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# LABOUR LAW TOOL

## Myanmar

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# 1. Human Trafficking Legal Framework

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The *Anti-Trafficking in Persons Law (2005)* deals with human trafficking, including rehabilitation of the victim. Under the law, human trafficking is prohibited and defined as when a person recruits, transports, transfers, sells, purchase, rents, leases, harbours or receives another person, for the purpose of exploitation, with or without consent, through:

- Threat; use of force; other form of coercion;
- Abduction;
- Fraud;
- Deception;
- Abuse of power or taking advantage of the vulnerability of a person; or
- The giving or receiving money or benefit to obtain the consent of the person who has control over another person.

Trafficking of women, children and young people carries a penalty of ten years to life imprisonment and a fine. Trafficking in all other persons carries a penalty of five to ten years imprisonment and a fine.

## 2. Recruitment Fees

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As background, under the *Employment and Skill Development Law*<sup>1</sup>, the Ministry of Labour, Population and Immigration is responsible for assisting employment seekers to seek employment, and employers to employ suitable employees in Myanmar. To that end, the Ministry has established labour exchange offices and permits private recruitment agencies to provide free services to employment seekers. Any recruitment for employment or collection of fees from the worker for recruitment services, without the permission of the Ministry, carries a penalty of imprisonment for a period not exceeding three years or fine or both<sup>2</sup>.

The *Overseas Employment Law* deals with employment seekers looking for overseas employment. Under this law, the Directorate of Labour issues licences to overseas employment agencies to provide recruitment services in Myanmar and may penalise agencies for not providing services as agreed or charging a service fee in excess of the fees prescribed by the authorities<sup>3</sup>. Such penalties include suspension or cancelling of the licence<sup>4</sup>.

Our responses below are subject to compliance with the Overseas Employment Law, where applicable.

### a. Fees paid for work permits or renewal

No breach of local laws. This issue is determined by agreement between employers and employees.

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1 Sections 3 and 4 of the *Employment and Skill Development Law*

2 Section 35 of the *Employment and Skill Development Law*

3 Section 15 of the *Overseas Employment Law*

4 Section 15 of the *Overseas Employment Law*

#### **b. Fees paid for passports (and/or passport renewals)**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **c. Fees paid for visas and other travel documents**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **d. Fees paid for border crossings**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **e. Fees paid for travel from home to work location**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **f. Fees paid for work training/orientation**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **g. Fees paid to employer for rent**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **h. Fees paid for accommodation in the departure location or during transit to the work location**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **i. Fees paid for 'placement' 'recruitment' or 'thank you' fees**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **j. Fees paid for translation services**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **k. Fees paid for document checking and certification**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **l. Fees paid for health assessment**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **m. Fees paid for vaccinations**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **n. Fees paid for travel booking services**

No breach of local laws. This issue is determined by agreement between employers and employees.

#### **o. Fees paid for guaranteeing future work**

No breach of local laws. This issue is determined by agreement between employers and employees.



#### p. Fees paid for on-the-job training

No breach of local laws. This issue is determined by agreement between employers and employees.

#### q. Knowingly charging fees to a worker to secure a job that does not exist

This conduct may be an offence under section 420 of the *Penal Code* which provides a penalty for imprisonment for a period not exceeding seven years or fine or both.

## 3. Child Labour

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#### a. Employing a child below the legal working age.

The *Minimum Age Convention 1973* was ratified in Myanmar in 2020. Consistent with the Convention, the minimum age for employment in Myanmar is 14 years<sup>5</sup>.

The minimum age specification applies to industry or activities such as mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; plantations and other agricultural undertaking mainly producing for commercial purposes. Employment of a person under 14 years of age carries a penalty for imprisonment for a period not exceeding three months or fine for an amount not exceeding MMK 2,000,000 under the *Factories Act*.

The same minimum age also applies to work in the retail sector. Employment of a person under 14 years of age carries a penalty of imprisonment for a period not exceeding six months and fine for an amount not exceeding MMK 10,000,000 under the *Shops and Establishment Law*.

The minimum age specification does not apply to family and small-scale holdings which produce for local consumption and do not regularly employ hired workers. There are no relevant regulations in this area.

Separate legislation applies to employment in factories. Under the *Factories Act*, children under 14 years of age are not permitted to work in factories.<sup>6</sup> However, a young person aged 14 or 15 years may work in a factory with a supporting certificate of fitness issued by a registered medical practitioner<sup>7</sup> for a total of four hours per day.<sup>8</sup> An adolescent (ie: over 16 years but under 18 years of age) may work regular hours in a factory setting with a supporting certificate of fitness.<sup>9</sup>

#### b. Employing a minor to engage in hazardous work.

Under the *Factories Act*, persons under the age of 18 years may not be employed at a dangerous or unhealthy workplaces.<sup>10</sup> This applies only to employment in factories. The penalty for violation is three months imprisonment, or a fine not less than MMK 2,000,000 or both.

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5 as Myanmar's economy and educational facilities are insufficiently developed - Article 2 paragraph 4 of the [Minimum Age Convention 1973 \(No. 138\)](#). The minimum age is also established in Section 48 (b) of the *Child Rights Law*; Section 75 of the *Factories Act*; and Section 14 of the *Shops and Establishments Law*.

6 Section 75 of the *Factories Act*

7 Section 77 of the *Factories Act*

8 Section 79 of the *Factories Act*

9 Section 78 of the *Factories Act*

## 4. Wage Deductions

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As background, sections 7 and 11 of the *Payment of Wage Law* provide that employers may deduct amounts from employees' wages for specified reasons being:

- a. Absence on work days (other than days the employee is on leave or on public holidays);
- b. Accommodation, transportation, meals, power and water bill payment which is arranged by the employer and accepted by the employee;
- c. Income tax;
- d. Advance, saving or statutory contribution (e.G. Social security fund); and
- e. Sums payable by the employee to the employer pursuant to an order of a court or a tribunal;

Employers may also deduct an amount from employees' wages as a fine under the following circumstances:<sup>11</sup>

- a. Fines for loss and damage suffered by the employer caused by an employee's intentional neglect, or negligence, dishonest act or omission; and
- b. Fines specified in the employment contract.

Before deducting a fine from an employee's wage, the employer must:

- a. Discuss the amount of the fine to be deducted from the employee's wages with the conciliatory body of the workplace known as the workplace coordinating committee, the workers' organisation/union or the employee; and
- b. Obtain approval from the factory and general labour law inspection department (fgllid) before the payment of wage is due.

The fines are required to be documented in Form (4) under rule 7 of the *Payment of Wage Rules*.

The amount of such fine shall not exceed 50% of the employee's monthly wage.

If the employee is unhappy about the fine, they may:

- a. Ask the workers' organisation or conciliatory body to review the wage deduction if they consider it is without a valid ground;
- b. Present the claim to the chief inspector of fgllid from the day of deduction of wage. The decision of the chief inspector is final;
- c. Institute a civil suit for the claim.

Employers who deduct employees' wages unlawfully, can be sentenced to imprisonment for a period not exceeding three months, or a fine of a minimum amount of MMK 2,000,000, or both.<sup>12</sup>

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10 Section 75A of the *Factories Act*

11 Section 11 of the *Payment of Wage Law*



## a. Withholding wages as a bond

Withholding wages as a bond is not permitted under section 7 and 11 of the *Payment of Wage Law*. This conduct violates section 24 of the *Payment of Wage Law*.

The penalty for breach is imprisonment for a period not exceeding three months, or a fine of a minimum amount of MMK 2,000,000, or both.<sup>13</sup>

## b. Withholding wages as forced savings

Unless the employee agrees, withholding wages as forced savings is not permitted under section 7 and 11 of the *Payment of Wage Law*.

The penalty for breach is imprisonment for a period not exceeding three months, or a fine of a minimum amount of MMK 2,000,000, or both.<sup>14</sup>

## c. Withholding wages as punishment for being late to shift

Withholding wages as punishment for being late to work is only permitted if the employment contract provides for this, and the employment contract has been endorsed by the Township Labour Office.<sup>15</sup> There are no specific provisions providing for the penalty in respect of a failure to obtain the endorsement on the employment contract, however, a general violation of rules, regulations, orders and directives issued under the *Employment and Skill Development Law* provides a penalty for imprisonment for a period not exceeding one year or fine or both<sup>16</sup>

## d. Withholding wages for refusing overtime

Employers cannot require employees to work overtime unless the employees agree to do so: Section 17 (a) of the *Shops and Establishments Law (2016)*.

Violation is punishable under Section 28 of the *Shops and Establishments Law (2016)* which provides a penalty for imprisonment for a period not exceeding three months or fine for an amount not exceeding MMK 7,500,000. The *Shops and Establishments Law* applies to the retail/wholesale and all general service sectors.

We have not been able to identify similar provisions in regulations governing other sectors of employment.

## e. Withholding wages for missing goods

Employers may only withhold wages for missing goods if the missing goods were entrusted to the employee and they are missing due to the employee's act or omission.<sup>17</sup> The penalty for violation carries an imprisonment for a period not exceeding three months and fine for an amount not exceeding MMK 2,000,000.

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12 Section 24 of the *Payment of Wage Law*

13 Section 24 of the *Payment of Wage Law*

14 Section 24 of the *Payment of Wage Law*

15 Sections 7 and 11 of the *Payment of Wage Law*.

16 Section 36 of the *Employment and Skill Development Law*

17 Rule 11 of the *Payment of Wage Rules* (Notification No. 193/2018).

## f. Withholding wages for accommodation (without explicit consent)

Employers may withhold wages for accommodation if the employee agrees: section 7 (b) of the *Payment of Wage Law* (2016). If there is no explicit consent from the employee, employers may not deduct wages for this reason.

## g. Withholding wages for bills such as water (without explicit consent)

Employer may withhold wages for bills such as water if the employee agrees: section 7 (b) of the *Payment of Wage Law* (2016). If there is no explicit consent from the employee, employers may not deduct wages for this reason. **Withholding wages to pay back recruitment fees**

Withholding wages to pay back recruitment fees is not a permitted type of wage deduction under the *Payment of Wage Law*. Accordingly, employers may not deduct wages for this reason unless it is agreed in the employment contract. The penalty for violation is imprisonment for a period not exceeding three months and fine for an amount not exceeding MMK 2,000,000.

The prescribed employment contract issued by the Ministry of Labour, Immigration and Population (“MOLIP”) does not permit employers to deduct wages for this reason. Any employer with more than five employees must use the prescribed employment contract.

## h. Withholding wages for absence/illness (outside of legal terms in employment contract)

Withholding wages for absence/illness (inconsistent with legal terms in the employment contract) is a violation of the *Payment of Wage Law*.

The penalty for breach is imprisonment for a period not exceeding three months, or a fine of a minimum amount of MMK 2,000,000, or both.<sup>18</sup>

## i. Withholding wages for uniform/work equipment

Withholding wages for uniform/work equipment is not permitted under the *Payment of Wage Law*. Accordingly, employers may not deduct wages for this reason unless it is agreed in the employment contract. The penalty for breach is imprisonment for a period not exceeding three months and fine for an amount not exceeding MMK 2,000,000.

## j. Taking control of the workers’ bank account

Taking control of the workers’ bank account is not permitted under the *Payment of Wage Law* or any other labour laws. The penalty for breach is imprisonment for a period not exceeding three months and fine for an amount not exceeding MMK 2,000,000.

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18 Section 24 of the *Payment of Wage Law*

## 5. Employment Contracts

As background, employers that employ five or more local employees must adopt the prescribed employment contract from MOLIP which sets out the mandatory terms and conditions prescribed in section 5 of the *Employment and Skill Development Law*.<sup>19</sup> These include terms such as probation period, wages/salary, place of work, duration of the contract, working hours, rest days, holidays and leave, overtime work, arrangements for meals during the period of work, accommodation and medical treatment, rules to be followed by the employee, resignation by employee, and termination of contract. These terms apply regardless of the number of employees in any company. Breach of these requirements attracts a penalty of imprisonment for a term not exceeding six months, or a fine, or both.<sup>20</sup>

### a. Workers do not have necessary legal work permits

Citizens, associate citizens and naturalized citizens of Myanmar are not required to have legal work permits.

Generally, foreign employees are allowed to work in Myanmar based on a business visa applied from MOLIP.

### b. Employment contract is not in writing

This conduct is a breach of local law. In Myanmar employment contracts must be in writing<sup>21</sup> and must include mandatory terms and conditions set out in section 5 of the *Employment and Skill Development Law*. Breach of these requirements attracts a penalty of imprisonment for a term not exceeding six months, or a fine, or both.<sup>22</sup>

Employment contracts must also be endorsed by the Township Labour Office.<sup>23</sup>

### c. Employment contract is not signed by the worker

This conduct is a breach of local law. In Myanmar employment contracts must be signed by the employee.<sup>24</sup>

The penalty for breach is imprisonment for a period not exceeding six months or fine or both.

### d. Employment contract is not signed by the employer

This conduct is a breach of local law. In Myanmar employment contracts must be signed by the employers.<sup>25</sup>

The penalty for breach is imprisonment for a period not exceeding six months or fine or both.

19 These include terms such as probation period, wages/salary, place of work, duration of the contract, working hours, rest days, holidays and leave, overtime work, arrangements for meals during the period of work, accommodation and medical treatment, rules to be followed by the employee, resignation by employee, termination of contract etc..

20 Section 5(b) and section 38(a) of the *Employment and Skill Development Law*

21 Section 5 (a) of the *Employment and Skill Development Law*; and decisions of the courts and tribunals

22 Section 5(b) and section 38(a) of the *Employment and Skill Development Law*

23 Section 5(g) of the *Employment and Skill Development Law (2013)*.

24 Section 5(a) of the *Employment and Skill Development Law (2013)*.

25 Section 5 of the *Employment and Skill Development Law (2013)*.

## e. Employment contract does not comply with local law

In Myanmar, employment contracts must include the types of terms and conditions specified in the *Employment and Skill Development Law*. See above. Those terms and conditions include terms such as probation period, wages/salary, place of work, duration of the contract, working hours, rest days, holidays and leave, overtime work, arrangements for meals during the period of work, accommodation and medical treatment, rules to be followed by the employee, resignation by employee, termination of contract etc.

The penalty for breach is imprisonment for a period not exceeding six months or fine or both.

## f. Employment contract is not in the worker's native language

As it is a statutory requirement<sup>26</sup> that employment contracts are endorsed by the Township Labour Office, employment contracts must be in the official language, Burmese.

There is no statutory requirement for the contract to be translated into the employee's native language.

## g. Contract excludes key components

### i. Wages estimates

This is a breach of section 29(a) of the *Contract Act (1872)* read with section 5(b) (3) of the *Employment and Skill Development Law (2013)*. The penalty for breach is imprisonment for a period not exceeding six months or fine or both.

### ii. Early termination with notice

This is a breach of section 29(a) of the *Contract Act (1872)* read with section 5(b) (16) of the *Employment and Skill Development Law (2013)*. The penalty for breach is imprisonment for a period not exceeding six months or fine or both

### iii. Early termination without notice

This is a breach of section 29(a) of the *Contract Act (1872)* read with section 5(b) (16) of the *Employment and Skill Development Law (2013)*. The penalty for breach is imprisonment for a period not exceeding six months or fine or both

### iv. Details of mandatory recruitment fees

No breach of local laws. There is no law requiring details of mandatory recruitment fees to be included in employment contracts.

### v. Transportation terms (including repatriation costs at end of contract)

If an employer wishes to seek reimbursement from employees, or require employees to pay, for transportation costs, the right to do so must be included in the employment contract. If it is not included in the employment contract (i.e., not agreed to by the employee), the employer cannot seek reimbursement from the employee. The competent tribunal or court may find any decision by the employer to deduct without the consent of the employee to be a breach of the employment contract, which carries an imprisonment for a period not exceeding three months or fine or both.<sup>27</sup>

26 Section 5(g) of the Employment and Skill Development Law (2013).

27 Section 39 of the *Employment and Skill Development Law*

#### **vi. Accommodation terms (if relevant);**

If an employer wishes to seek reimbursement from employees, or require employees to pay, for accommodation costs, the right to do so must be included in the employment contract. If it is not included in the employment contract (i.e., not agreed to by the employee), the employer cannot seek reimbursement from the employee. The competent tribunal or court may find any decision by the employer to deduct without the consent of the employee to be a breach of the employment contract, which carries an imprisonment for a period not exceeding three months or fine or both.<sup>28</sup>

#### **vii. Discipline terms (lateness, illness etc.)**

Disciplinary terms must be set out in employment contracts. If an employer takes disciplinary action against an employee for conduct not specified in the contract, the employee may lodge a complaint at the labour office. The penalty for breach is imprisonment for a period not exceeding three months or fine or both.

#### **viii. Standard holiday entitlements**

This is a breach of the *Leave and Holiday Act (1872)* read with section 5(b)(7)(11) of the *Employment and Skill Development Law (2013)*. The penalty for breach is imprisonment for a period not exceeding three months or fine or both.

#### **ix. Illness entitlements**

This is a breach of the *Leave and Holiday Act (1872)* read with section 5(b)(7)(11) of the *Employment and Skill Development Law (2013)*. The penalty for breach is imprisonment for a period not exceeding three months or fine or both.

### **h. Illiterate workers have not been read their contract**

The labour laws do not require employers to read their employment contracts to employees. However, in practice the employer should explain the terms of the contract verbally to the employee and insert a record of the explanation into the contract. This is supported by the fact that each of the employer and employee are required to sign the prescribed employment contract before their respective witnesses.

### **i. Employment contract has been substituted or amended after signing**

Employment contracts can only be substituted or amended after signing by mutual agreement between the employer and employee.<sup>29</sup> Otherwise, the amendment is void.

### **j. Workers are not provided a copy of their contract**

The labour office requires three executed copies, one for official record, one for the employer and one for the employee. Employees may lodge a complaint to the labour office if they are not provided with a copy of the contract. If the employer fails to rectify the breach upon an order from the labour office, a violation of the order attracts a penalty of imprisonment for a period not exceeding one year or fine or both.

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28 Section 39 of the *Employment and Skill Development Law*

29 Section 5(g) of the *Employment and Skill Development Law (2013)*

## 6. Payment Issues

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### a. Payslips are not provided to workers

Rule 9 of the *Payment of Wages Rules* requires employers to keep a record of payment of wages in accordance with a specified form and counter-signed by the employee. These records are subject to inspection by the FGLID. Employers are, in practice, required to provide pay records to the employees. Failure to do so may result in the employee making a complaint to the labour office which may issue an order directing the employer to rectify the issue. A violation of the order issued by the labour office attracts a penalty of imprisonment for a period not exceeding one year or fine or both.

### b. Payslips are not compliant with local laws, if any

Rule 9 of the *Payment of Wages Rules* requires employers to keep a record of payment of wages in accordance with a specified form and counter-signed by the employee. These records are subject to inspection by the FGLID. The penalty for breach is a fine of an amount not exceeding MMK 500,000<sup>30</sup>.

### c. Payslips are not legible

See (b) above. There is no specific legislation requiring payslips to be legible.

### d. Workers are not paid the salary agreed in their contract of employment

This conduct breaches local law. Employers are required to pay employees the salary agreed in their employment contract. The penalty for breach is imprisonment for a term not exceeding 3 months, or a fine, or both.

### e. Workers are paid late

This conduct breaches local law. Employers are required to pay their employees upon completion of work or at a time mutually agreed by the employer and employee, but not later than one month from completion of work.<sup>31</sup> The penalty for breach is imprisonment for a period not exceeding three months or fine for an amount not exceeding MMK 2,000,000 or both.

### f. Workers are not paid minimum wage

This conduct breaches local law. Employers must pay a wage to employees which is not less than the minimum wage prescribed by the *Minimum Wage Law (2013)*.<sup>32</sup> The penalty for breach is imprisonment for a period not exceeding one year or fine for an amount not exceeding MMK 500,000 or both.

Any term in an employment contract, relating to the minimum wage is void if it does not comply with the *Minimum Wage Law*.

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30 Section 26 of the *Payment of Wage Law*

31 *Payment of Wage Law*.

32 Section 22(a) of *Payment of Wage Law*.



### **g. Workers are paid a piece-rate that is not equal to minimum wage**

See response to 6(f) above.

### **h. Workers are not provided with holiday pay**

This conduct breaches local law. Employers are required to pay employees their full pay for public holidays.<sup>33</sup> The penalty for breach is imprisonment for a term not exceeding three months, or a fine for an amount not exceeding MMK 50,000, or both. The court may order the employer to grant an employee the holiday and full pay for such holiday.<sup>34</sup>

### **i. Workers are not provided with sick pay**

This conduct breaches local law. Employees are entitled to a maximum of 30 days medical leave per year with full wage or salary, provided it is supported by a medical certificate.<sup>35</sup> The penalty for breach by an employer is imprisonment for a term not exceeding three months, or a fine for an amount not exceeding MMK 50,000, or both.

The court may order the employer to grant the medical leave and full pay for such medical leave according to section 14 (a) of the *Leave and Holidays Act*.

### **j. Workers are paid 'in-kind' through other means (like 'work-for-benefits')**

Payment of wages can be made in cash, or part in cash and part in kind, the value of which is determined at the local market price. Such arrangements must be for the benefit of the employee and their family; be reasonable and fair;<sup>36</sup> and be agreed to by the employee. Any alternative arrangement to pay 'in-kind' without the employee's agreement carries a penalty of imprisonment for a period not exceeding three months or fine or both.

### **k. Workers are not paid in legal tender**

See 6(j) above.

If an employee is paid money, they must be paid in local currency or foreign exchange recognised by the Central Bank of Myanmar. Payment must be in cash or in cheque or bank transfer to the employee's bank account.<sup>37</sup>

### **l. Workers are required to work compulsory overtime**

This conduct in the retail/wholesale and all general service sectors, breaches local law. The *Shops and Establishments Law* applies. Employees are not required to work compulsory overtime, but employees can agree with their employers to work overtime.<sup>38</sup> Employees who require employees to work compulsory overtime are subject to penalties of imprisonment for a period not exceeding three months and fine or both<sup>39</sup>.

We have not been able to identify similar provisions in regulations governing other sectors of employment.

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33 *Leave and Holidays Act*

34 Section 14 (a) of the *Leave and Holidays Act*.

35 Section 6(1) of the *Leave and Holiday Act*

36 Section 3 of the *Payment of Wage Law*

37 Section 3 (a) of the *Payment of Wage Law*.

38 Section 11(a) of the *Shops and Establishment Law*

39 Section 39 of the *Employment and Skill Development Law*

### **m. Workers are not paid for overtime work**

This conduct breaches local law. Employees are entitled to payment at overtime rates for overtime work.<sup>40</sup> The penalty for breach is imprisonment for a term not exceeding three months, or a fine not exceeding MMK 2,000,000, or both.<sup>41</sup>

### **n. Overtime work is used to discipline workers**

See response to 6(l) above.

### **o. Overtime pay is not in line with legal minimum wage**

Overtime rates apply to basic salaries/wages which are subject to minimum wage requirements: rule 20 of the Payment of Wage Rules and section 22 of the Minimum Wage Law. The prescribed minimum rate for overtime pay is two times of one hour rate of wage. The penalty for breach is a fine for an amount not exceeding MMK 500,000<sup>42</sup>.

## **7. Withholding of Passports and Documents**

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### **a. Workers' documents (passport, identity documents etc.) are held and they are unable to access them if they want to**

We have not identified any specific laws on this point. However, in practice, employers do not hold employees' documents (passport, identity documents etc.) without the employee's consent for fear of being investigated for theft under the *Penal Code*.

### **b. Documents are held by employers without express consent**

See response to 7(a) above.

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40 Section 14 of the *Payment of Wage Law*

41 Section 24 of the *Payment of Wage Law* read together with sections 4, 14 and 22 thereof.

42 Section 26 of the *Payment of Wage Law*

## 8. Deprivation of Liberty

### a. Workers are not permitted to leave the workplace (outside of normal working practices)

This conduct breaches local law as it constitutes wrongful restraint or confinement, contravening sections 339 and 340 of the *Penal Code*. The penalty under section 341 of the *Penal Code* is imprisonment for a term not exceeding one month or fine for an amount not exceeding MMK 50,000.

### b. Workers are not permitted to leave their accommodation except to attend work

See response to 8(a) above.

### c. Workers are not permitted to leave the country without permission from their employer (e.g. Kafala system)

No such permission is required under the law. If an employer requires an employee to seek their permission, the employee may lodge a complaint with the labour office pursuant to section 23 of the *Settlement of Labour Dispute Law*. Such conduct by the employer may amount to criminal intimidation under section 352 of the *Penal Code* and the penalty for breach is an imprisonment for a period not exceeding two years or fine or both.

### d. Workers require permission to change employer or leave their job (outside of the contractual notice period)

See response to 8(a) above.

### e. Workers are assigned a minder if they wish to leave their accommodation/workplace outside of normal working hours

No such authority is vested in the employer under local law. If an employer assigns a minder to an employee without the employee's consent, the employee may lodge a complaint with the labour office pursuant to section 23 of the *Settlement of Labour Dispute Law*. The employer's conduct breaches local law as it constitutes wrongful restraint or confinement, contravening sections 339 and 340 of the *Penal Code*. The penalty under section 341 of the *Penal Code* is imprisonment for a term not exceeding one month or fine for an amount not exceeding MMK 50,000

### f. Workers are physically locked into the workplace

See response to 8(a) above.

### g. Military/government security guards are used to guard the workplace

No relevant laws have been identified. In the ordinary course of business, employer would not be able to engage military/government security guards.

## 9. Intimidations/Threats/Violence

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### a. Workers experience, or are threatened with, physical abuse

This conduct breaches section 352 of the *Penal Code*. The penalty is imprisonment for a period not exceeding three months or fine for an amount not exceeding MMK 50,000 or both.

### b. Workers experience, or are threatened with, psychological abuse

See response to 9(a) above.

### c. Workers are threatened with deportation if they do not comply with demands

Employers do not have authority under local law to deport employees. This conduct may amount to a criminal intimidation under section 352 of the *Penal Code* and the penalty for breach is imprisonment for a period not exceeding two years or fine or both.

## 10. Isolation

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### a. Confiscation of the worker's mobile device

Employers can ban the use of mobile phones during working hours by incorporating such rules in the terms of the employment contract. However confiscation of an employee's mobile device by an employer may be a criminal offence (theft) under the *Penal Code* which carries a penalty of imprisonment for a period not exceeding three years or fine or both.

### b. Workers are required to ask permission to contact friends/family

Employers can ban the use of mobile phones during working hours by incorporating such rules in the terms of the employment contract. However, in practice employers cannot unreasonably deny an employee's request to use their mobile device although we have not identified any relevant regulations to support this practice.

# 11. Sexual Harassment

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## a. Workers experience, or are threatened with, sexual abuse

This conduct breaches sections 354 and 355 of the Penal Code. The penalty is imprisonment for a term not exceeding two year or fine or both.

## b. Workers are required to take pregnancy/sexual health tests

Employees are not required under local to take pregnancy/sexual health tests at the request of their employers. A provision in an employment contract requiring an employee to undergo such tests would not be accepted by the labour office.

If an employer requires an employee to take such a test, the employee may lodge a complaint with the conciliatory body pursuant to section 23 of the *Settlement of Labour Dispute Law* who would represent the employee to reach a settlement or conciliation with the employer. We have not identified any penalties on the conduct of the employer in this case.

## 3. Workers are required to take contraception

See response to 11 (b) above.

## 12. Bonded Labour

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### a. Workers have debts (that are unofficial, not in writing etc.) related to their employment

For employees employed in Myanmar, this conduct breaches local law.

Sections 7 and 11 of the *Payment of Wage Law* permit employers to deduct amounts from employees' wages for specified reasons only, and to deduct a fine from employees' wages in certain circumstances only. See response to 4 above.

For overseas employment seekers, employment agencies operating under licence issued by Directorate of Labour may charge service fees for securing suitable employment overseas. The service fees are regulated by the Directorate. Employment agencies that overcharge for their services are subject to a penalty of imprisonment for a term not exceeding three years or fine or both.<sup>43</sup>

### b. Workers have debt that is unethical (such as excessive or illegally high interest rates) related to their employment

Although there is no specific prohibition:

- i. A term of an employment contract setting an excessive or illegally high interest rate could be regarded as a penalty under section 74 of the *Contract Act*. The courts may exercise discretion to limit the compensation amount.
- ii. The labour office may withhold its endorsement of the employment contract under section 5 (b) of the *Employment and Skill Development Law*.

### c. Workers are in debt to their employer or recruiter

The *Money Lenders Act* provides that all moneylenders must be registered with the authorities. However as a matter of practice, there is no enforcement of this law in the context of informal moneylending transactions between employers and employees, or between recruiters and employees.

### d. Workers are in debt due to paying recruitment fees

No express prohibition under local laws. Recruitment fees charged with approval by MOLIP are not prohibited under the law.





Contact us at:



[info@themekongclub.org](mailto:info@themekongclub.org)



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