



# GLOBAL EXPANSION GUIDEBOOK EMPLOYMENT

*Myanmar*



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## INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Employment*.

### GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

### EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2024 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

To learn more about DLA Piper's global Employment practice, visit [www.dlapiper.com](http://www.dlapiper.com) or contact:

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## MYANMAR



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### LEGAL SYSTEM, CURRENCY, LANGUAGE

New civil laws co-exist with the old British colonial laws and regulations, and the laws and regulations issued by the various military governments over the last fifty years. Further, there has been a liberal application over the last few decades of "policies and practices," which are not detailed in any laws or regulations and are often unpublished.

Myanmar/Burmese Kyat (MMK).

The official language is Burmese. English has become increasingly popular in the business community. In practice, dual language (Burmese/English) contracts will be required to ensure that all parties understand the contents of the employment contract.

### CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign investor investing in Myanmar may either incorporate a subsidiary or register an overseas corporation of a company incorporated outside Myanmar. A Myanmar subsidiary may be wholly foreign owned or may be a joint venture with a Myanmar company. Foreign employers usually cannot directly engage employees in Myanmar without local corporate presence.

Employers must pay social insurance at the rate of 3 percent, of which 2 percent is to be paid into the Health and Social Care fund and 1 percent into the Employment Injury Benefit fund. Personal income tax must be paid by employees on their assessable income. The employer is responsible for calculating each employee's personal income tax liability, withholding it from the employee's pay check and remitting this amount to the tax authorities on the employee's behalf.

### PRE-HIRE CHECKS

**Required**

None.

**Permissible**

Employers may request their employees to provide information relating to the execution of an employment contract, such as full name, age, gender, residence address, educational level, occupational skills, and health conditions. Employers may also request a recommendation letter from a local administration office or a previous employer and may request a criminal background check from the relevant township police station when an employee submits an application for employment.

## IMMIGRATION

All foreigners who work in Myanmar must obtain a business visa and may apply for a multiple-entry visa and a long-term stay permit or work permit. Pursuant to the Myanmar Investment Rules, an investor should obtain approval from the Myanmar Investment Commission (MIC) when appointing a foreigner as a senior manager, technical expert or consultant. An MIC company must submit a work permit application in advance of the appointment of a foreign expert, or within 7 days of the foreign expert's arrival in Myanmar.

Foreign employees of companies without an MIC permit/endorsement are required to obtain a business visa. A valid business visa holder intending to work in Myanmar for an extended duration must apply for a longer stay and multiple-entry visa, and may apply for a stay permit. A Foreign Registration Certificate should be obtained by foreign nationals who wish to reside and work in Myanmar continuously for more than 90 days.

## HIRING OPTIONS

### Employee

The term "worker" is the general term used for "employees" in Myanmar, although the 2 terms may have slightly different meanings depending on the specific legislation. Employees may be employed on a full-time, part-time or casual basis. Certain laws such as the Workmen Compensation Act 1923 contain specific carve-outs for employees engaged on a "casual" basis. While the law does not provide specific differentiations with regard to the rights and obligations associated with full-time, part-time, fixed-term and indefinite forms of employment, entitlements upon termination of various types of contracts do differ.

Employers must maintain registers and records of employees, ie, the work performed by such employees, the wages paid to them, the deductions made from their wages, the receipts given by them, and any other particulars. Government-appointed inspectors may visit the facilities of the enterprise and audit the status of such registers and records.

### Independent contractor

The labor legislation does not specifically regulate independent contractors. Independent contractors can be hired directly by the company via a service agreement or an independent contractor agreement.

### Agency worker

These would likely fall into the category of contractors which are permissible but not specifically regulated by Myanmar Law.

## EMPLOYMENT CONTRACTS & POLICIES

An employer must enter into a written employment contract with an employee within 30 days of employment. Generally, the employer must use the standard employment contract issued by the Government.

An employment contract must include the following information:

- Type of employment
- Probation period
- Wages/salary
- Location of the employment
- Term of contract
- Working hours
- Day off/public holidays and leave
- Working overtime
- Meals during working hours
- Accommodation and uniform
- Medical treatment
- Arrangement for transportation and travelling
- Regulations to be followed by the employees
- Training courses
- Resignation and dismissal
- Termination
- Responsibilities of the employer
- Responsibilities of employees
- Terminating and making new employment contract with mutual consent between the parties
- Dispute resolution
- Amending and supplementing terms and conditions of contract



- Obligations of the employer and employee

## Probationary periods

The probationary period of a standard employment contract is usually 3 months, though this term is not required by legislation. Wages of not less than 75 percent of the basic salary for the work performed during the probationary period must be paid.

## Policies

Per the standard employment contract, employers must set out minor and major offences in an appendix to the employment contract for an employee's information. Employers are also recommended to adopt internal regulations which accord with the law, though the law provides no specific guidance on preparation of internal regulations. Generally, internal work rules and regulations mentioned in the employment contract will need to be submitted to the Township Labor Office (TLO) for approval.

## Third-party approval

The employer must send a copy of the employment agreement to the TLO where the company is located for registration and must obtain the approval of the TLO. Because the employment agreement must be entered into within 30 days of the employment commencement, the TLO approval should be factored into this timeframe, eg, by obtaining the TLO's pre-approval of the contract prior to the parties' execution. Companies with fewer than 5 employees do not need to submit employment contracts for registration, but should still use the standard template.

## LANGUAGE REQUIREMENTS

Although not specified, an employment contract needs to be in a language understood by both parties, so dual language is advisable (English and Burmese).

## WORKING TIME, TIME OFF WORK & MINIMUM WAGE

### Employees entitled to minimum employment rights

All employees, whether full-time, part-time or on a "casual" basis.

### Working hours

The maximum number of working hours is 8 hours per day and 48 hours per week (44 in factories).

### Overtime

Hours worked exceeding 8 hours per day are considered overtime work. Overtime with the employee's consent is permissible, but is restricted to no more than 12 hours per week. In the event of a special occasion, overtime can be a maximum of 16 hours in a week. Employees should not work or be allowed to work after midnight.

For factories, overtime of more than 16 hours in any week is prohibited, and no more than 12 hours per week is allowed in factories where a continuous process is carried out. Factory managers must obtain the approval of the Factories and General Labor Laws Inspection Department for proposed overtime work and payment.

## Wages

Wages must be paid at the end of every month in factories and establishments where fewer than 100 people are employed, and within 5 days after the end of the month in all other cases. Wages following termination of employment must be paid within 2 days following the date of termination. All payments of wages must be made on a working day.

All wage payments shall be paid in Kyat or any foreign currency recognized by the Central Bank of Myanmar. Payment may be made either by cash or check, or transferred into the employee's bank account, if the employer and employee both agree. Overtime payment must be paid at twice the rate of ordinary wages.

The Minimum Wages Law 2013 stipulates that an employee's wage must not be lower than the minimum wage provided by the government.

In March 2018, the National Minimum Wage Committee set a new minimum wage of MMK 4,800 per day (approximately US\$3.10 per day). This wage does not apply to small businesses with fewer than 10 workers, and family businesses.

## Vacation

Every employee who has completed a period of 12 months of continuous service must be granted annual leave of 10 days remunerated with average wages. From the commencement of employment, employees also have an annual entitlement to 6 days of paid casual leave. The casual leave does not carry over if not taken in 1 year. Employees can take casual leave of up to 3 days at a time, except that more days are allowed for religious or social activities. Casual leave is not allowed to be combined with any other types of leave.

## Sick leave & pay

Employees with at least 6 months' continuous service are eligible for 30 days' medical leave per year with full pay, provided a medical certificate is given to the employer upon the employee's return to work. If not in service for at least 6 months, an employee is entitled to 30 days' sick leave without pay.

## Maternity/parental leave & pay

Maternity leave shall be allowed for 6 weeks before confinement and 8 weeks after confinement with wages or pay. Maternity leave may be granted in continuation of medical leave. If an employee is covered by the Social Security Law 2012, he/she has the right to enjoy benefits in accordance with the Social Security Law.

## DISCRIMINATION & HARASSMENT

The employer shall not discriminate or fail to honor employment rights equally on the grounds of the employee being a member of a labor organization, nationality, religion, race, sex and age.

Employees are entitled to the prescribed minimum wage without discrimination on the basis of gender.



## WHISTLEBLOWING

No text yet.

## BENEFITS & PENSIONS

There are no mandatory pension obligations, except for civil servants. A retired employee who has paid contributions to the Health and Social Care fund for at least 180 months is entitled to medical treatment provided by a specified clinic.

Some companies voluntarily provide benefits, such as private health insurance coverage, provident funds, other savings plans, and employee stock option plans (ESOPs), for their employees. Voluntary benefits are not regulated and are offered through and detailed within internal company policies or other documentation; thus, information on the extent of voluntary benefits that companies are providing is scarce.

## DATA PRIVACY

There are not currently any specific laws or regulations in Myanmar relating to data privacy. However, per the Law Protecting the Privacy and Security of Citizens enacted on March 8, 2017, a person is not allowed to do the following without permission of the relevant authorities:

- Request or acquire any private call data, electronic communications data and information from operators or supply such information
- Open, search, seize, destroy or damage any envelope, parcel or correspondence communicated that are the personal affairs of other individuals and
- Criticize or interfere in the personal affairs and family affairs of any citizen or engage in conduct that may be detrimental to the good name, standing or dignity of an individual

Other than the above, there are currently no other laws or regulations on data privacy.

## RULES IN TRANSACTIONS/BUSINESS TRANSFERS

There are no specific rules governing employment implications of transactions/business transfers, other than as below.

An employer must pay a statutorily prescribed severance payment to the affected employees in accordance with relevant laws in the case of the employer's breach of contract, liquidation, sale of the business, winding-up the business or reducing the number of workers.

The severance payment is based on the length of time the employee has continuously served the employer, and on the basis of the employee's last salary (without overtime premium). See "**severance**" below.

## EMPLOYEE REPRESENTATION

Labor organizations (that is, the labor organization of the employer's trade/establishment, which function as a union) represent employees in Myanmar. The employer must recognize the labor organizations relevant to its industry. If there are more than 30 employees, a Workplace Coordinating Committee (WCC) must be established. The WCC is formed by 2 elected worker representatives and 2 employer representatives. If a labor union is already active, then the worker representatives come from the union. The employer must assist as much as possible if the labor organization requests help. Labor organizations have the right to participate in collective bargaining on behalf of the workers. The employer must not discriminate against employees who are union/labor organization members.

The labor organization shall decide who should be its representatives, who carry out negotiations with the employer on terms and conditions of employment and in settling the collective bargaining matters of workers in accordance with labor laws.

The employer must allow any worker who is assigned any duty on the recommendation of the relevant executive committee of a labor organization to perform such duty not exceeding 2 days per month unless otherwise agreed.

## TERMINATION

### Grounds

Based on the standard employment contract (see above under Employment Contract and Policies), termination is possible in the following circumstances:

- Liquidation of the factory/company
- Winding up the employer's business due to force majeure or
- Death of employee

All employers must ensure their employment contract/an annex to it provides a list of misconduct offences. Although not an exclusive list, typical grounds for termination for cause are listed in the "work rules" annex to the standard issue government employment contract. These are:

- Stealing, accepting stolen goods, misusing, or helping to misuse, work-related property
- Intentionally destroying, or helping to destroy, the property of the factory/company
- Quarrelling among employees, injuring another employee or causing conflicts
- Committing morality-related crimes in the workplace
- Corruption
- Bringing alcohol to, or selling or drinking alcohol at, the workplace

- Gambling at the workplace
- Keeping, distributing, selling or using narcotic drugs
- Smoking or using fire at the work place
- Bringing prohibited materials or explosives
- Entering restricted areas of the factory/company
- Breaking secrets, revealing confidential information, formulae, statistics or technologies of the company to others, or taking photos thereof
- Being arrested and sentenced in criminal cases
- Failing to come to work for 3 days continuously or for 5 days during a month without permission from the employer or manager

If an employee is not in compliance with work obligations, then the employee must have received 3 written prior warnings, with an undertaking given by the employee on the third warning, of poor performance and have been provided with the opportunity to rectify his or her conduct prior to termination of employment.

## Employees subject to termination laws

All.

## Restricted or prohibited terminations

An employer is not permitted to terminate an employee who did not breach the existing laws, rules or the employment contract.

## Third-party approval for termination/termination documents

None.

## Mass layoff rules

An employer may terminate the employment of an employee as a result of closure, or a necessary change or restructuring of the business. In any cases of making changes to employment conditions such as changes of employer or changes of work place or changes of work nature, the employer must report these to the TLO within 10 days with the prescribed Form. Workforce reductions or termination of employment, must be effected in coordination with a workplace union and the WCC, if no union exists in the workplace, coordination should be directly with the WCC.

## Notice

Either party may terminate the relationship by giving 1 months' notice, but the employer must have a basis for termination.

## Statutory right to pay in lieu of notice or garden leave

Myanmar laws do not provide payment in lieu of notice or garden leave, but it is often written into employment contracts or internal policies, or agreed upon at the time of termination.

## Severance

The employer shall, in respect of the termination of an employment contract of an employee having worked continuously, make severance payments on the basis of his/her last salary (without overtime premium) as follows:

Periods of service	Severance (Monthly Salary)
6 months to less than 1 year	½
1 year to less than 2 years	1
2 years to less than 3 years	1½
3 years to less than 4 years	3
4 years to less than 6 years	4
6 years to less than 8 years	5
8 years to less than 10 years	6
10 years to less than 20 years	8
20 years to less than 25 years	10
From the completion of and more than 25 years	13

## POST-TERMINATION RESTRAINTS

### Non-competes

The labor legislation does not regulate non-compete clauses; employers may include such provisions in employment documentation. Sometimes their inclusion might raise issues at the time of registration of the contract with the TLO.

### Customer non-solicits

These provisions are often included in executive level employment contracts, but are not regulated by law and sometimes raise issues at the time of registration of employment contracts with the TLO.

### Employee non-solicits

Same as customer non-solicits.

## WAIVERS

The waiver of statutory rights is not regulated in the labor laws of Myanmar. The enforceability of a waiver of claims by an employee is not addressed by law. Where a waiver is desirable, it is recommended that employers allow an employee a reasonable amount of time to seek legal advice before requiring them to sign the waiver.

## REMEDIES

### Discrimination

The employer shall not discriminate or fail to honor the employment rights equally on the grounds of the employee being a member of a labor organization, nationality, religion, race, sex and age. The employees shall be entitled to the prescribed minimum wage without discrimination on grounds of gender.

### Unfair dismissal

An employer is not permitted to terminate an employee who did not breach existing laws, work rules or their employment contract.

In the case of an individual dispute, a worker who claims unfair termination may present a claim to the WCC for internal resolution. The claim shall be negotiated and settled by the WCC within 5 days from the receipt day of the claim. If not successful, a worker may submit a complaint to the Township Conciliation Body and if the worker is not satisfied with the outcome, he/she may file a claim with a competent court for unfair dismissal. In the case of a collective dispute, if the workers are not satisfied with the decision of Township Conciliation Body, they may submit a complaint to the Arbitration Body, then the Arbitration Council. The Arbitration Council must form a Tribunal to settle the case. The Tribunal will make a final decision. If the Arbitration Council or Tribunal finds the termination to be unfair, it has the power to:

- Order the re-instatement of the employee and treat the employee in all respects as if the employment had not been terminated
- Order the re-engagement of the employee in work comparable to that in which the employee was employed prior to his/her dismissal, or other reasonably suitable work, at the same wage
- Order the employer to pay compensation to the worker

### Failure to inform & consult

Per the standard employment contract, mass redundancies shall be carried out in coordination with the workplace union, or if none exists in the workplace, then with the Workplace Coordination Committee through its representative. Breach of the standard contract can result in fines or imprisonment.

## CRIMINAL SANCTIONS

If any employer fails to sign an employment contract, it can be punished with imprisonment for not more than 6 months, a fine, or both.

If anyone violates any matters contained in an employment contract, he/she shall be punished with imprisonment for not more than 3 months, a fine, or both.

Employers or employees may be criminally liable for certain violations and subject to a fine, imprisonment, or both.

## KEY CONTACTS



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