Prakas No. 443/18 and Instruction No. 023/19, the seniority indemnity is only applicable to the UDC employees who are covered by the scope of Labor Law. As stated earlier, employees on a Fixed Duration Contract (FDC) are not entitled to seniority indemnity but are instead entitled to a severance payment at the end of their contract, which covered by the separate rules.

Exemption: It is important to note that certain entities and their employees are exempt from the seniority indemnity regulations. Pursuant to Instruction No. 044/19, employees of foreign diplomatic representatives, United Nations agencies, and international organizations in Cambodia are not subject to the implementation of seniority indemnity under Prakas No. 443/19.

Probationary Period

Treatment of the probationary period is a key consideration. In principle under Instruction No. 057, an employee's probationary period is **NOT** included in the calculation of seniority indemnity. From a legal perspective, the employee's seniority for indemnity purposes starts only after they have successfully completed their probationary period and have been officially confirmed as an employee on a UDC.

- New Employees. A new employee who has passed their probation and worked for at least 21 days is entitled to the seniority indemnity for that semester.
- Termination During Probation. If an employee's contract is terminated during the probationary period, they are generally not entitled to the seniority indemnity.

3. Method of Calculation for Seniority Indemnity

Entitlement and Payment Schedules

- **On-going Seniority Indemnity.** In all UDC employees who are working from 2019, employers are required to pay a seniority indemnity payment equivalent to 15 days of wages and benefits each year which will be paid twice per year as follows:
 - (i). 7.5 days of wages and benefits in June;
 - (ii). 7.5 days of wages and benefits in December.
- **Back Pay of Seniority Indemnity.** In UDC employees who worked prior to 2019, employers are required to pay a back pay of seniority indemnity payment as below.
 - (i). Textile, garment and footwear sectors: equivalent to 30 days of wages and benefits for each year worked prior to 2019 which paid twice per year (15 days in June and 15 days in December);
 - (ii). Non-textile, garment and footwear sectors: equivalent to 6 days of wages and benefits for each year worked prior to 2019 which paid twice per year (3 days in June and 3 days in December).

The maximum amount of back pay of seniority indemnity must not exceed 6 months of the average wage of each year.

(See Prakas No. 443/18 and Prakas No. 042/19)

Seniority Indemnity Upon Termination

If a UDC employee's employment is terminated by the employer for a valid reason (other than serious misconduct or resignation by employee), they are entitled to:

- Seniority indemnity for the current semester;
- Any unpaid seniority indemnity accrued before 2019;
- Other final payments (last wage, payment in lieu of unused annual leave, payment in lieu of improper or insufficient prior notice).

Method of Calculation

*First, calculate the average wage and fringe benefits per month

Average wage and benefits per month =	Total wage and benefits per semester 6 months or actual months worked
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*Second, calculate the average wage and fringe benefits per day

Average wage and benefits per day =	Average wage and benefits per month 22 or 24 or 26 working days, depending on the enterprise's practice of actual working days per month
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Therefore, seniority indemnity for the semester is:

Amount of seniority indemnity for the semester =	"average wage and benefits per day" x 7.5 days
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*Note in case of termination:

- 7 days (the separation/termination is at the point between first month and sixth month in the semester);
- 7.5 days (the separation/termination is at the end of the semester).

(See Article 89 (New) the Amendment to Labor Law 2018; Instruction No. 058/19)

References

- Law on Amendment of Article 87, Title "C", Section 3 of Chapter 4, Article 89, Article 90, Article 91, Article 94, Article 110, Article 120, and Article 122 of Labor Law, dated 26 June 2018 ("Amendment to Labor Law 2018");
- Prakas No. 443 on the Payment of Seniority Indemnity, dated 21 September 2018 ("Prakas No. 443/18");
- Instruction No. 042 on Payment of Seniority Indemnity Pre-2019 for Non-Textile, Garment and Footwear Sectors, dated 22 March 2019 ("Instruction No. 042/19");
- Instruction No. 044 on the Implementation of Prakas No. 442 and Prakas No. 443 in respect of Employees of Foreign Diplomatic Representatives, Agencies of the United Nations, and International Organization in Cambodia, dated 05 April 2019 ("Instruction No. 044/19");
- Instruction No. 057 on Payment of Seniority Indemnity Pre-2019 for Textile, Garment and Footwear Sectors, dated 10 June 2019 ("Instruction No. 057/19");
- Instruction No. 058 on Payment of New Seniority Indemnity in Each Year from 2019, dated 10 June 2019 ("Instruction No. 058"); and
- Instruction No. 023 on Payment of Back Pay of Pre-2019 Seniority Indemnity and Payment of New Seniority Indemnity from 2019 for Enterprises in Textile, Garment and Footwear Sectors, dated 08 July 2019 ("Instruction No. 023/19").

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