

## 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, with a focus on on-going seniority indemnity, to support your enterprise or organization in meeting your compliance obligations.

#### Regulatory Background

The legal entitlement of seniority indemnity for employees on Undetermined Duration Contracts (UDCs) originated from the 2018 amendment of the Labor Law. 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 enterprises 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 amended Labor Law.

#### What is Seniority Indemnity?

Seniority indemnity is a type of entitlement for employees on UDCs, as set out under Article 89 (New) of the amended Labor Law. For the avoidance of doubt, seniority indemnity is not available for employees on Fixed Duration Contracts.

There are two types of seniority indemnity:

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



## Who is Entitled to Seniority Indemnity?

In accordance with Prakas No. 443/18 and Instruction No. 023/19, seniority indemnity is only applicable to the UDC employees who are covered by the scope of Labor Law. Also, 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 is 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 certain international organizations or intergovernmental 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 (i.e., January to June or July to December).
- Termination During Probation. If an employee's contract is terminated during the probationary period, they are generally not entitled to the seniority indemnity.

## Obligation and Method of Calculation for Seniority Indemnity

### Entitlement and Payment Schedules

UDC employees who are working from 2019 are entitled to an on-going seniority indemnity equivalent to 15 days of wages and benefits each year, which will be disbursed twice per year as follows:

- 7.5 days of wages and benefits in June;
- 7.5 days of wages and benefits in December.

For periods of employment prior to 2019, UDC employees are entitled to a back pay of seniority indemnity equivalent to 15 days of actual wages per year of service. The disbursement amount, though, depends on the sector in which an employee is employed. Employees in textile, garment and footwear sectors receive 30 days of their back pay entitlement twice per year; in contrast, in employees in all other sectors receive 6 days of their back pay entitlement twice per year.

*(See Prakas No. 443/18, Instruction No. 042/19, and Instruction No. 057/19)*

### Method of Calculation

Note that the following applies to on-going seniority indemnity. Back pay of seniority indemnity is subject to a separate method of calculation.

First, calculate the average wage and fringe benefits per month

$$\text{Average wage and benefits per month} = \frac{\text{Total wage and benefits per semester}}{6 \text{ months or actual months worked}}$$

Second, calculate the average wage and fringe benefits per day

$$\text{Average wage and benefits per day} = \frac{\text{Average wage and benefits per month}}{22 \text{ or } 24 \text{ or } 26 \text{ working days, depending on the enterprise's practice of actual working days per month}}$$

Therefore, seniority indemnity for the semester is:

$$\text{Amount of seniority indemnity for the semester} = \text{"average wage and benefits per day"} \times 7.5 \text{ days}^*$$

(\*) Note in case of termination:

- 7 days if the termination occurs between first month and sixth month in the semester;
- 7.5 days if the termination occurs upon completion of the six-month semester period.

*(See Article 89 (New) of the amended Labor Law; Instruction No. 058/19)*

### 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:

- On-going seniority indemnity for the current semester;
- Any unpaid of back pay of 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).

### **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. 058/19”); 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”).

### ***Further information***

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**KEY CONTACT:**

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**SOK Lor**

Managing Director, Sok Xing & Hwang

T: +855 12 212 515

E: [lor.sok@sxhlaw.com](mailto:lor.sok@sxhlaw.com)



**LAM Kimleng**

Associate, Sok Xing & Hwang

T: +855 93 238 885

E: [kimleng.lam@sxhlaw.com](mailto:kimleng.lam@sxhlaw.com)