KRAM DATED MARCH 13, 1997

ON THE LABOR LAW

We,

His Majesty Norodom Sihanouk,

King of Cambodia,

- having seen the 1993 Constitution of the Kingdom of Cambodia;
- having seen Kret dated September 24, 1993 on the appointment of the First Prime Minister and the Second Prime Minister of the Royal Government of Cambodia;
- having seen Kret dated November 1, 1993 on the appointment of the Royal Government of Cambodia;
- having seen Kram NS-RKM-0794-002 dated July 20, 1994 on the organization and functioning of the Council of Ministers;
- having seen Kret NS-RKT-1094-083 dated October 24, 1994 on the modification of the composition of the Royal Government of Cambodia;
- having seen Kram NS-RKM-0196-017 dated January 24, 1996 on the creation of the Ministry of Social, Labor and Veterans Affairs;
- upon the proposal of the two Prime Ministers and the Minister of Social, Labor and Veterans Affairs;

promulgate;

the Labor Code adopted by the National Assembly on January 10, 1997 during the 7th Session of the First Legislature, the text of which is as follows:

CHAPTER I

GENERAL PROVISIONS

Section 1

Scope of application

Different Categories of Workers in the Kingdom of Cambodia

Article 1:

This law governs relations between employers and workers resulting from employment contracts to be performed within the territory of the Kingdom of Cambodia, regardless of where the contract was made and what the nationality and residences of the contracted parties are.

This law applies to every enterprise or establishment of industry, mining, commerce, crafts, agriculture, services, land or water transportation, whether public, semi-public or private, non-religious or religious; whether they are of professional education or charitable characteristic as well as the liberal profession of associations or groups of any nature whatsoever.

This law shall also apply to every personnel member who is not governed by the Common Statutes for Civil Servants or by the Diplomatic Statutes as well as officials in the public service who are temporarily appointed.

This law shall not apply to:

a) Judges of the Judiciary.

b) persons appointed to a permanent post in the public service.

c) personnel of the Police, the Army, the Military Police, who are governed by a separate statute.

d) personnel serving in the air and maritime transportation, who are governed by a special legislation. These workers are entitled to apply the provisions on freedom of union under this law.

e) domestics or household servants, unless otherwise expressly specified under this law. These domestics or household servants are entitled to apply the provisions on freedom of union under this law.

Article 2:

All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, in the sense of this law, provided that they employ one or more workers, even discontinuously.

Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer.

A given establishment shall be always under the auspices of an enterprise. The establishment may employ just one person. If this establishment is unique and independent, it is both considered as an enterprise and an establishment.

Article 3:

"Workers", in the sense of this law, are every person of all sex and nationality, who has signed an employment contract in return for remuneration, under the direction and management of another person, whether that person is a natural person or legal entity, public or private. To clearly determine the characteristics of a worker, one shall not take into account of neither the jurisdictional status of the employer nor that of the worker, as well as the amount of remuneration.

Article 4:

"Domestics or household servants" are those workers who are engaged to take care of the homeowner or of the owner’s property in return for remuneration.

Article 5:

"Employees or helpers" are those who are contracted to assist any person in return for remuneration, but who do not perform manual labor fully or who do so incidentally.

Article 6:

"Laborers" are those workers who are not household servants or employees, namely those who perform mostly manual labor in return for remuneration, under the direction of the employer or his representative.

The status of laborer is independent of the method of remuneration; it is determined exclusively by the nature of the work.

Article 7:

"Artisans" are persons, who practice a manual trade personally on their own account, working at home or outside, whether or not they use the motive force of automatic machines, whether or not they have a shop with a signboard, who primarily sell the products of their own work carried out either alone or with the help of their spouse or family members who work without pay, or with the help of workers or apprentices, but the entire workshop is solely under the direction of their own.

The number of non-family workers, who regularly work for an artisan, cannot exceed seven; if this number is exceeded, the employer loses the status of artisan.

Article 8:

"Apprentices" are those who have entered into an apprenticeship contract with an employer or artisan who has contracted to teach or use someone to teach the apprentice his occupation; and in return, the apprentice has to work for the employer according to the conditions and term of the contract.

Article 9:

In accordance with the stability of employment, it is distinguished:

- regular workers
- casual workers, who are engaged to perform an unstable job.

Regular workers are those who regularly perform a job on a permanent basis.

Casual workers are those who are contracted to:

- perform a specific work that shall normally be completed within a short period of time.
- perform a work temporarily, intermittently and seasonally.

Article 10:

Casual workers are subject to the same rules and obligations and enjoy the same rights as regular workers, except for the clauses stipulated separately.

Article 11:

In accordance with the method of remuneration, workers are classified as follows:

- workers remunerated on a time basis (monthly, daily, and hourly), who are paid daily or at intervals not longer than fifteen days or one month.
- workers remunerated by the amount produced or piecework.
- workers remunerated on commission.

Section 2

Non-discrimination

Article 12:

Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners, no employer shall consider on account of:

- race,
- color,
- sex,
- creed,
- religion,
- political opinion,
- birth,
- social origin,
- membership of workers' union or the exercise of union activities;

To be the invocation in order to make a decision on:

- hiring,
- defining and assigning of work,

- vocational training,
- advancement,
- promotion,
- remuneration,
- granting of social benefits,
- discipline or termination of employment contract.

Distinctions, rejections, or acceptances based on qualifications required for a specific job shall not be considered as discrimination.

Section 3

Public order

Article 13:

The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void.

Except for the provisions of this law that cannot be derogated in any way, the nature of public order of this law is not obstructive to the granting of benefits or the rights superior to the benefits and the rights defined in this law, granted workers by a unilateral decision of an employer or a group of employers, by an employment contract, by a collective convention or agreement, or by an arbitral decision.

Section 4

Publicity

Article 14:

The employer must keep at least one copy of the labor law at the disposal of his workers and, in particular, of the workers' representatives in every enterprise or establishment set forth in Article 1 of this law.

Section 5

Forced labor

Article 15:

Forced or compulsory labor is absolutely forbidden in conformity with the International Convention No. 29 on the forced or compulsory labor, adopted on June 28, 1930 by the International Labor Organization and ratified by the Kingdom of Cambodia on February 24, 1969.

This article applies to everyone, including domestics or household servants and all workers in agricultural enterprises or businesses.

Article 16:

Hiring of people for work to pay off debts is forbidden.

CHAPTER II

ENTERPRISES - ESTABLISHMENTS

Section 1

Declaration of the opening and closing of the enterprise

Article 17:

All employers to whom this labor law is applied, shall make a declaration to the Ministry in Charge of Labor when opening an enterprise or establishment. This declaration is called a declaration of the opening of the enterprise or establishment, that must be made in writing and be submitted to the Ministry in Charge of Labor before the actual opening of the enterprise or establishment.

Employers who employ fewer than eight workers on a permanent basis and who do not use machinery, shall make and submit this declaration to the Ministry in Charge of Labor within thirty days following the actual opening of the enterprise or establishment.

Article 18:

For the closing of the enterprise, employers shall also make a declaration to the Ministry in Charge of Labor within thirty days following the closing of the enterprise.

Article 19:

A Prakas (ministerial order) of the Ministry in Charge of Labor shall define the formality and procedure of the declarations to follow in each case.

Article 20:

Every employer shall establish and neatly keep a register of an establishment that was numbered and initialed by the Labor Inspector. The model of the register shall be set by a Prakas of the Ministry in Charge of Labor.

Section 2

Declaration on movement of personnel

Article 21:

Every employer must make the declaration to the Ministry in Charge of Labor each time when hiring or dismissing a worker.

This declaration must be made in writing within fifteen days at the latest after the date of hiring or dismissal.

This period is extended to thirty days for agricultural enterprises.

The declaration of hiring and dismissal is not applied to:

- Casual employment with a duration of less than thirty continuous days.
- Intermittent employment for which the actual length of employment does not exceed three months within twelve consecutive months.

Section 3

Internal regulations of the enterprise

Article 22:

Every employer of an enterprise or establishment, set out in Article 17 above, who employs at least eight workers shall always establish an internal regulation of the enterprise.

Article 23:

Internal regulations adapt the general provisions of this law in accordance with the type of enterprise or establishment and the collective agreements that are relevant to the sector of activity of the aforementioned enterprise or establishment, such as provisions relating to the condition of hiring, calculation and payment of wages and perquisites, benefits in kind, working hours, breaks and holidays, notice periods, health and safety measures for workers, obligations of workers and sanctions that can be imposed on workers.

Article 24:

The internal regulations must be established by the manager of enterprise after consultation with workers' representatives, within three months following the opening of the enterprise, or within three months after the promulgation of this law if the enterprise already exists.

Before coming into effect, the internal regulations shall be [visaed] by the Labor Inspector. This visa shall be issued within a period of sixty days.

Article 25:

The articles of internal regulations that suppress or limit the rights of workers, set forth in laws and regulations in effect or in conventions or collective agreements applicable to the establishment, are null and void.

The Labor Inspector shall require the inclusion of enforceable provisions in virtue of laws and regulations in effect.

Article 26:

An employer can not impose disciplinary action against a worker for any misconduct of which the employer or one of his representatives has been aware for over fifteen days.

The employer shall be considered to renounce his right to dismiss a worker for serious misconduct if this action is not taken within a period of seven days from the date on which he has learned about the serious misconduct in question.

Article 27:

Any disciplinary sanction must be proportional to the seriousness of the misconduct. The Labor Inspector is empowered to control this proportionality.

Article 28:

The employer shall not impose fines or double sanctions for the same misconduct. These fines mean any measure that leads to a reduction of the remuneration being normally due for the performance of work provided.

Article 29:

The internal regulations must be diffused and affixed to a suitable place that is easily accessible, on the premises where work is carried out and on the door of the premises where workers are hired.

These internal regulations shall constantly be kept in a good state of legibility.

Article 30:

All modifications to the internal regulations must be conformable to the provisions governing the enterprise or establishment.

Article 31:

In enterprises or establishments, employing less than eight workers, where there are no internal regulations, the employer may pronounce, according to the seriousness of the misconduct of the workers concerned, a warning, a reprimand, a suspension of work without pay for not more than six days or a dismissal with or without a prior notice.

Section 4

Employment card

Article 32:

Every person of Cambodian nationality working as a worker for any employer is required to possess an employment card.

No one can keep a worker in his service who does not comply with the provision of the above paragraph.

Article 33:

The possession of an employment card is optional for seasonal farm workers.

Article 34:

The employment card is for the purpose of identifying the holder, the nature of work for which he has contracted, the duration of contract, the agreed wages and the method of payment, as well as the successive contracts.

It is forbidden to use a worker's employment card for purposes other than those for which it is created.

When the worker quits working for the employer, that employer shall not write any appreciation on the employment card.

Article 35:

The employment card is drawn up and issued by the Labor Inspectors at the request of the worker who presents an identity card issued by the competent authorities and a certificate of employment issued by his employer.

Article 36:

The issuance of employment card is incurred in a fee that shall be collected and given to the national budget. The fee rate and the method of collection are to be set by a joint Prakas (ministerial order) of the Ministry of Finance and the Ministry in Charge of Labor.

Article 37:

The hiring and dismissal of a worker, his wage and wage increase shall be recorded in his employment card.

The above record made by the employer must be presented, within seven whole days following the date of entry and departure of the worker, for the visa of the Labor Inspector.

Article 38:

The loss of employment card must be declared to the Labor Inspector's Office. A duplicate shall be issued under the same conditions as those laid for the issuance of employment card.

Section 5

Payroll ledger

Article 39:

Every employer of an enterprise or establishment covered by Article 17 above shall constantly keep a payroll ledger whose format shall be set by a Prakas (ministerial order) of the Ministry in Charge of Labor.

Before being used, all the pages of the payroll ledger must be numbered and initialed by the Labor Inspector.

The payroll ledger must be kept in the Bureau of Cashier or Head Office of each enterprise so that it is simply available immediately for inspections. The employer shall keep the payroll ledger for three years after it has been closed.

The Labor Inspector may require to see the payroll ledger at any time.

Article 40:

The payroll ledger shall record:

a) information about each worker employed by the enterprise.

b) all indications concerning the work performed, wage and holidays.

Article 41:

Any enterprises that wish to make the payroll ledger in a different way but contains the same type of information and the same method of review, may apply to the Labor Inspector's Office.

Section 6

Company store

Article 42:

The "company store" is defined as any establishment where the employer directly or indirectly sells his workers or their families foodstuffs and merchandise of any kind, for their personal needs.

Company stores are authorized under the four conditions as follows:

1. The workers are not obliged to shop just there.

2. The employer or his attendant is not allowed to make a profit from the sale of the merchandise.

3. The accounting of each company store is to be entirely distinctive of that of the enterprise.

4. The price of items on sale is to be displayed visibly.

Article 43:

The opening of a company store is determined by a Prakas (ministerial order) of the Ministry in Charge of Labor.

The Labor Inspector monitors the operation of company stores whose management is also shared by the elected representatives of the concerned workers. The Labor Inspector has the authority to order a temporary shutdown of a company store until a final decision is made by the Ministry in Charge of Labor.

Section 7

Guarantee

Article 44:

The employer cannot subject the signing or the maintaining of employment contract to a cash guarantee or bond of any form.

Section 8

Characteristics of labor contractor

Article 45:

The labor contractor is a sub-contractor who contracts with an entrepreneur and who himself recruits the necessary work force or workmen for the execution of certain work or the provision of certain services for an all-inclusive price.

Such a contract must be in writing.

Article 46:

The exploitation or underestimation of workmen by the labor contractor or sub-contractor is forbidden.

Article 47:

The labor contractor is required to observe the provisions of this law in the same manner as an ordinary employer and assumes the same responsibilities as the latter.

Article 48:

In case of insolvency or default by the labor contractor, the entrepreneur or the manager of enterprise shall substitute for the contractor to fulfill his obligations to the workers.

The harmed workers, in such case, may file a case directly against the entrepreneur or manager.

Article 49:

The labor contractor is required to indicate his status, the name and address of the entrepreneur, by affixing them to a place that is simply visible in each workshop, storeroom, or work site where work is performed.

Article 50:

The entrepreneur shall constantly keep available a list of labor contractors with whom he has contracted. This list, indicating the name, address, and status of the labor contractor as well as the situation of each workplace, must be sent to the Labor Inspector's Office within seven whole days following the date of signing the labor contract.

This period is extended to fifteen days for agricultural enterprises or businesses.

CHAPTER III

APPRENTICESHIP

Section 1

Nature and form of the apprenticeship contract

Article 51:

The apprenticeship contract is one in which a manager of an industrial or commercial establishment, an artisan or craftsman agrees to provide or is entrusted with complete, methodical and professional training to another person who contracts, in return, to work for him as an apprentice under the conditions and for a time period that have been agreed upon. This time period cannot exceed two years.

Article 52:

The apprenticeship contract must be in form of writing by notarial deed or by private agreement within a fortnight of its implementation, otherwise it is considered null.

Article 53:

An apprenticeship contract shall be made up according to customary practices of a profession if there are no rules established by the Labor Inspector's Office, with consent of representatives of the profession taught.

The apprenticeship contract must contain:

1. The last name, first name, age, profession and address of the instructor.

2. The last name, first name and address of the apprentice.

3. The last name, first name, profession and address of the apprentice's parents or guardian or a person authorized by his parents.

4. The date and duration of the contract, as well as the trade for which the apprentice is trained.

5. The conditions for the apprentice's remuneration and, if applicable, all benefits in kind: food, accommodation or any other items agreed between both parties.

6. The skill areas that the manager of the enterprise is contracted to teach the apprentice.

7. Indemnity to be paid in case of termination of the contract.

8. The main obligations of the instructor and the apprentice.

The apprenticeship contract must be signed by the instructor and the apprentice. In case the apprentice is a minor, the contract can be signed by his legal representative and the instructor. The Labor Inspector shall review, countersign and register the apprenticeship contract.

Section 2

Terms of apprenticeship contract

Article 54:

No one can be an instructor or undertake an apprenticeship if he is less than twenty-one years of age, and cannot justify having practiced, for at least two years, the profession to be taught as a technician, trainer, craftsman or skilled worker.

The period of practice of his profession can be reduced to one year, if the instructor has a diploma in theoretical and practical training from a recognized school or a specialized training center.

Article 55:

No employer, instructor in charge of an apprenticeship can live in the same house with female minor apprentices.

The capacity as an apprenticeship instructor or a person in charge of apprenticeship is disqualified for:

1. Individuals who have been convicted of a crime.
2. Individuals who have been guilty of behaving against the local traditional customs.
3. Individuals who have been imprisoned for stealing, fraud, misappropriation and corruption.

Article 56:

A Prakas (ministerial order) of the Ministry in Charge of Labor shall determine the occupation and types of work for which teenagers aged at least eighteen years are allowed to be an apprentice.

Once his vocational skill training is adequate, the apprentice is no longer as an apprentice but as a worker hereafter.

Article 57:

Any enterprise employing more than sixty workers must have the number of apprentices equal to one-tenth of the number of the workers in service of that enterprise.

The maximum number of apprentices employed in an enterprise, regardless of the total number of workers, shall be determined by a Prakas of the Ministry in Charge of Labor in accordance with the possible availability of personnel and materials.

Derogation of the obligation stated in the first paragraph of this article can be endorsed by a decision of the Labor Inspector for enterprises that have requested to pay an apprenticeship tax whose amount and method of payment shall be set by a Prakas of the Ministry in Charge of Labor.

Section 3

Duties of instructors and apprentices

Article 58:

The instructor shall behave in loco parentis towards the apprentice, that is, watch over his conduct and manners, either at home or outside, and inform his parents or their representative of any serious offenses committed by the apprentice or any incorrect propensity manifested. Moreover, the instructor must also inform the apprentice's parents, without delay, in the case of illness, absence or any other problem, for their intervention.

The instructor shall not employ an apprentice for overwork or for any work or service other than those related to the exercise of the apprentice's profession.

Article 59:

The instructor must progressively and completely teach the apprentice the occupation that is the subject of the contract and, if applicable, provide him with every facility or opportunity in the event of the apprentice wishing to take a course in a vocational training school.

At the end of the apprenticeship, a certificate attesting the execution of the contract by both parties and the professional skill of the apprentice shall be awarded after an official examination conducted by a neutral exam panel.

Article 60:

The apprentice shall obey and respect his instructor within the context of apprenticeship. He must assist the instructor in his work to the best of his ability. He shall keep the professional confidentiality.

Article 61:

Any person who is convinced of having incited an apprentice to break his contract shall be liable to an indemnity in favor of the manager of the establishment or of the workshop that the apprentice has abandoned. The indemnity must, in no case, not exceed the amount of actual damages suffered by the former employer.

Any new apprenticeship contract made before the fulfillment of all the obligations or termination of the preceding contract shall be null and void.

Section 4

Monitoring of apprenticeship

Article 62:

A system for monitoring the apprenticeship, such as determining programs by trade, supervision during the apprenticeship, final examination, methods for setting up examination panel, etc., shall be determined by a Prakas (ministerial order) of the Ministry in Charge of Labor.

The Prakas of the Ministry in Charge of Labor shall also clearly determine the regulations regarding the duration of the apprenticeship, including the trial period, according to the level of professional skill and technical and conceptual knowledge, as well as all the apprentice's previous training and experience or professional progress made during the course of the apprenticeship.

Section 5

Termination of apprenticeship contract

Article 63:

The apprenticeship contract is terminated lawfully:

1. By the death of the instructor or the apprentice.
2. If the apprentice or the instructor is obliged to serve in the army.
3. If the instructor or the apprentice is imprisoned for a felony or misdemeanor.
4. By the closure of workshop or enterprise, specified in the above articles.

Article 64:

An apprenticeship contract may be terminated at the request of one or both parties, particularly in the following cases:

1. In case either party does not comply with the stipulations of the contract.
2. In case of serious or usual violation of the provisions in this chapter.
3. In case the apprentice obstinately does not respect internal regulations.

If the instructor moves his residence to Sangkat (section) or Khum (commune) other than the one in which he lived at the signing of the contract. Nevertheless, a request for termination of contract for this reason is acceptable only within three months following the day when the instructor moved.

Either party considers to be damaged by the unjustifiable termination of apprenticeship contract, can demand for compensation from the other party.

CHAPTER IV

THE LABOUR CONTRACT

Section 1

Signing and execution of a labor contract

Article 65:

A labor contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties.

It can be written or verbal. It can be drawn up and signed according to local custom. If it needs registering, this shall be done at no cost.

The verbal contract is considered to be a tacit agreement between the employer and the worker under the conditions laid down by the labor regulations, even if it is not expressly defined.

Article 66:

Everyone can be hired for a specific work on the basis of time, either for a fixed duration or for an undetermined duration.

Article 67:

A labor contract signed with consent for a specific duration must contain a precise finishing date.

The labor contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years.

Any violation of this rule leads the contract to become a labor contract of undetermined duration.

Sometimes, this contract may have an unspecified date when it is drawn up for:

· replacing a worker who is temporarily absent;

· work carried out during a season;

· occasional periods of extra work or a non-customary activity of the enterprise;

This duration is then finished by:

· the return to work of the worker who was temporarily absent or the termination of his labor contract;

· the end of the season;

· the end of the occasional period of extra work or of the non-customary activity of the enterprise

At the signing of the contract, the employer must inform the worker of the eventually sensitive issues and the approximate duration of the contract.

Contracts without a precise date can be renewed at will as many times as possible without losing their validity.

Contracts of daily or hourly workers who are hired for a short-term job and who are paid at the end of the day, the week or fortnight period, are considered to be contracts of fixed duration with an unspecified date.

A contract of a fixed duration must be in writing. If not, it becomes a labor contract of undetermined duration.

When a contract is signed for a fixed period of or less than two years, but the work tacitly and quietly continues after the end of the fixed period, the contract becomes a labor contract of undetermined duration.

Article 68:

A contract for a probationary period cannot be for longer than the amount of time needed for the employer to judge the professional worth of the worker and for the worker to know concretely the working conditions provided. However, the probationary period cannot last longer than three months for regular employees, two months for specialized workers and one month for non-specialized workers.

The round travel costs incurred by a worker during the probationary period when working far from his habitual residence are to be covered by the employer.

Article 69:

Within the framework of his contract, the worker shall perform all of his professional activities for the enterprise. Primarily, he must do the work for which he is hired, and perform it by himself with due care and attention.

However, outside working hours, the worker can engage in any professional activities that are not in competition with the enterprise for which he works or that are not harmful to the agreed process of performance, unless there is an agreement to the contrary.

Article 70:

Any clause of a contract that prohibits the worker from engaging in any activity after the expiration of the contract is null and void.

Section 2

Suspension of the labor contract

Article 71:

The labor contract shall be suspended under the following reasons:

1. The closing of the establishment following the departure of the employer to serve in the military or for a mandatory period of military training.

2. The absence of the worker during obligatory periods of military service and military training.

3. The absence of the worker for illness certified by a qualified doctor. This absence is limited to six months, but can, however, be extended until there is a replacement.

4. The period of disability resulting from a work-related accident or occupational illness.

5. The leave granted to a female worker during pregnancy and delivery, as well as for any post-natal illness.

6. Absence of the worker authorized by the employer, based on laws, collective agreements, or individual agreements.

7. Temporary layoff of a worker for valid reasons in accordance with internal regulations.

8. The absence of a worker during paid vacations, including an incidental travel period as well.

9. The incarceration of a worker, without a later conviction.

10. An act of God that prevents one of the parties from fulfilling his obligations, up to a maximum of three months.

When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and be under the control of the Labor Inspector.

An employer can terminate a suspended contract provided that the reasons for the suspension have been remedied and he has given prior notice in accordance with the law.

Article 72:

The suspension of a labor contract affects only the main obligations of the contract, that are, those under which the worker has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.

Other obligations such as furnishing of accommodation by the employer, as well as the worker's loyalty and confidentiality towards the enterprise, continue to be in effect during the period of suspension.

The suspension of a labor contract does not lead to a suspension of the union's mandate or that of workers' representative.

Unless otherwise specified, periods of suspension are taken into account when calculating the employment seniority.

Section 3

Termination of the labor contract

A. Labor Contracts of Specific Duration

Article 73:

A labor contract of specific duration normally terminates at the specified ending date. It can, however, be terminated before the ending date if both parties are in agreement on the condition that this agreement is made in form of writing in the presence of a Labor Inspector and signed by the two parties to the contract.

If the both parties do not agree, a contract of specified duration can be canceled before its termination date only in the event of the serious misconduct or acts of God.

The premature termination of the contract by the will of the employer alone for reasons other than those mentioned in paragraphs 1 and 2 of this article entitles the worker to damages in an amount at least equal to the remuneration he would have received until the termination of the contract.

The premature termination of the contract by the will of the worker alone for reasons other than those mentioned in paragraphs 1 and 2 of this article entitles the employer to damages in an amount that corresponds to the damage sustained.

If the contract has a duration of more than six months, the worker must be informed of the expiration of the contract or of its non-renewal ten days in advance. This notice period is extended to fifteen days for contracts that have a duration of more than one year. If there is no prior notice, the contract shall be extended for a length of time equal to its initial duration or deemed as a contract of unspecified duration if its total length exceeds the time limit specified in Article 67.

At the expiration of the contract, the employer shall provide the worker with the severance pay proportional to both the wages and the length of the contract. The exact amount of the severance pay is set by a collective agreement. If nothing set in such agreement, the severance pay is at least equal to five percent of the wages paid during the length of the contract.

If a contract of unspecified duration replaces a contract of specified duration upon the latter's expiration, the employment seniority of the worker is calculated by including periods of the both contracts.

In every case of contract termination, the worker can require the employer to provide him with an employment certificate.

B. Labor Contracts of Unspecified Duration

Article 74:

The labor contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party.

However, no layoff can be taken without a valid reason relating to the worker's aptitude or behavior, based on the requirements of the operation of the enterprise, establishment or group.

Article 75:

The minimum period of a prior notice is set as follows:

- Seven days, if the worker's length of continuous service is less than six months;
- Fifteen days, if the worker's length of continuous service is from six months to two years;
- One month, if the worker's length of continuous service is longer then two years and up to five years.

- Two months, if the worker's length of continuous service is longer than five years and up to ten years.
- Three months, if the worker's length of continuous service is longer than then years.

Method for calculating the length of service of workers, who are not employed on a monthly basis, shall be determined by a Prakas (ministerial order) of the Ministry in Charge of Labor.

Article 76:

Any article of a labor contract, of an internal regulation, or any other individual agreement that sets the prior notice period to be less than the minimum set forth in this provision shall be null and void.

Article 77:

The termination of a labor contract at will on the part of the employer alone, without prior notice or without compliance with the prior notice periods, entails the obligation of the employer to compensate the worker the amount equal to the wages and all kinds of benefits that the worker would have received during the official notice period.

Article 78:

The prior notice is the obligation to be observed in enterprises or establishments set forth in Article 1 of this law, both by the worker and by the employer when one of them decides unilaterally to terminate the labor contract. However, the worker laid off for reasons other than serious misconduct can leave the enterprise before the end of the notice period if he finds a new job in the meantime. In such case, the worker will not be required to compensate the employer.

Article 79:

During the notice period, the worker of the enterprise is entitled to two days leave per week with full payment to look for a new job.

These leave days are paid to the worker at the normal rate of remuneration, regardless of how it is calculated. This payment shall include other perquisites.

Article 80:

For task-work or piecework, the worker usually cannot abandon the task that he has been assigned before it has been finished.

However, for a long-term employment that cannot be completed in less than one month, one of the contracting parties who wishes to release himself from the obligations of the contract for serious reasons, he can do so as long as he notifies the other party eight days in advance.

Article 81:

Throughout the notice period, the employer and the worker shall be bound to carry

out the obligations incumbent on them.

Article 82:

The contracting parties are released from the obligation of giving prior notice under the following cases:

1. For probation or an internship specified in the contract.
2. For a serious offense on the part of one of the parties.
3. For acts of God that one of the parties is unable to meet his obligations.

Article 83:

The following are considered to be serious offenses:

A. On the part of the employer

1. The use of fraudulent measures to entice a worker into signing a contract under conditions to which he would not otherwise have agreed, if he had realized it;

2. Refusal to pay all or part of the wages;

3. Repeated late payment of wages;

4. Abusive language, threat, violence or assault;

5. Failure to provide sufficient work to a piece-worker;

6. Failure to implement labor health and safety measures in the workplace as required by existing laws.

B. On the part of the worker

1. Stealing, misappropriation, embezzlement;

2. Fraudulent acts committed at the time of signing (presentation of false documentation) or during employment (sabotage, refusal to comply with the terms of the employment contract, divulging professional confidentiality).

3. Serious infractions of disciplinary, safety, and health regulations.

4. Threat, abusive language or assault against the employer or other workers.

5. Inciting other workers to commit serious offenses.

6. Political propaganda, activities or demonstrations in the establishment.

Article 84:

Pending the creation of the Labor Court, the common court has the jurisdiction to determine the magnitude of offences other than those included in the preceding article.

Article 85:

The employer may find himself unable to meet his obligations in the context of Article 82 - paragraph 3, particularly in the following cases:

1. The closing of the establishment by public authorities.

2. Catastrophe (flooding, earthquake, war) that cause material destruction and make it impossible to resume work for a long time. For death of the employer that causes the closure of the establishment, the workers are entitled to an indemnity equal to that of the notice period.

Article 86:

The worker may find himself unable to meet his obligations in the context of Article 82 - paragraph 3, particularly in the following cases.

1. Chronic illness, insanity, permanent disability;

2. Imprisonment.

The cases cited in the first paragraph above, the employer cannot be released from his obligation to give the prior notice.

Article 87:

If a change occurs in the legal status of the employer, particularly by succession or inheritance, sale, merger or transference of fund to form a company, all labor contracts in effect on the day of the change remain binding between the new employer and the workers of the former enterprise.

The contracts cannot be terminated except under the conditions laid down in the present Section.

The closing of an enterprise, except for acts of God, does not release the employer from his obligations as stated in this section III. Bankruptcy and judicial liquidation are not considered as acts of God.

Article 88:

In businesses of a seasonal nature, as per list determined by a Prakas of the Minister in Charge of Labor, the layoff of workers at the end of a work period cannot be considered as dismissal, and does not result in any compensation. However, the lay-off shall be announced at least eight days in advance by a written notice conspicuously posted at the main entry of each work site, and if applicable, on each boat on which there is a work site.

C. Indemnity for Dismissal

Article 89:

If the labor contract is terminated by the employer alone, except in the case of a serious offense by the worker, the employer is required to give the dismissed worker, in addition to the prior notice stipulated in the present Section, the indemnity for dismissal as explained below:

- · Seven days of wage and fringe benefits if the worker's length of continuous service at the enterprise is between six and twelve months.

- · If the worker has more than twelve months of service, an indemnity for dismissal will be equal to fifteen days of wage and fringe benefits for each year of service. The maximum of indemnity cannot exceed six months of wage and fringe benefits. If the worker's length of service is longer than one year, time fractions of service of six months or more shall be counted as an entire year.

The worker is also entitled to this indemnity if he is laid off for reasons of health.

Article 90:

Indemnity for dismissal must be granted to the worker and, if applicable, he can also claim damages even though the contract was not terminated by the employer, but the latter, through his evil actions, pushed the worker into ending the contract himself. If the employer treats the worker unfairly or repeatedly violates the terms of the contract, he also has to pay indemnities and damages to the worker.

D. Damages

Article 91:

The termination of a labor contract without valid reasons, by either party to the contract, entitles the other party to damages.

These damages are not the same as the compensation in lieu of prior notice or the dismissal indemnity.

The worker, however, can request to be given a lump sum equal to the dismissal indemnity. In this case, he is relieved of the obligation to provide proof of damage incurred.

Article 92:

When a worker has unjustly breached a labor contract and takes a new job, the new employer is jointly liable for damages caused to the former employer if it is proven that he has encouraged the worker to leave the former job.

Article 93:

Any worker who was engaged to furnish his services may, upon expiration of the contract, demand from his employer a certificate of employment containing primarily the starting date of employment, the date of departure, and kind of job held, or, if applicable, the jobs held successively as well as the periods during which the jobs were held.

The refusal to supply this certificate obliges the employer to pay damages to the worker.

The certificates supplied to workers are exempt form all stamp and registration tax, even if they contain items other than those mentioned in the preceding paragraph, as long as these items do not include any bond, receipt or any agreement liable to ad valorem duties.

The phrase "free from all engagement" and all other terms indicating the normal expiration of a labor contract, the professional qualifications and the services rendered are included in this exemption.

Any harmful statement that could prejudice the employment of a worker is formally prohibited.

Article 94:

Without prejudice to the provisions of Article 91, the damages owed in the case of a breach of the labor contract without valid reasons, as well as those owed by the employer as per provision of Article 89 above, are determined by the competent court and based on local custom, the type and importance of the services rendered, the worker's seniority and age, the pay deductions or payments for a retirement pension, and, in general, on all circumstances that can justify the existence and the extent of the harm incurred.

E. Mass Layoff

Article 95:

Any layoff resulting from a reduction in an establishment's activity or an internal reorganization that is foreseen by the employer is subject to the following procedures:

The employer establishes the order of the layoffs in light of professional qualifications, seniority within the establishment, and family burdens of the workers.

- · The employer must inform the workers' representatives in writing in order to solicit their suggestions, primarily, on the measures for a prior announcement of the reduction in staff and the measures taken to minimize the effects of the reduction on the affected workers.

- · The first workers to be laid off will be those with the least professional ability, then the workers with the least seniority. The seniority has to be increased by one year for a married worker and by an additional year for each dependent child.

The dismissed workers have, for two years, priority to be re-hired for the same position in the enterprise.

Workers who have priority for re-hire are required to inform their employer of any change in address occurring after the layoff.

If there is a vacancy, the employer must inform the concerned worker by sending a recorded delivery or registered letter to his last address. The worker must appear at the establishment within one week after receiving the letter.

The Labor Inspector is kept informed of the procedure covered in this article. At the request of the workers' representatives, the Labor Inspector can call the concerned parties together one or more times to examine the impact of the proposed layoffs and measures to be taken to minimize their effects.

In exceptional cases, the Minister in Charge of Labor can issue a Prakas (ministerial order) to suspend the layoff for a period not exceeding thirty days in order to help the concerned parties find a solution. This suspension may be repeated only one time by a Prakas of the Ministry.

CHAPTER V

COLLECTIVE LABOUR AGREEMENTS

Article 96:

The purpose of the collective agreement is to determine the working and employment conditions of workers and to regulate relations between employers and workers as well as their respective organizations. The collective agreement can also extend its legally recognized roles to trade union organizations and improve the guarantees protecting workers against social risks.

The collective agreement is a written agreement relating to the provisions provided for in Article 96 - paragraph 1. The collective agreement is signed between:

a) one part: an employer, a group of employers, or one or more organizations representative of employers; and

b) the other part: one or more trade union organizations representative of workers. With derogation of the above principle, during the transitional periods that there is no trade union organization representative of workers in an enterprise or establishment, a collective agreement can be made between the employer and the shop stewards who have been duly elected as per the conditions of Section 3, Chapter XI.

The collective agreement is concluded for a definite term or for an indefinite term. When it is for a definite term, this term may not exceed three years. At its expiration, it shall remain in effect unless it has been cancelled, on the condition of keeping a three months' notice, by either party. When the collective agreement is concluded by shop stewards under the exceptional conditions laid in paragraph 2 of this article, the term of such agreement is not to exceed one year. When the collective agreement is concluded for an indefinite term, it can be cancelled, but it continues to be in effect for a period of one year to the party that forwarded a complaint to cancel it. The notice of cancellation does not prevent the agreement from being implemented by the other signatories.

Collective agreements shall specify their scope of application. This can be an enterprise, a group of enterprises, an industry or branch of industry, or one or several sectors of economic activities.

Article 97. –

The provisions of a collective agreement shall apply to employers concerned and all categories of workers employed in the establishments as specified by the collective agreement.

Article 98:

The provisions of collective agreements can be more favorable toward workers than those of laws and regulations in effect. However, the collective agreements cannot be contrary to the provisions on the public order of these laws and regulations.

Any provisions of labor contracts between employers and workers, already covered by a collective agreement, that are less favorable than the provisions provided for in this collective labor agreement shall be nullified and must be replaced automatically by the relevant provisions of the collective agreement.

A collective agreement of an enterprise or an establishment can adapt to the provisions of a collective agreement covering the wider scope of application that is applicable to the enterprise under the special conditions of the enterprise or the establishment in question. The collective agreement of the enterprise or establishment can include new provisions and clauses that are more favorable to workers.

In the event of agreements covering the wider scope of application applicable to an enterprise or establishment, the provisions of these agreements must be adapted accordingly by the collective agreement of the enterprise or establishment.

Article 99:

At request of a professional organization of workers or employers that is representative in the relevant scope of application, or on its own initiative, the Minister in Charge of Labor, after consultation with the Labor Advisory Committee, may extend all or some of the provisions of a collective agreement to all employers and all workers included in the occupational area and scope of this agreement.

Article 100:

In the absence of a collective agreement, the Ministry in Charge of Labor, after having received the approval from the Labor Advisory Committee, can issue a Prakas (ministerial order) to lay the working conditions for a particular occupation.

Article 101:

The Prakas of the Ministry in Charge of Labor shall determine:

a) the conditions and methods for implementing the procedure for extending the scope of application as specified in Article 99;

b) the conditions and methods for implementing the regulatory procedure set out in Article 100;

c) the methods for registering, filing, publishing and posting the collective

agreements;

d) the methods for monitoring the enforcement of those agreements, in case of necessity.

CHAPTER VI

GENERAL WORKING CONDITIONS

Section 1

Wage

A. Wage Determination

Article 102:

For the purposes of this law, the term "wage", irrespective of what the determination or the method of calculation is, means the remuneration for the employment or service that is convertible in cash or set by agreement or by the national legislation, and that shall be given to a worker by an employer, by virtue of a written or verbal contract of employment or service, either for work already done or to be done or for services already rendered or to be rendered

Article 103:

Wage includes, in particular:

- actual wage or remuneration;
- overtime payments;
- commissions;
- bonuses and indemnities;
- profit sharing;
- gratuities;
- the value of benefits in kind;
- family allowance in excess of the legally prescribed amount;
- holiday pay or compensatory holiday pay;
- amount of money paid by the employer to the workers during disability and maternity leave.

Wage does not include:

- health cares;
- legal family allowance;
- travel expenses;
- benefits granted exclusively to help the worker do his or her job.

B. Guaranteed Minimum Wage

Article 104:

The wage must be at least equal to the guaranteed minimum wage; that is, it must ensure every worker of a decent standard of living compatible with human dignity.

Article 105:

Any written or verbal agreement that would remunerate the worker at a rate less than the guaranteed minimum wage shall be null and void.

Article 106:

For work of equal conditions, professional skill and output, the wage shall be equal for all workers subject to this law, regardless of their origin, sex or age.

Article 107:

The guaranteed minimum wage is established without distinction among professions or jobs. It may vary according to region based on economic factors that determine the standard of living.

The minimum wage is set by a Prakas (ministerial order) of the Ministry in Charge of Labor, after receiving recommendations from the Labor Advisory Committee. The wage is adjusted from time to time in accordance with the evolution of economic conditions and the cost of living.

Elements to take into consideration for determining the minimum wage shall include, to the extent possible:

a) the needs of workers and their families in relation to the general level of salary in the country, the cost of living, social security allowances, and the comparative standard of living of other social groups;

b) economic factors, including the requirements of economic development, productivity, and the advantages of achieving and maintaining a high level of employment.

Article 108:

For task-work or piecework, whether it is done in the workshop or at home, the wage must be calculated in a manner that permits the worker of mediocre ability working normally to earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage as determined for a worker.

Article 109:

Minimum wages established by virtue of this law must be permanently posted in the workplace and in payment and recruitment offices.

Article 110:

The employer shall include the commissions or gratuities, if any, when calculating remuneration for paid holiday, dismissal indemnity in the event of dismissal and for damages in the event of termination of the labor contract without prior notice, or for an abusive breach of the labor contract. The calculation is based on the average monthly commissions or gratuities previously received over a period not to exceed the twelve months of service up to the date of leave or termination of work.

Article 111:

The specifications for a labor contract of government services or of public institutions shall include all necessary stipulations to ensure the enforcement of the provisions of this law pertaining to the guaranteed minimum wage and general work regulations.

Article 112:

The employer must take measures to inform the workers in a precise and easily comprehensible fashion of:

a) The terms regarding wage that apply to the workers before they are assigned to a job or at any time that these terms change.

b) The items that make up their wage for every pay period when there is a change to the items.

C. Payment of Wages

Article 113:

The wage must be paid directly to the worker concerned, unless the worker agrees to get paid through other methods. The wage shall be paid in coin or bank note, which is legally circulating, notwithstanding provisions to the contrary.

Article 114:

The employer, however, is prohibited from restricting the worker's freedom to using his wage at his disposal.

Article 115:

Except for acts of God, wages shall be paid at the workplace or in the employer's office if it is nearby.

The payment of wages in the form of alcohol or harmful drugs shall not be allowed in any circumstances. Furthermore, the payment of wages shall not be made in a drink shop or in a retail business or in places of recreation, except for persons being employed in such establishments.

Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wages shall made a day earlier.

Article 116:

Laborers' wages shall be paid at least two times per month, at a maximum of sixteen-day intervals.

Employees' wages must be paid at least once per month.

Commissions due to sale agents or commercial representatives must be paid at least every three months.

For all task-work or piecework that is to be executed for longer than fifteen days, the dates of payment can be fixed by agreement, but the laborer must receive partial payments every fifteen days and be paid in full in the week following the delivery of the work.

In the event of termination of a labor contract, wage and indemnity of any kind must be paid within forty-eight hours following the date of termination of work.

Article 117:

In case of an unjustified delay in the payment of wages, the Labor Inspector shall serve notice on the employer to pay the wage of his workers by setting the deadline by which payment must be made.

If payment is not made by the deadline, the Labor Inspector shall write up a report and bring the matter, at no cost, before the competent court that may take any measure to keep the asset in the interest of the workers, including appointing a provisional administrator as well.

The Labor Inspector can then take any actions to force the employer to fulfil his obligations toward his workers and employees.

Article 118:

In the event of disputes over the payment of wages, the employer has the duty to prove that he has made the payment.

This proof can be derived from the signature of the worker concerned or those of two witnesses if he is illiterate, put in the payroll ledger that the employer is required to keep.

Article 119:

It is not contradictory to the worker for the confirmation that "all wages and remuneration are already paid," or for any other similar term of confirmation indicating that the worker has renounced all or part of his rights in the contract, either during the execution or after the termination of the labor contract.

Even though the worker accepts payment without protest, this does not mean that he has renounced the right to payment of all or part of his wages, allowances, or other benefits granted him by legislative, regulatory, or contractual provisions.

D. Lapse of Lawsuits for Payment of Wages

Article 120:

A lapse of a lawsuit for the payment of wages is three years from the date the wage was due.

Claims subject to the lapse of lawsuit include the actual wage, perquisites and all other claims of the worker resulting from the labor contract, as well as the indemnity in the event of dismissal.

E. Guarantees and Priority of Wage Claims

Article 121:

Amounts owed to contractors of any kind cannot be garnished nor can payment be objected with prejudice to workers' wage payments.

Wages owed to workers shall be paid before payment is made to suppliers of supplies used for construction.

Article 122:

Wage claims of the workers, including domestics or household servants, shall take priority over the movable or immovable properties of the debtor within the last six months prior to the declaration of bankruptcy or the court-ordered liquidation of the employer.

Sale agents and commercial representatives have priority for commissions and remittances earned for the last six months prior to the declaration of bankruptcy or court-ordered liquidation.

Priority established by this article also applies to the claims of workers for paid holidays and compensation for notice period and to dismissal indemnity.

Article 123:

Prioritized claims provided for in Article 122 above, are opposable to all other general and special priority, including the priority of the National Treasury.

Amounts deducted by the National Treasury from the money order of the employer after the date when payment of debt was stopped, shall be returned to debtors (sub-creditors).

Article 124:

Workers benefit from outclassing all of creditors for a portion of their claim: the unattachable portion of wages earned by Laborers during the last fifteen days, by employees during the last thirty days, and by commercial representatives during the last ninety days prior to the declaration of bankruptcy or court-ordered liquidation.

This part of their claim is paid to the workers, before other claims, just within ten days following the declaration of bankruptcy or court-ordered liquidation by a simple ruling of a judge, from the funds existing at the time the bankruptcy was declared or the liquidation was ordered, or from the first funds that become available.

Article 125:

In order to determine the amount of wage in view of enforcing the provisions of Article 124 above, not only the actual wages are taken into account but also the other items of remuneration covered in Article 103 of this law, as well as any damages due eventually for the breach of contract.

F. Wage Deductions

Article 126:

Wage deductions for the purpose of job placement that are provided directly or indirectly to an employer, to his representative, or to any intermediary such as a labor recruiter are prohibited.

Article 127:

None of the balance can be made, in favor of the employer, between the worker's wage and the employer's claim for diverse supplies of whatever kind, with the exception of:

1. Tools and equipment required for the work and that are not returned by the worker upon his departure;

2. Items and materials under the control and usage of the worker;

3. Amounts advanced to acquire the said items;

4. Amounts owed to the company store.

However, the total amount deducted from the wage, in any case, cannot surpass the portion deemed necessary to provide the basic living for the worker and his family.

Article 128:

Any employer who makes a cash advance, other than the amount advanced for the purchase of tools, equipment, items and materials that the worker takes charge of and uses, can get reimbursed only by a series of gradual deductions that do not exceed the transferable or attachable portion of the wage.

The deducted amounts are not to be confused with the attachable portion of the wage as determined by laws in effect. The employer has the priority to deduct this attachable portion before a third party to whom the worker owes.

Installments, as stipulated in Article 116 above, and partial wage payments made before the normal deadline but in payment for finished work, can be fully deducted from the following paycheck.

Article 129:

Collective agreements authorizing any wage deductions other than these cases are null and void.

However, the worker can authorize deductions of his wage for dues to the trade union to which he belongs. This authorization must be in writing and can be revoked at any time.

G. Garnishment and Assignment of Wages of Workers and Domestics

Article 130:

Wages can be garnished or assigned only as follows:

1 . The portion of wage that is less than or equal to the guaranteed minimum wage cannot be garnished or assigned.

2. A maximum of twenty percent of the portion of wage greater than the guaranteed minimum wage to three times the minimum wage can be garnished or assigned.

3. A maximum of thirty percent of the portion of wage greater than three times the guaranteed minimum wage to ten times the minimum wage can be garnished or assigned.

4. A maximum of fifty percent of the portion of wage greater than ten times the minimum wage can be garnished or assigned.

The wage taken into account for this calculation is the monthly wage.

Article 131:

The limits, stipulated in Article 130 above, do not apply to food creditors, since the purpose of the unattachable portion of the wages is to feed the worker's family. However, food creditors can only claim the current monthly amount of his ration allowance; for overdue amounts, they must participate with the other creditors for the attachable portion.

Article 132:

Family allowances cannot be garnished or assigned except to pay for debts for food.

Article 133:

The garnishment and assignment of wages are to be carried out in accordance with the procedure of law in effect.

H. Tips

Supervision and Distribution of Tips

Article 134:

Tips are remuneration made by clients to personnel of certain establishments such as hotels, restaurants, cafés, bars, and hair salons, and received by the employer as a mandatory percentage added to the client's bill with a note "service charge. "These tips must be collected by the employer and distributed in full to the personnel in contact with the clientele.

Article 135:

The employer shall clearly justify the receipt and the payment to his staff of the amount of tips covered by the preceding article.

Article 136:

The method of dividing tips and determining the categories of personnel who should receive them are established by the customs of the occupation or, if not applicable, by a Prakas (ministerial order) of the Ministry in Charge of Labor.

Section 2

Hours of work

Daily and weekly hours

Article 137:

In all establishments of any nature, whether they provide vocational training, or they are of a charitable nature or liberal profession, the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week.

Article 138:

The work schedule is set by each enterprise for different jobs based on the nature of their activities and organization of work.

When the work schedule consists of split shifts, the enterprise's management can normally set up only two shifts, one in the morning and the other in the afternoon.

Article 139:

If workers are required to work overtime for exceptional and urgent jobs, the overtime hours shall be paid at a rate of fifty percent higher than normal hours. If the overtime hours are worked at night or during weekly time off, the rate of increase shall be one hundred percent.

Article 140:

The Ministry in Charge of Labor can issue a Prakas (ministerial order) authorizing an extension of the daily hours in order to make up for hours lost following mass interruptions in the work or a general slowdown from either accidental causes or acts of God, notably bad weather or because of holidays, local festivals, or other local events, in the following cases:

a) Making up for lost hours will not be authorized for more than 30 days per year and will be implemented within fifteen days after the return to work. For agricultural enterprises this period is extended to one month.

b) The extension of the daily working hours cannot exceed one hour.

c) Hours of work cannot exceed ten hours per day.

Article 141:

Prakas issued by the Ministry in Charge of Labor shall determine as follows:

1. The allocation of working hours within the forty-eight hour working week in order to allow for a break on Saturday afternoon or any other equivalent approach, on the condition that the extra hours do not exceed one hour per day of the regular schedule.

2. The allocation of working hours within a period of time other than the week, on the condition that the average length of working time calculated by the number of weeks does not surpass forty-eight hours per week, that the daily hours do not surpass ten hours, and that the extra hours do not exceed one hour per day.

3. Permanent dispensations that can be allowed for preparatory or supplementary work that must be performed outside of the limit set for general work of the establishment, or for certain categories of workers whose work is essentially intermittent.

4. Temporary dispensations are allowed in favor of seasonal businesses and industries and certain enterprises in the following cases:

a) For serious or imminent accidents, for acts of God, or for urgent work to be performed on machines or equipment, but only to the extent that this avoids a serious disruption to the normal operations of the enterprise.

b) To prevent the loss of perishable materials or avoid compromising the technical outcome of the work.

c) To allow special work to take place, such as establishing inventory and balance sheet, setting deadlines, liquidating and settling accounts.

To allow the enterprise to handle periods of extra work due to exceptional circumstances when it is unable to wait for other measures to be taken by the employer.

5. The measures for monitoring work hours, rest times and the full working period, as well as the procedures for allowing and implementing dispensations.

6. The region to which the dispensations apply.

Article 142:

The Prakas of the Ministry in Charge of Labor will set equivalent standards for the hours of presence and the actual hours worked suitable to the profession or occupation for which the work is intermittent.

Article 143:

The provisions of the present Section can be suspended for war or other events that threaten national security.

Section 3

Night work

Article 144:

For the purposes of this law, the term "night" represents a period of at least eleven consecutive hours that includes the interval between 2200 and 0500 hour.

Besides continuous work that is performed by rotating teams who sometimes work during the day and sometimes at night, the work at the enterprise can always include a portion of night work. Night work is paid at the rate set in Article 139 of this law.

Section 4

Weekly time off

Article 145:

The provisions of the present Section shall apply to workers employed in enterprises of any kind as specified in Article 1 of this law.

However, these provisions do not apply to rail transport workers, whose time off is covered by special provisions.

Article 146:

It is prohibited from using the same worker for more than six days per week.

Article 147:

Weekly time off shall last for a minimum of twenty-four consecutive hours. All workers shall be given in principle a day off on Sunday.

Article 148:

When it is established that having all staff take Sunday off would be detrimental to the public or jeopardize the normal operation of the enterprise, the rest must be arranged as follows:

a). Give all staff rest on a day other than Sunday.

b). Rest from Sunday noon to Monday noon.

c). Rest by rotating all staff. Necessary authorizations must be requested from the Ministry in Charge of Labor.

Article 149:

It is permitted by law to give the weekly time off, by rotating the day off, to establishments belonging to the following categories:

1. Manufacturers of foodstuffs intended for immediate consumption;

2. Hotels, restaurants, and bars;

3. Natural flower shops;

4. Hospitals, hospices, asylums, homes for retired persons, mental institutions, dispensaries, health clinics, and pharmacies;

5. Bathhouses;

6. Publishers of newspapers, information and show business; museums and exhibitions;

7. Vehicle rental firms;

8. Enterprises supplying electricity, water and power for machinery;

9. Businesses providing land transportation other than railroads;

10. Industries using materials that rapidly deteriorate;

11. Industries where any interruption of operations could cause the product being manufactured to spoil or deteriorate; and

12. Industries performing work for safety, sanitation, or public utility.

A Prakas (ministerial order) of the Ministry in Charge of Labor shall list the types of industries containing in categories 10 and 11, as well as other categories of establishments that are entitled to benefit from rotating the weekly time off.

Article 150:

A Prakas of the Ministry in Charge of Labor shall determine the methods of enforcing weekly time off in factories that operate around the clock and for specialists employed in the round-the-clock manufacturing operations.

Article 151:

In case of urgency that the work is immediately carried out necessarily for salvageable measures or preventing imminent accidents, or to repair damages to materials, facility installations, or buildings of the establishment, the weekly time off can be suspended for staff needed to perform the urgent work.

The right to suspend this rest shall apply not only to workers of the enterprise where the urgent work is necessary, but also to another enterprise making repairs in the interests of the first enterprise. In the second typical enterprise, each worker must be given a compensatory break equal to the missed time off, in the same way as for workers in the first typical enterprise who are normally involved in maintenance and repair .

The provisions of this article can not apply to children less than eighteen years of age and to women.

Article 152:

Guards and caretakers in industrial and commercial establishments who cannot have their time off on Sunday must have a compensatory time off on another day of the week.

Article 153:

In retail food stores, the weekly break can be given from Sunday afternoon to Monday afternoon or by rotating the shift for a one-day break per week.

Article 154:

In retail stores, the weekly break can be cancelled upon authorization from the Labor Inspector if it coincides with a local holiday.

Each worker deprived of the weekly break must be given compensatory time off in the week that follows.

Article 155:

In enterprises where bad weather results in days off, these forced days off can be deducted from weekly breaks to a maximum of two days per month.

Article 156:

In seasonal industries or industries that process perishable goods or foodstuffs that are sensitive to bad weather, the weekly break can be suspended as an exception upon authorization from the Labor Inspector.

Article 157:

A Prakas of the Ministry in Charge of Labor shall list the particular industries that are included in the general categories laid out in Articles 155 and 156 above, as well as the provisions for providing compensatory time off.

Article 158:

When the weekly break is given to the workers collectively, a legible notice indicating the days and hours of the time off must be posted in a conspicuous place.

Article 159:

When the weekly break is not given to the workers collectively, there must be a special list including the names of the workers subject to a particular rest schedule, and indicating this break scheme.

Newly hired workers must be added to this list after a period of six days.

The list must be constantly updated and must be made available to the agents in charge of labor control for [visaing] it during their visits.

Article 160:

Any business owner, director, or manager who wants to suspend the weekly break must request authorization from the Labor Inspector and, except for acts of God, must do so before the work commences.

He must explain to the Labor Inspector about the circumstances that justify the suspension of the weekly break, indicate the date and duration of the suspension, specify the number of workers to which the suspension applies, and indicate the plan for providing compensatory time off. If the Labor Inspector refuses to authorize the suspension of the weekly break, he must inform the business owner, director, or manager of his refusal in writing within four days upon receipt of the request. Lack of notification is considered valid authorization for suspension of the weekly break.

Section 5

Paid holidays

Article 161:

Each year, the Ministry in Charge of Labor issues a Prakas (ministerial order) determining the paid holidays for workers of all enterprises.

These paid holidays do not break off the length of service required to obtain paid annual leave, nor do they reduce this type of leave.

Article 162:

In case the public holiday coincides with a Sunday, workers will have the following day off. Time off for holidays cannot be the reason for reducing monthly, bi-monthly, or weekly wages.

Article 163:

Workers paid by the hour, the day, or by the amount produced shall be entitled to an indemnity equal to the wage lost as a result of holidays as defined in Article 161. This indemnity shall be paid by the employer.

Article 164:

In establishments or enterprises where work cannot be interrupted because of the nature of their activities requiring the workers to occupy with working during holidays; those workers shall be entitled to an indemnity in addition to wages for the work performed. The amount of this indemnity to be paid by the employer shall be set by a Prakas of the Ministry in Charge of Labor.

Article 165:

Hours lost because of holidays as indicated above can be made up according to the conditions laid down in laws in effect. The made-up hours shall be considered as normal work hours.

Section 6

Paid annual leave

Article 166:

Unless there are more favorable provisions in collective agreements or individual labor contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service.

Any worker who has not worked for two continuous months is entitled, at the termination of his labor contract, to compensation for paid leave calculated in proportion to the amount of time he worked in the enterprise.

For jobs that are not performed regularly throughout the year, a worker is considered to have met the condition of continuous service if he works an average of 21 days per month.

The length of paid leave as stated above is increased according to the seniority of workers at the rate of one day per three years of service.

Official paid holidays and sick leave are not counted as paid annual leave.

Article 167:

The right to use paid leave is acquired after one year of service.

If the contract is terminated or expires before the worker has acquired the right to use his paid-leave, an indemnity calculated on the basis of Article 166 above is granted to the worker.

Apart from this, any collective agreement providing compensation in place of paid leave, as well as any agreement renouncing or waiving the right to paid annual leave, shall be null and void.

Acceptance by the worker to defer all or part of his rights to paid leave until the termination of the contract is not considered as renunciation. Deferment of this leave cannot exceed three consecutive years and can only apply to leave exceeding twelve working days per year.

Article 168:

Before the worker departs on leave, the employer must pay him an allowance that is at least equal to the average wage, bonuses, benefits, and indemnities, including the value of benefits in kind, but excluding reimbursement for expenses, that the worker earned during the twelve months preceding the date of departure on leave. This allowance shall in no case be less than the allowance that the worker would have received had he actually worked.

Article 169:

The length of continuous service set out in Article 166 must cover the entire period during which the worker has a labor contract with the employer, even if the work was suspended without a termination of the contract.

Included in the period for which the worker is entitled to paid leave each year is as follows:

- weekly time off;
- paid holidays;
- sick leave;
- maternity leave;
- annual leave and notice period;
- special leave granted up to a maximum of seven days during any event directly affecting the worker's immediate family.

On the contrary, special leave for personal reasons is not included when calculating the eligibility period for paid annual leave if the time off was not made up.

Article 170:

In principle, annual leave is normally given for the Khmer New Year unless there is a different agreement between the employer and the worker. In this case, the employer must inform the Labor Inspector of this arrangement.

In every case of the paid annual leave exceeding fifteen days, employers have the right to grant the remaining days off at another time of the year, except for the leave for children and apprentices less than eighteen years of age.

Section 7

Special leave

Article 171:

The employer has the right to grant his worker special leave during the event directly affecting the worker's immediate family.

If the worker has not yet taken his annual leave, the employer can deduct the special leave from the worker's annual leave.

If the worker has taken all his annual leave, the employer cannot deduct the special leave from the worker's annual leave for the next year.

Hours lost during the special leave can be made up under the conditions set by a Prakas of the Ministry in Charge of Labor.

Section 8

Child labor - women labor

A. Joint Provisions

Article 172:

All employers and managers of establishments in which child laborers or apprentices less than eighteen years of age or women work, must watch over their good behavior and maintain their decency before the public. All form of sexual violation (harassment) is strictly forbidden.

Article 173:

A Prakas of the Ministry in Charge of Labor shall determine the different types of work that are hazardous or too strenuous and that shall be prohibited to children aged less than eighteen years.

The Prakas shall also establish the special conditions under which minors can be employed in insalubrious or hazardous establishments where the staff is exposed to arrangements harmful to their health.

Article 174:

Minors less than eighteen years old cannot be employed in underground mines or quarries.

The Prakas of the Ministry in Charge of Labor shall determine the special conditions of work and apprenticeship for minors aged from sixteen to less than eighteen years for underground work.

Article 175:

Children, employees, laborers, or apprentices aged less than eighteen years cannot be employed to perform night work in any enterprise covered in Article 1 of this law.

The Prakas of the Ministry in Charge of Labor shall determine the conditions under which special dispensations can be allowed for teenagers over sixteen years of age:

a) for work performed in the industries listed below, which, because of their nature, must operate continuously day and night:

- iron and steel factories;
- glass factories;
- paper factories;
- sugar factories;
- gold ore refineries.

b) For an inevitable case that obstruct the normal operations of the establishment.

Article 176:

The nighttime break for children of either sex must be a minimum of eleven consecutive hours.

B. Child Labor

Article 177:

1. The allowable minimum age for wage employment is set at fifteen years.

2. The minimum allowable age for any kind of employment or work, which, by its nature, could be hazardous to the health, the safety, or the morality of an adolescent, is eighteen years. The types of employment or work covered by this paragraph are determined by a Prakas (ministerial order) of the Ministry in Charge of Labor, in consultation with the Labor Advisory Committee.

3. Regardless of the provisions of paragraph 2 above, the Ministry in Charge of Labor can, after having consulted with the Labor Advisory Committee, authorize the generation of occupation or employment for adolescents aged fifteen years and over on the condition that their health, safety, or morality is fully guaranteed and that they can receive, in the corresponding area of activity, specific and adequate instruction or vocational training.

4. Regardless of the provisions of paragraph 1 above, children from twelve to fifteen years of age can be hired to do light work provided that:

a) The work is not hazardous to their health or mental and physical development.

b) The work will not affect their regular school attendance, their participation in guidance programs or vocational training approved by a competent authority.

5. Prakas issued by the Ministry in Charge of Labor in consultation with the Labor Advisory Committee will determine the types of employment and establish the working conditions, particularly the maximum number of hours of work authorized as per paragraph 4 above.

6. After having consulted with the Labor Advisory Committee, the Ministry in Charge of Labor can wholly or partially exclude certain categories of occupation or employment from having to implement this article if the implementation of this article for these types of occupation or employment create considerable difficulties.

Article 178:

The Labor Inspector can request a physician, who is in public service, to examine children less than eighteen years of age employed in an enterprise in order to establish that their jobs are not beyond their physical capabilities. If this is the case, the Labor Inspector is empowered to demand that their job be changed or that they be let out of the establishment upon the advice or examination of the physician, if their parents so protest.

Article 179:

All employers must keep a register of children aged less than eighteen years old, whom they employ, indicating their date of birth. This register must be submitted to the Labor Inspector for visa, observation and warning.

Article 180:

In orphanages and charitable institutions in which primary education is given, occupational or vocational training for children less than fourteen years old must not exceed three hours per day. A record must be kept indicating the date of birth, manual labor conditions for children, and the daily schedule i.e. the assignment of hours of study, manual labor, rest, and meals.

The record must be submitted to the Labor Inspector for visa, observation and warning at the end of each year.

Article 181:

No unemancipated child of either sex less than eighteen years old can contract to work without the consent of his guardian.

C. Women Work

Article 182:

In all enterprises covered by Article 1 of this law, women shall be entitled to a maternity leave of ninety days.

After the maternity leave and during the first two months after returning to work, they are only expected to perform light work.

The employer is prohibited from laying off women in labor during their maternity leave or at a date when the end of the notice period would fall during the maternity leave.

Article 183:

During the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer.

Women fully reserve their rights to other benefits in kind, if any.

Any collective agreement to the contrary shall be null and void.

However, the wage benefits specified in the first paragraph of this article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise.

Article 184:

For one year from the date of child delivery, mothers who breast-feed their children are entitled to one hour per day during working hours to breast-feed their children. This hour may be divided into two periods of thirty minutes each, one during the morning shift and the other during the afternoon shift. The exact time of breast-feeding is to be agreed between the mother and the employer. If there is no agreement, the periods shall be at the midpoint of each work shift.

Article 185:

Breaks for breastfeeding are separate from and shall not be deducted from normal breaks provided for in the labor law, in internal regulations of the establishment, in collective labor agreements, or in local custom for which other workers in the same category enjoy them.

Article 186:

Managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a crèche (day-care center).

If the company is not able to set up a crèche on its premises for children over eighteen months of age, female workers can place their children in any crèche and the charges shall be paid by the employer.

Article 187:

A Prakas (ministerial order) of the Ministry in Charge of Labor shall determine the conditions for setting up hygienic environment and supervising these nursing rooms and crèches.

Section 9

Workers recruited outside the work place

Article 188:

All workers who were recruited far from the work place and whose trip to the work place was paid for by the employer are, at the expiration of the contract or during leave period, entitled to a return trip to the place of recruitment at the expense of the employer under the same conditions as the original trip.

The same obligation applies to the employer if there is a lay-off as a result of a work stoppage, the closing of the enterprise or an individual dismissal. If the reason for the dismissal is a serious misconduct on the part of the worker, the employer must reimburse travelling expenses only in proportion to the period the worker has worked in the enterprise.

Article 189:

The worker whose services were terminated under the conditions specified above can demand a return expense from his former employer only within a maximum of one year from the day he stopped working for the employer.

Article 190:

A Prakas of the Ministry in Charge of Labor shall determine the procedure for implementation of this Section.

CHAPTER VII

SPECIFIC WORKING CONDITIONS FOR AGRICULTURAL WORKS

Article 191:

Besides the general provisions set out in this law, the following provisions apply to agricultural workers.

Article 192:

An agricultural worker is a worker employed on:

- plantations;
- farms (the growing of crops and the raising of animals);
- forestry exploitation;
- fisheries.

Section1

Plantations

Article 193:

For the purposes of this law, the term "plantation" means all agricultural business that regularly employs paid workers and that primarily cultivates or produces the following for commercial purposes: coffee, tea, sugar cane, rubber, bananas, coconuts, peanuts, tobacco, citrus fruits, oil palm, cinchona, pineapple, pepper, cotton, jute, and other commercial crops.

The provisions in the present Section do not apply to family enterprises or small- sized plantations whose produce is only for the local market and that do not regularly employ paid workers.

A. Hours of Work

Article 194:

The normal number of working hours for plantation workers is eight hours per day, or forty-eight hours per week. For certain categories of workers, the daily number of hours can be increased to nine as long as the weekly total does not exceed forty-eight.

Article 195:

For regular resident workers, i.e. those accommodated by the enterprise, any time over one hour required for travelling between workplace and home is considered to be part of the workday.

For regular non-resident workers as well as casual workers, the daily working hours is determined according to the hours worked.

Article 196:

For certain jobs, a maximum of two hours may be added to the actual eight hours of work in order for workers to be present at the work site. These jobs shall be listed in a Prakas (ministerial order) of the Ministry in Charge of Labor. During the two hours for which workers are required to be present at the work site, workers cannot be forced to perform any work and can use the time freely.

Article 197:

If hours worked are more than eight hours of work per day, the extra hours are paid at the overtime rate. Overtime hours cannot be added to the actual workday to exceed ten hours in the same day, except for a case of preventing a disaster or repairing damage caused by a disaster.

B. Partial Payment in Kind

Article 198:

Partial payment of wages in kind is allowed but cannot be imposed.

In case that the employer makes such payment in kind, each regular worker shall be allocated, in addition to the portion of the payment he receives in cash, an allotment of 900 grams of uncooked rice per paid workday.

Article 199:

The payment in rice covered in the preceding article can be replaced by a payment in cash if the parties so agree.

The cash value of the portion of the wage paid in kind, in any case, must be calculated exactly and recorded in a ledger kept for this purpose.

C. Family Benefits

Article 200:

All regular plantation workers are entitled to a daily allocation of rice as indicated below for their wife and dependent minor children, legitimate or illegitimate, less than sixteen years old:

- 800 grams for the wife;
- 200 grams for a child under two years;
- 400 grams for a child two to six years;
- 600 grams for a child six to ten years;
- 750 grams for a child ten to sixteen years.

These benefits are due to the worker as head of the household for each day worked entitling him to wage or to any interruption of work for hospitalization or for a justified illness.

Children more than sixteen years of age and less than twenty-one years of age, who are studying in a public secondary or tertiary education institution or in an authorized private secondary or tertiary education institution, or who are working as apprentices, receive the same family benefits as minor children less than sixteen years old.

To be entitled to family benefits, the wife must meet the following requirements:

a) She must not be gainfully employed.

b) She must live with her husband, either on the plantation if he is a regular resident worker or at home or in the husband's normal place of residence outside the plantation if he is a non-resident.

To be entitled to family benefits, minor children must live with the head of the household, either at the plantation if he is a resident worker, or at his home or normal place of residence outside the plantation if he is a non-resident. However, children who study at a distant school or who attend apprenticeship and therefore cannot live with their parents are entitled to benefits if a statement attesting to this situation is issued by the public or authorized private school. If the school is a private institution, the signature of the head of the institution must be notarized by the competent ministry.

Article 201:

Family benefits are due to the worker as of the date of hiring on the condition that the employer was given all required supporting documents.

Article 202:

The worker who wants to benefit from the provisions of the present Section must present the following supporting documents:

a) an excerpt of marriage certificate;

b) an excerpt of birth certificate for each child;

c) a declaration by the head of the household claiming responsibility for his own that his wife is not gainfully employed;

d) eventually, proof of schooling or apprenticeship attendance as provided for in Article 200.

Article 203:

If the worker finds himself unable to procure the certificates enumerated in paragraphs a) and b) of Article 202 above, they can be replaced by either a court decision or by an attested affidavit as prescribed by the laws or regulations in effect regarding civil status.

D. Housing

Article 204:

Regular full-time workers shall be entitled to free housing (main house and outbuildings) provided by the employer under the conditions set by a Prakas (ministerial order) of the Ministry in Charge of Labor.

Article 205:

Housing (main house) provided to a married worker living with his family should have a minimum inhabitable area of twenty-four square meters. A house of this size can be provided to single workers at the rate of one house per a maximum of four single persons of the same sex.

Article 206:

The housing must be constructed in conformance with sanitation and public health regulations issued by the competent authorities. To this end, enterprises shall submit the plans and specifications for one or more types of housing to the Bureau of Labor Inspection who will directly advise and then send them to the competent provincial or municipal authorities. If the authorities voice no reservation within thirty days from the submission, the enterprise can undertake any construction conforming to the submitted project. Special authorization can be requested for the construction of temporary housing during the installation period or the clearing of new lots as long as the temporary housing is not occupied longer than three years and that it conforms to general standards of sanitation, hygiene and health as established by the competent authorities.

Article 207:

Workers are prohibited from housing anyone other than their wife and legitimate or illegitimate children registered with the employer in the houses putting at their disposal, unless otherwise authorized by the employer.

Article 208:

Workers must always keep their house, as well as their outbuildings, courtyard, and garden, clean. They are liable for damage to the housing they are provided.

E. Housing Allowance

Article 209:

When the plantation cannot furnish housing to regular full-time workers, the employer is required to pay them a monthly housing allowance under the conditions determined by a Prakas from the Ministry in Charge of Labor in accordance with the recommendation of the Labor Advisory Committee.

F. Water

Article 210:

Workers must be supplied with water for all their needs, in every season, and under the best conditions possible.

Article 211:

The source of water shall be found, protected and the water shall be distributed first for consumption.

Article 212:

In case that the water are suspected to be tainted, the employer shall take all necessary measures (sterilization by boiling or chlorinating, etc.) recommended by the public health service.

G . Provision of Supplies

Article 213:

Plantations or work sites that are located far from regular markets and that do not have adequate supplies of their own, the employer can set up a store that provides staples such as rice, dry salted fish, smoked fish, salt, tea, etc. The store must operate according to the conditions defined in Articles 42 and 43 of this law.

H. Latrines

Article 214:

In each community of workers, the number of latrines must equal at least one-quarter of the number of houses. These latrines shall be in covered buildings placed at a sufficient distance from the living areas. They shall be enclosed and maintained permanently in a sanitary state.

Article 215:

Household refuse and garbage of all kinds shall be placed in a pit away from water sources and buried daily or burned.

Article 216:

Dead animals must be buried far from water sources, wells, cisterns, and inhabited areas.

I. Death - Interment or Cremation

Article 217:

Deaths shall be certified by the competent authorities and interment or cremation shall be organized as prescribed by the regulations in effect.

Article 218:

Upon the death of each regular worker, the employer shall furnish:

- a coffin;
- white cloth;
- transportation of the coffin to the cemetery or the crematorium;
- and shall be responsible for funeral costs up to at least one-month wage of the deceased worker.

J. Day Nursery

Article 219:

When a plantation employs one hundred or more regular working resident women, the Labor Inspector can, on the advice of the health service and the provincial or municipal governors, require the employer to construct, organize, and maintain a day nursery near the workers' housing.

This day nursery will be placed under the supervision of a female caretaker, who will be eventually assisted as needed by one or more helpers, depending on the number of children, and will be provided with necessary supplies such as milk and rice.

For infants more than two years old, the owner of the plantation shall distribute, in addition to rice, a variety of food. The rations shall be monitored by the health service of the enterprise.

Article 220:

The maximum age of admittance for children to the day nursery is six years.

Article 221:

A day nursery shall be opened and operated according to the conditions specified above, provided that there are at least ten children enrolled.

K. School

Article 222:

When there are at least twenty children aged at least six years of regular resident workers at the plantation, the employer must construct and maintain, at his own expense, a sufficient number of primary schools located close to the workers' housing.

Article 223:

The employer must equip these schools with furniture and teaching materials, at his own expense, in conformance with the directives of the competent administrative services.

Article 224:

Teacher salaries are to be paid by the plantation.

Article 225:

If the school is located more than 1500 meters from the village, the employer is required to provide transportation for the school children at his expense in vehicles that provide protection from sun and rain.

Article 226:

The children of regular non-resident workers can be admitted to the schools on the plantation, but the employer is not responsible for their transportation.

Section 2

Other agricultural works

Article 227:

The particular working conditions in agricultural enterprises other than plantations shall be established specifically by proposal of the Minister in Charge of Labor after having consulted with the Labor Advisory Committee.

CHAPTER VIII

HEALTH AND SAFETY OF WORKERS

SCOPE OF APPLICATION

Article 228:

The provisions of the present Chapter shall apply to all enterprises of any kind, as stated in Article 1 of this law.

However, excluded from them are workshops where only family members are employed under the direction of the father, the mother, or guardian as long as the work is not performed using a boiler or mechanical or electric motors or the industry is not classified as dangerous or unsanitary.

Section 1

General provisions

Article 229:

All establishments and work places must always be kept clean and must maintain standards of hygiene and sanitation or generally must maintain the working conditions necessary for the health of the workers.

The Ministry in Charge of Labor and other relevant ministries shall prepare a Prakas (ministerial order) to monitor the measures for enforcing this article in all establishments subject to the provisions of this Chapter, particularly regarding:

- the quality of the premises;
- cleaning;
- hygienic arrangements for the needs of personnel;
- beverages and meals;
- lodging of the personnel, if applicable;
- work stations and the seating arrangements;
- ventilation and sanitation;
- individual protective instruments and work clothes;
- lighting and noise levels in the workplace.

Article 230:

All establishments and work places must be set up to guarantee the safety of workers. Machinery, mechanisms, transmission apparatus, tools, equipment and machines must be installed and maintained in the best possible safety conditions. Management of technical work utilizing tools, equipment, machines, or products used must be organized properly for guaranteeing the safety of workers.

The Prakas covered in Article 229, shall also determine the measures for enforcing this article, particularly regarding:

- risks of falling;
- moving heavy objects;
- protection from dangerous machines and apparatus;
- preventive measures to be taken for work in confined areas or for work done in an isolated environment;
- risks of liquids spilling;
- fire prevention.

Article 231:

Without prejudice to the provisions in Articles 229 and 230 and the regulation for their enforcement, and if necessary, the Ministry in Charge of Labor can issue other Prakas in order to enforce the same legislative measures regarding the special regulations for certain professions or certain types of work.

Article 232:

The Prakas described in Articles 229 to 231 shall be issued after having consulted with the Labor Advisory Committee.

Section 2

Inspections

Article 233:

Visits to establishments and inspections of the enforcement of the legislative provisions and regulations regarding health, working conditions and safety shall be made by Labor Inspectors and Labor Controllers. Labor Medical Inspectors and experts in work safety shall collaborate to achieve these inspection missions.

After inspection, if infractions are found, the Labor Inspector shall serve notice on the manager of the establishment by indicating all points that do not conform to the provisions of Chapter VIII of this labor law and the Prakas for its implementation.

Article 234:

Before drawing up an official report, the Labor Inspectors and Controllers must serve notice on the managers of the establishments to conform to the provisions of Prakas for implementing Articles 229 to 231, when this procedure is required.

By derogation of this rule, the Labor Inspectors and Controllers can, without serving prior notice, write up an official report when they have identified a serious or imminent danger to the health or safety of the workers.

Article 235:

The procedure of serving notice must also be used when a dangerous situation is identified and resulted from an infraction of the general provisions even if they have not yet been the subjects of specific provisions for implementation.

Article 236:

Serving notice must be done in writing, either in the register of the establishment or by recorded delivery or registered letter with acknowledgement of receipt. Serving notice shall be dated and signed, with specification of the infractions or identified dangers, and set a deadline for remedying them.

If the infraction has not been remedied by the deadline, the Labor Inspector or Controller can write up an official report.

Article 237:

Before the expiration of the deadline, the employer can lodge a complaint to the Ministry in Charge of Labor. This complaint does not conflict with serving notice. The Minister can give a ruling on this within 30 days, with the clear justification. If there is no written notification of this ruling within the time allowed, the complaint is deemed accepted.

Section 3

Labor health service

Article 238:

Enterprises and establishments covered by Article 1 of this law must provide the primary health care to their workers.

Article 239:

The Labor Health Service shall be led by one or more physicians who are called Labor Physicians and whose curative and preventive role consists in avoiding a deterioration of workers' health that is adversely affected by their work. In particular, they monitor the hygienic standards of the work, the risks of contagion and the workers' state of health.

Health records of the workers collected by medical personnel are confidential, and the information contained in the records cannot be given to the employer, to a union, or to any third party in a manner that could identify the employee. However, data extracted from the files that do not identify the individuals can be used for the purposes of research on labor health or public health.

The provisions of the preceding paragraph do not prevent the files from being given to the Labor Health Inspector or to the Labor Inspector, who can have access to these files at any time upon request.

Article 240:

Depending on the necessity of the enterprise, the labor health service can serve a single enterprise or jointly serve several enterprises.

The cost of organizing and operating the labor health service is borne by the employer. For inter-enterprise services, the costs are distributed proportionally based on the number of employees at each enterprise.

Article 241:

As of the date set by a joint Prakas (ministerial order) of the Ministry in Charge of Labor and the Ministry of Health, there shall be physicians specialized in labor health necessarily taking up the positions of Labor Physicians.

Article 242:

All enterprises and establishments covered by Article 238 of this law and employing at least fifty workers shall have a permanent infirmary on the premises of the establishment, workshop, or work site.

This infirmary shall be run by a physician assisted by one or more male or female nurses, based on the number of workers.

During working hours, both day and night, there shall always be at least one male or female nurse present.

The infirmary shall be supplied with adequate materials, bandages and medicines to provide emergency care to workers in the event of accidents or occupational illness or sickness during work.

Expenses incurred in organizing and operating this infirmary are the responsibility of the employer.

Article 243:

When an enterprise covered by Article 228 has one or more branches or work sites that employ a total of at least fifty workers and are located more than five kilometers from the main work site, the employer is required to provide the branches or work sites with the same means as the main work site to assist and to treat workers. This includes medical personnel, buildings, materials, bandages and medicines.

Article 244:

When there are more than 200 workers, the infirmary must include, in addition to medicines and bandages, areas for hospitalizing the injured and sick before they are transferred to a hospital or isolated if necessary. These areas must be able to handle two per cent of the personnel employed at the site.

Care, treatment, and food for the injured and sick persons hospitalized in the infirmary are the responsibility of the employer.

Article 245:

Apart from the measures in the preceding articles, the employer is required to cover these expenses:

1) the service of chemical prophylaxis on their sites;

2) vaccination against epidemics.

In the case of an epidemic, the Minister of Health can order extraordinary preventive measures at work sites.

Article 246:

The Ministry in Charge of Labor and the Ministry of Health shall issue a joint Prakas to determine:

a) the organization and operation of the labor health services;

the maximum time that the labor physician must devote to personnel at the establishments in question based on the size of their work force and the nature of their activities, as well as the physician's mandatory tasks;

c) the frequency and the content of the reports to be filed by the manager of the enterprise or by the representatives of the inter-enterprise services with regard to the organization, operation and financial management of the health service.

Article 247:

The Ministry in Charge of Labor shall issue a Prakas to determine:

a) the conditions under which pre-employment, re-employment, periodical, and special physical exams are given;

b) the number, qualifications, and the duties of the medical personnel to be employed;

c) the conditions under which employers are required to establish and provide at their expense:

1) the infirmary specified in Article 242;

2) a bandaging room for a work force of 20 to 50 workers;

3) a first aid kit for a work force of fewer than 20 workers, and with particular regard to the infirmary, the number of rooms, the area space, the equipment and their purpose based on the number of workers employed when medical exams are conducted at the enterprise, whether or not the enterprise has an autonomous medical service;

4) the medical exams of workers as stipulated in point a) of this article.

CHAPTER IX

WORK-RELATED ACCIDENTS

Article 248:

An accident is considered to be work related, regardless of the cause, if it happens to a worker working or during the working hours, whether or not the worker was at fault; it is the accident inflicted on the body of the worker or on an apprentice with or without wage, who is working in whatever capacity or whatever place for an employer or a manager of an enterprise.

Equally, accidents happening to the worker during the direct commute from his residence to the work place and home are also considered to be work-related accidents as long as the trip was not interrupted nor a detour made for a personal or non-work-related reason.

All occupational illness, as defined by law, shall be considered a work-related accident and shall be remedied in the same manner.

Article 249:

Managers of enterprise are liable for all work-related accidents stipulated in the Article above regardless of the personal status of each worker.

The same liability applies to:

- directors of private hospitals, but solely for the personnel they employ
- professionals, solely for their employees
- craft shops, only for workers other than the wife and the children of the craftsman
- property owners, only for their domestic workers
- agricultural enterprises, for their workers

Apart from the categories expressly mentioned in the preceding paragraph, any person who engages the services of a worker for a specific, occasional work is required to make reparation for accidents that victimized the worker during the work.

Article 250:

Every manager of enterprise shall manage or have someone take all appropriate measures to prevent work-related accidents.

Article 251:

Laborers who normally work alone are not subject to the provisions of the present Chapter or to applicable regulations if they just take one or more fellow laborers to occasionally work with them.

Article 252:

The victim or his beneficiaries are entitled to compensation from the manager of enterprise or the employer in the event of work-related accidents inflicting on him and resulting in temporary incapacitation. However, this compensation can be paid on the condition that the accidents cause incapacitation for longer than four days. If the work-related accidents lead to a temporary incapacitation of four days or less, the victim is entitled to his regular wage.

The victim who intentionally causes an accident shall receive no compensation.

The competent tribunal can:

- reduce the compensation if it is proved that the accident was the result of an inexcusable mistake of the victim;
- increase the compensation if it is proved that the accident was the result of an inexcusable mistake of the employer or persons acting for him in management of work.

Article 253:

Compensation for fatal accidents or for accidents causing permanent disability is paid to the victim or his beneficiaries as an annuity.

Supplementary compensation is granted to a victim who requires constant care from another person.

In the event of incapacitation, compensation shall be paid no later than the fifth day after the accident.

Article 254:

Victims of work-related accidents shall be entitled to medical assistance (benefits in kind, medical treatment and medicament as well as hospitalization) and to all surgical assistance and prostheses deemed necessary after the accident.

Article 255:

Notwithstanding the preceding provisions, victims of work-related accidents can benefit from more favorable conditions if there is such an agreement between the parties.

Article 256:

A general insurance system obligatory for work-related accidents shall be set up. This system shall be managed under the insurance of the National Social Security Fund (Caisse Nationale de la Sécurité Sociale, CNSS).

Article 257:

Current regulations continue to be in effect until the promulgation of regulatory text or regulations on social insurance for occupational risks.

Nevertheless, during the transitional period, the Ministry in Charge of Labor can issue a Prakas (ministerial order) to determine how to enforce the present Chapter, notably:

1. The method for declaring and investigating accidents.
2. Guarantees and other necessary provisions.

The level of disability and the amount of compensation.

CHAPTER X

PLACEMENT AND RECRUITMENT OF WORKERS

Section 1

Placement

Article 258:

Any person looking for employment can request to be registered with the Placement Office of the Ministry in Charge of Labor or with the Employment Office of his province or municipality.

All employers are required to notify the Placement Office of the Ministry in Charge of Labor or the provincial or municipal Employment Office of any vacancies in his enterprise or any new need for personnel.

An employer can directly recruit workers for his enterprise, but he must meet the requirement mentioned in Article 21 of this law.

Article 259:

No employer is required to accept a worker who has been referred to him by the Placement Office. The priority for accepting certain categories of workers will be determined by special provisions and regulations.

Article 260:

Personnel of a Placement Office are prohibited from demanding or accepting any payment whatsoever for the placement of a worker.

Section 2

Employment of foreign labor

Article 261:

No foreigner can work unless he possesses a work permit and an employment card issued by the Ministry in Charge of Labor. These foreigners must also meet the following conditions :

Employers must beforehand have a legal work permit to work in the Kingdom of Cambodia;

These foreigners must have legally entered the Kingdom of Cambodia;

These foreigners must possess a valid passport;

These foreigners must possess a valid residency permit;

These foreigners must be fit for their job and have no contagious diseases. These conditions must be determined by a Prakas (ministerial order) from the Ministry of Health with the approval of the Ministry in Charge of Labor.

The work permit is valid for one year and may be extended as long as the validity of extension does not exceed the fixed period in the residency permit of the person in question.

Article 262:

The Ministry in Charge of Labor can revoke a work permit in the following cases :

When the holder does not fulfil one of the conditions laid in paragraph 2 – point a), b), c), d), and e) of Article 161 above.

When the job to be extended by the holder in the Kingdom of Cambodia is competing with Cambodian job seekers in the country. This revocation is carried out upon the expiration of the work permit that may be re-issued or extended in favor

When the holder is unemployed for more than one month or is hired by another employer.

The Ministry in Charge of Labor shall issue a Prakas for the issuance of work permits and employment cards to foreign workers.

A joint Prakas of the Ministry in Charge of Labor and the Ministry of Economic and Finance shall set the rate of fee for issuing such work permits and employment cards.

Article 263:

Enterprises of any kind and professionals such as lawyers, bailiffs, and notaries who need to recruit staff to work in their profession must appeal to Cambodian as a first priority.

Article 264:

Notwithstanding the provisions of Article 261 above, the maximum percentage of foreigners who can be allowed to employ in each of the enterprises covered by Article 263 above shall be determined by a Prakas (ministerial order) of the Ministry in Charge of Labor based on each of the categories of personnel as follows :

Office personnel.

Specialized personnel.

Non-specialized personnel.

Each enterprise is required to justify, during the entirety of its existence, that each of the three categories of personnel specified above include at least the minimum percentage of workers of Cambodian nationals as already provided.

Article 265:

In exceptional cases, in order to allow the employment of specialist indispensable to the operation of the enterprise, the percentage of foreigners can be exceeded the above limit with the authorization of the Minister in Charge of Labor at the suggestion or proposal of the Labor Inspector.

CHAPTER XI

TRADE UNION FREEDOM AND WORKER REPRESENTATION IN THE ENTERPRISE

Section 1

The right to form a trade union

Article 266:

Workers and employers have, without distinction whatsoever and prior authorization, the right to form professional organizations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, both collectively and individually, of the persons covered by the organization's statutes.

Professional organizations of workers are called "workers' unions".

Professional organizations of employers are called "employers' associations".

For the purposes of this law, trade unions or associations that include both employers and workers are forbidden.

Article 267:

Workers' unions and employers' associations have the right:

- to draw up their own statutes and administrative regulations, as long as they are not contrary to laws in effect and public order;
- to freely elect their representatives;
- to formulate their work program.

Article 268:

In order for their professional organization to enjoy the rights and benefits recognized by this law, the founders of those professional organizations must file their statutes and list of names of those responsible for management and administration, with the Ministry in Charge of Labor for registration. All requests for registration shall be appended with the statement of constitution of the organization.

If the Ministry in Charge of Labor does not reply within two months after receipt of the registration form, the professional organization is considered to be all ready registered.

A copy of the statutes and the list of names of those responsible for management and administration shall be sent to the Labor Inspector's Office where the organization was established, as well as to the Office of the Council of Ministers, to the Ministry of Justice and to the Ministry of Interior.

The filing will be renewed when there are changes in the statutes or management.

Article 269:

The members responsible for the administration and management of a professional organization shall meet the following requirements:

1) be at least 25 years of age;

2) be able to read and write Khmer;

3) not have been convicted of any crime;

4) have engaged in the profession or the job for at least one year.

Article 270:

Foreigners who are eligible to be candidates for the election of the management of a professional organization of employers must meet the following requirements:

1) be at least 25 years of age;

2) have the right to permanent residence in accordance with the Immigration Law of the Kingdom of Cambodia;

3) have worked for at least two consecutive years in the Kingdom of Cambodia.

Foreigners who are eligible to be candidates for the election of the management of a professional organization of workers must meet the following requirements:

1) be at least 25 years of age;

2) be able to read and write Khmer;

3) have the right to permanent residence in accordance with the Immigration Law of the Kingdom of Cambodia;

4) have worked for at least two consecutive years in the Kingdom of Cambodia

Article 271:

All workers, regardless of sex, age, nationality are free to be a member of the trade union of their choice.

Article 272:

All members of a trade union can participate in the management and administration of the union if they meet the requirements laid in Articles 269 and 270 above. The union's statutes, however, can possibly limit the conditions for participation of retirees in these functions.

Article 273:

The trade union freedom of individuals also implies freedom of not joining a workers' union or employers' association and freedom of withdrawing at any time from the organizations in which they join.

Article 274:

The professional organizations covered by Article 266 have the civil status (civil rights). They have the right to sue in court and to acquire personal property or real estate without authorization, for free or for payment. More generally, they have the right to enter into contract.

Article 275:

The professional organizations of workers and of employers set out in Article 266 can freely consult each other about the study, research, promotion and protection of their moral and material interests. The provisions of Articles 266, 267, 268, 269, and 270 are also applicable to Unions of professional organizations on the condition that the Unions must acknowledge the names and headquarters of all their constituent unions or associations, as provided for in Article 268.

Article 276:

In case of dissolving a professional organization of workers and of employers, the assets of the organization are allotted as prescribed in the statutes or, if there are no such statutory provisions, are allotted according to the rules determined by the General Assembly. If there are no such statutory provisions and no decision from the General Assembly, the organization's assets can only be transferred in form of donation to another similar, legally constituted organization or to relief associations or to social providence.

Article 277:

The representativeness of a professional organization or a union of professional organizations is recognized in the framework of geography or profession or, if necessary, by the type for which the union was registered to operate. The representativeness is determined by the following criteria:

a) be legally registered as provided for in Article 268 above;

b) have more members holding valid membership cards than the others. Any trade unions having the largest number of members in the order of the first and the second majority will be considered to be the representative unions within the enterprise. However any trade union whose number of members is over 51 percent of the total number of workers in the enterprise shall be considered as the most representative union;

c) receive dues from at least 33 percent of its members;

d) have programs and activities indicating that the union is capable of providing professional, cultural and educational services to its members, as provided for in Article 266 of this law.

Within sixty days at the latest after receipt of the form requesting recognition of the representativeness of the professional organization, the Ministry in Charge of Labor shall give an official decision on the recognition of the representativeness of the professional organization that has met the criteria mentioned in paragraph 1 above.

Provisions of the labor law can attach the representativeness of professional organization recognized by the Ministry in Charge of Labor, in conformance with the criteria established in paragraph 1 of the present article, to the benefit of certain advantages relating to:

- allocation of seats in certain organizations provided for in the labor law,
- competence in matters of collective bargaining (negotiation),
- nomination of candidates in the first round of elections for shop stewards.

If it is necessary to determine the representative nature of a professional organization or to verify its sustainability, the Minister in Charge of Labor can conduct an investigation.

The professional organization in question is required to provide any proof documents at request of the competent official.

When the proof documents are not available or these documents are not sufficient, the recognition of representativeness can be rejected or suspended until the necessary information is obtained. The advantages pertaining to the representativeness which every professional organization deserves are consequently cancelled or suspended.

Article 278:

In all enterprises or establishments employing eight or more workers, the representative union can appoint a shop steward from among the official shop stewards or alternate to represent it as the union representative to the manager of enterprise or establishment. He has sufficient authority to conclude and sign a collective agreement with the enterprise or establishment on behalf of the organization who appointed him. This appointment is valid for the entire term of office of the shop steward.

Section 2

Protection of trade union freedom

Article 279:

Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.

Article 280:

Acts of interference are forbidden. In the senses of the present article, acts of interference are primarily measures tending to provoke the creation of worker organizations dominated by an employer or an employers' organization, or the support of worker organizations by financial or other means, on purpose to place these organizations under the control of an employer or an employers' organization.

Article 281:

All employers are forbidden to deduct union dues from the wage of their workers and to pay the dues for them.

Article 282:

Union stewards or former union stewards who relinquished their position for less than six months are entitled to benefits provided for in the provisions of Articles 292, 293 and 294 regarding the dismissal, re-assignment or transfer of shop stewards. In the recommendation on request for an authorization to dismiss or appeal, the Labor Inspector or the Minister in Charge of Labor shall examine whether the measure is involved with the mandate of the incumbent union steward or the former one.

Section 3

Representation of workers in the enterprise

Article 283:

In every enterprise or establishment where at least eight workers are normally employed, the workers shall elect a shop steward to be the sole representative of all workers who are eligible to vote in the enterprise or establishment.

The scope of present Section is the same as the scope of application defined in Article 1 of this Labor Law, except:

- Workers covered by Article 1 - paragraph 3 of this law have the right to elect shop stewards, but the provisions for implementation shall be determined by a separate Anukret (sub-decree).
- Personnel serving in the air or sea transportation industries also abide by the provisions of the present Section. However, for elections of shop stewards, they must be grouped into one or more specific electoral colleges with their own shop stewards within their enterprises.
- This Section 3 does not apply to domestic or household servants.

Acknowledgement that there are several distinct establishments within any enterprise, having the above-required number of workers, does not have effect on excluding a number of workers from abiding by this provision.

If there is no agreement between the employer and the representative union organizations in the enterprise on the number of distinct establishments required for the election for shop stewards, such a dispute shall be submitted to the Labor Court, which has jurisdiction to acknowledge the nature of a distinct establishment.

Article 284:

The missions of the shop steward are as follows:

- to present to the employer any individual or collective grievances relating to wages and to the enforcement of labor legislation and general labor regulations as well as collective agreements applicable to the establishment;
- to refer to the Labor Inspector all complaints and criticism relating to the enforcement of the labor legislation and labor regulations that the Labor Inspector is responsible for monitoring;
- to make sure the provisions relating to the health and safety of work are enforced;
- to suggest measures that would be beneficial to contribution towards protecting and improving the health, safety and working conditions of the workers in the establishment, particularly in case of work-related accidents or illnesses

The shop steward must be consulted and put forward a written opinion on the draft of internal regulations provided for in Article 24 of this labor law, or on draft of modification to these regulations.

The shop steward must also be consulted and put forward a written opinion on the measure for redundancy due to a reduction in activity or an internal reorganization of the enterprise or establishment.

Article 285:

The number of shop stewards is set in proportion to the number of workers in the establishment as follows:

- from 8 to 50 workers: one official shop steward and one assistant shop steward;
- from 51 to 100 workers: two official shop stewards and two assistant shop stewards;
- more than 100 workers: one extra shop official steward and one extra assistant shop steward for each group of one hundred workers.

Article 286:

Workers of either sex who are at least 18 years old and who have worked for the enterprise for at least three months and have not incurred in forfeiture of their right to vote, as set forth in Electoral Law, are eligible to vote.

Voters who are at least 25 years old and who have seniority of at least six months in the enterprise shall be eligible to be candidates. In addition to these conditions, a foreigner who is eligible to be a candidate must have the right to reside in the Kingdom of Cambodia in conformance with the provisions of Immigration Law until the end of the term solicited.

Article 287:

The election shall take place during working hours. The ballot is secret. The election of official shop stewards and assistant shop stewards shall be organized with separate ballots, but at the same time. If there is a pre-electoral agreement or a collective agreement or a regulatory provision applicable to the discrete professional categories that entail distinct electoral polls, then the election shall be organized separately in different places.

Article 288:

The shop stewards are elected from the candidates nominated by the representative union organizations within each establishment.

A union organization cannot nominate more candidates than the seats available for the prospective shop stewards to fill, and if necessary, this must apply to each electoral body.

Article 289:

Any candidates who obtain the larger number of votes are declared elected up to the number of seats to fill. In case only one seat remains to be filled and several candidates received the same number of votes, this seat is allocated to the older of the candidates. The ballot is valid only if the number of voters is at least equal to half of the number of those registered.

Article 290:

In case of contradiction to Article 289 above or if the representative union organizations did not nominate any candidates within the allotted time, a new ballot shall be organized within fifteen days later in which the voters can vote for any candidate whether or not nominated by the union organization. No quorum is required for this second ballot to be valid.

Article 291:

The official shop stewards and assistant shop stewards are elected for two years term and can be re-elected. Their functions are terminated by death, resignation and termination of the labor contract. When an official shop steward leaves office or is temporarily absent, he is replaced by an assistant shop steward from the same electoral body, and the priority for replace is given to the assistant shop steward who has been nominated by the same union organization and who received the largest number of votes.

Article 292:

It is the duty of the employer to organize elections. In case that there are no shop stewards, the employer shall set a date for the elections and publicize it within fifteen days upon receipt of the request of a worker, a union, or the Labor Inspector. The elections shall be organized within 45 days upon receipt of the request.

If there is an election to elect all new shop stewards, the balloting must take place in the fifteen days period preceding the expiration of the current term.

Article 293:

The dismissal of a shop steward or a candidate for shop steward can take place only after authorization from the Labor Inspector. The same protective measures apply to former shop stewards three months following the end of their terms and to unelected candidates during three months following the proclamation of the results of the ballot. Any reassignment or transfer that would end the shop steward's term is subject to the same procedure.

The Labor Inspector, who has been referred a request to authorize the dismissal of a worker covered by the present article, shall give his decision to the employer and to the worker in question as well as to the union organization to which the worker belongs, within one month at the latest upon receipt of the case.

On receipt of the decision, the employer, the worker in question, or the union organization to which the worker belongs has a period of two months to appeal to the Minister in Charge of Labor. The Minister in Charge of Labor can cancel or reverse the decision of the Labor Inspector.

If there is no notification of the Labor Inspector's decision within the allotted time, or if there is no notification of the decision of Minister in Charge of Labor within two months upon receipt of the appeal, the case and the appeal are considered to be rejected.

Article 294:

When the Minister in Charge of Labor or the Administrative Chamber of the Court of Appeal revokes an administrative decision authorizing the dismissal of a shop steward, the latter is entitled to resume his previous position or an equivalent position, if he has made an appeal within two months after receipt of notification of the administrative decision. The shop steward shall be reinstated in his term if it does not expire. In the contrary case, the shop steward enjoys the rights by the procedures laid in Article 293 until the next elections for shop stewards.

Article 295:

In the case of serious misconduct, the manager of enterprise can render the decision to instantly suspend the party in question pending the Labor Inspector's decision. If the Labor Inspector turns down the dismissal, the suspension is annulled and its effects are cancelled lawfully.

Article 296:

The employer must, within eight days following the elections, make an official report on the results of the elections of shop stewards to the Labor Inspector's Office. Furthermore, the employer must post another copy of the official report in the establishment for information.

Article 297:

The presence of the shop steward in the enterprise or establishment is not an obstacle to the workers' right to present their own grievances directly to the employer or his representatives.

Article 298:

Disputes relating to the election, eligibility and the fairness of the elections of shop stewards shall be referred to the Labor Court, or to the common court that has jurisdiction to rule promptly without the possibility of appeal recourse if the Labor Court does not exist.

Article 299:

The Ministry in Charge of Labor shall issue a Prakas (ministerial order) to determine the mode of enforcement of the present section, particularly regarding:

a) The development of voting procedure and the division of the workers into electoral colleges.

b) The conditions under which the shop stewards are recognized by the employer or his representative.

c) The means for the shop stewards, including the number of working hours, to carry out their duties.

d) The conditions under which an electoral body can remove a shop steward from office.

CHAPTER XII

SETTLEMENT OF LABOUR DISPUTES

Section 1

Individual disputes,

Preliminary conciliation of individual disputes

Article 300:

An individual dispute is one that arises between the employer and one or more workers or apprentices individually, and relates to the interpretation or enforcement of the terms of a labor contract or apprenticeship contract, or the provisions of a collective agreement as well as regulations or laws in effect.

Prior to any judicial action, an individual dispute can be referred for a preliminary conciliation, at the initiative of one of the parties, to the Labor Inspector of his province or municipality.

Article 301:

On receipt of the complaint, the Labor Inspector shall inquire of both parties to elicit the subject of the dispute and then shall attempt to conciliate the parties on the basis of relevant laws, regulations, or collective agreements, or the individual labor contract.

To this effect, the Labor Inspector shall set a hearing that is to take place within three weeks at the latest upon receipt of the complaint.

The parties can be assisted or represented at the hearing.

The results of the conciliation shall be contained in an official report written by the Labor Inspector, stating whether there was agreement or non-conciliation. The report shall be signed by the Labor Inspector and by the parties, who receive a certified copy.

An agreement made before the Labor Inspector is enforceable by law.

In case of non-conciliation, the interested party can file a complaint in a court of competent jurisdiction within two months, otherwise the litigation will be lapsed.

Section 2

Collective labor dispute

Conciliation

Article 302:

A collective labor dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peacefulness.

Article 303:

If there is no planned settlement procedure in a collective agreement, the parties shall communicate the collective labor dispute to the Labor Inspector of their province or municipality. However, the Labor Inspector can take legal conciliation proceedings upon learning of the collective labor dispute even though he has not been officially notified.

Article 304:

The Minister in Charge of Labor shall designate a conciliator within forty-eight hours from the moment he is apprised or himself learns of the dispute.

Article 305:

Conciliation shall be carried out within fifteen days from the designation by the Minister in Charge of Labor. It can be renewed only by joint request of the parties to the dispute.

Article 306:

During the period of conciliation, the parties to the dispute must abstain from taking any measure of conflict. They must attend all meetings to which the conciliator calls them. Unjustified absence from any such meeting is punishable by a fine set in the rules of Chapter XVI.

Article 307:

A conciliatory agreement, signed by the parties and [visaed] by the conciliator, has the same force and effect of a collective agreement between the parties and the persons they represent. However, when the party representing workers is not a trade union, the agreement is neither binding on such union nor on the workers it represents.

Article 308:

In the absence of an agreement, the conciliator shall record and indicate the key points where the conciliation failed and shall prepare a report on the dispute. The conciliator shall send such record and report to the Minister in Charge of Labor within forty-eight hours at the latest after the conclusion of conciliation.

B. Arbitration

Article 309:

If conciliation fails, the labor dispute shall be referred to settle:

a) by any arbitration procedure set out in the collective agreement, if there is such a procedure; or

b) by any other procedure agreed on by all the parties to the dispute; or

c) by the arbitration procedure provided for in this Section.

Article 310:

In a case covered by paragraph c) of Article 309 above, the Minister in Charge of Labor shall refer the case to the Council of Arbitration within three days following the receipt of the report from the conciliator as specified in Article 308 above.

The Council of Arbitration must inevitably meet within three days following the receipt of the case.

Article 311:

Members of the Council of Arbitration shall be chosen from among magistrates, members of the Labor Advisory Committee, and generally from among prominent figures known for their moral qualities and their competence in economic and social matters. These persons shall be included on a list prepared each year by a Prakas (ministerial order) of the Ministry in Charge of Labor.

Article 312:

The Council of Arbitration has no duty to examine issues other than those specified in the non-conciliation report or matters, which arise from events subsequent to the report, are the direct consequence of the current dispute.

The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes.

The Council of Arbitration has the considerable power to investigate the economic situation of the enterprises and the social situation of the workers involved in the dispute.

The Council has the power to make all inquiries into the enterprises or the professional organizations, as well as the power to require the parties to present any document or economic, accounting, statistical, financial, or administrative information that would be useful in accomplishing its mission. The Council may also solicit the assistance of experts.

Members of the Council of Arbitration must keep the professional confidentiality regarding the information and documents provided to them for examination, and of any facts that come to their attention while carrying out their mission.

All sessions of the Council of Arbitration shall be held behind closed doors.

Article 313:

Within fifteen days starting from the date of its receipt of the case, the Council of Arbitration shall communicate its decision to the Minister in Charge of Labor. The Minister shall immediately manage to notify the parties. The latter have the right to appeal this arbitral decision by informing the Minister by registered mail or by any other reliable method within eight calendar days from the date of receiving the notification.

Article 314:

The final arbitral decision which was not appealed by either party shall be implemented immediately.

The arbitral decision which was already implemented shall be filed and registered the same way that a collective agreement is.

Article 315:

The reports on conciliation agreements and arbitral decisions, which have not been appealed, shall be posted in the workplace of the enterprise involved in the dispute and in the office of the relevant provincial and municipal Labor Inspector's Office.

Article 316:

The procedure for conciliation and arbitration shall be carried out free of charge.

Article 317:

The Ministry in Charge of Labor shall issue a Prakas (ministerial order) to determine the mode of enforcement of the present section.

CHAPTER XIII

STRIKES - LOCKOUTS

Section 1

General provisions

Article 318:

A strike is a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work.

A lockout is a total or partial closing of an enterprise or establishment by the employer during a labor dispute.

Article 319:

The right to strike and to a lockout are guaranteed. It can be exercised by one of the parties to a dispute in the event of rejecting the arbitral decision.

Article 320:

The right to strike can also be exercised when the Council of Arbitration has not rendered or informed of its arbitration decision within the time periods prescribed in Chapter XII.

It can also be exercised when the union representing the workers deems that it has to exert this right to enforce compliance with a collective agreement or with the law.

It can also be exercised, in a general manner, to defend the economic and socio-occupational interests of workers.

The right to strike can be exercised only when all peaceful methods for settling the dispute with the employer have already been tried out.

Article 321:

The right to strike cannot be exercised when the collective dispute results from the interpretation of a juridical rule originating from the existing law, or the collective agreement, or the rule relating to an arbitral decision accepted by the concerned parties.

It also cannot be exercised for the purpose of revising a collective agreement or reversing an arbitral decision accepted by the parties, when the agreement or the decision has not yet expired.

Article 322:

The right to a lockout shall be exercised under the same provisions as the right to strike.

Section 2

Procedures prior to the strike

Article 323:

A strike shall be declared according to the procedures set out in the union’s statutes, which must state that the decision to strike is adopted by secret ballot.

A. Prior Notice

Article 324:

A strike must be preceded by prior notice of at least seven working days and be filed with the enterprise or establishment. If the strike affects an industry or a sector of activity, the prior notice must be filed with the corresponding employer's association, if any. The prior notice must precisely specify the demands which constitute the reasons for the strike.

The prior notice must also be sent to the Ministry in Charge of Labor.

Article 325:

During the period of prior notice, the Minister in Charge of Labor shall actively seek all means to conciliate between the parties to dispute, including soliciting the collaboration of other relevant ministries. The parties are required to be present at the summons of the Minister in Charge of Labor.

B. Minimum Service

Article 326:

During the period of prior notice, the parties to the dispute are required to attend the meeting in order to arrange the minimum service in the enterprise where the strike is taking place so that protection of the facility installations and equipment of the enterprise will be assured. If there is no agreement between the parties, the Ministry in Charge of Labor shall determine the minimum services in question.

A worker who is required to provide minimum service covered by this Article and who does not appear for such work is considered guilty of serious misconduct.

C. Essential Services

Article 327:

If the strike affects an essential service, namely an interruption of such a service would endanger or be harmful to the life, safety, or health of all or part of the population, the prior notice mentioned in Article 324 shall be extended to a minimum of fifteen working days.

Article 328:

During the period of such prior notice, the Minister in Charge of Labor shall determine the minimum essential service to be maintained so as not to endanger the life, health or safety of persons affected by the strike. The workers' union that has declared the strike shall be asked to give its views as to which services to be maintained.

A worker who is required to provide the minimum essential service covered by this Article and who does not appear for such work is considered guilty of serious misconduct.

Article 329:

The list of enterprises that provide essential services in the sense of Article 328 shall be established by a Prakas (ministerial order) of the Ministry in Charge of Labor. All disputes concerning the qualification for an essential service shall be settled by the Labor Court, or in the absence of a Labor Court, by a common court.

Section 3

Effects of a strike

Article 330:

A strike must be peaceful. Committing violent acts during a strike is considered to be serious misconduct that could be punished, including work suspension or disciplinary layoff.

Article 331:

Freedom of work for non-strikers shall be protected against all form of coercion or threat.

Article 332:

A strike suspends the labor contract. During a strike, the allowance for work is not provided and the salary is not paid.

The worker shall be reinstated in his job at the end of the strike.

The mandate of workers' representatives shall not be suspended during the strike so that they can maintain contact with representatives of the employer.

Article 333:

The employer is prohibited from imposing any sanction on a worker because of his participation in a strike. Such sanction shall be nullified and the employer shall be punishable by a fine in the amount set in Article 369 of Chapter XVI.

Article 334:

During a strike, the employer is prohibited from recruiting new workers for a replacement for the strikers except to maintain minimum service provided for in Articles 326 and 328 if the workers who are required to provide

such service do not appear for work. Any violation of this rule obligates the employer to pay the salaries of the striking workers for the duration of the strike.

Article 335:

A lockout undertaken in violation of these provisions obligates the employer to pay the workers for each day of work lost thereby.

Section 4

Illegal strikes

Article 336:

Illegal strikes are those that do not comply with the procedures set out in this Chapter.

Non-peaceful strikes are also illegal.

Article 337:

The Labor Courts or, in the absence of the Labor Courts, the common courts, have sole jurisdiction to determine the legality or illegality of a strike.

If the strike is declared illegal, the strikers must return to work within forty-eight hours from the time when this declaration is given out. A worker who, without valid reason, fails to return to work by the end of this period is considered guilty of serious misconduct.

CHAPTER XIV

LABOUR ADMINISTRATION

Section 1

General provisions

Article 338:

The Labor Administration is primarily responsible for preparing, implementing, coordinating, supervising, and evaluating national labor policy. Particularly within the realms of public administration, it is the tool for formulating and enforcing legislation in order for this policy to materialize.

The Labor Administration consistently studies the situation of employed, unemployed or under-employed persons in light of the national laws and practices regarding working conditions, employment and professional life. It pays attention to inadequacies and abuses in this area and puts forward a proposal and request a decision on method for remedy.

The Labor Administration offers its advisory service to employers and to workers, as well as to their respective organizations, in order to promote consultation and real cooperation between the authorities or public institutions and employers or workers, as well as between employers' and workers' organizations.

The Labor Administration responds to requests for technical assistance from employers and workers, as well as from their respective organizations.

The Labor Administration offers conciliatory services to employers and workers, as well as to their organizations, in order to help settle individual or collective disputes.

Article 339:

The Labor Administration must permanently maintain enough personnel, material, means of transportation, offices and premises to meet the needs of the service that is conveniently accessible to all interested persons.

Agents of the Labor Administration must be acquired with adequate training for carrying out their respective functions. Relevant measures are taken by Prakas (ministerial order) of the Ministry in Charge of Labor to ensure that permanent training is provided to these agents during their employment.

Article 340:

The agents of the Labor Administration must have the sufficient qualifications to perform their assigned functions, have access to the necessary training in carrying out their functions and be free from all undue external influence.

All this personnel shall be granted with material means and financial resources required to effectively perform their statutory duties.

Article 341:

The Ministry in Charge of Labor shall issue a Prakas to determine the structure of the Labor Administration and, for each service, specify:

- the roles and tasks incumbent on the responsible agents;
- the organization, relationship and coordination with the other services within the Labor Administration;
- layout of the service in order to best serve in provinces and municipalities in the country;
- work methods of the responsible agents.

Article 342:

The special statutes and conditions of service for the various categories of personnel in the Labor Administration shall be determined by an Anukret (sub-decree).

Section 2

Labor inspection

Article 343:

The tasks of the Labor Inspection are assumed by Labor Inspectors and by Labor Controllers.

Before their appointment, Labor Inspectors and Controllers must solemnly swear allegiance to fulfilling their duties and to not revealing, even after having left their post, any manufacturing or trade secrets or operating methods that they learned of during the course of their work.

Article 344:

The Labor Inspection shall have the following missions:

a) to ensure enforcement of the present Labor Law and regulatory text that is provided for, as well as other laws and regulations that are not yet codified and that relate to the labor system;

b) to provide information and technical advice to employers and to workers on the effective ways of observing the legal provisions;

c) to bring to the attention of the competent authority any improprieties or abuses that are not specifically covered by the existing legal provisions;

d) to give advice on issues relating to the arrangement or restructuring of enterprises and organisms that have been authorized by the administrative authorities and covered by Article 1 of this law;

e) to monitor the enforcement of the legal provisions regarding the living conditions of workers and their families.

Article 345:

Labor Inspectors and Controllers can ask for assistance from duly qualified experts and technicians from relevant ministries or outside, who are specialized in medicine, mechanics, electricity, chemistry and environment, in order to ensure enforcement of the legal provisions regarding the health and safety of workers in carrying out their duties, and to inquire about the effectiveness of the methods applied, the materials used, and the regulations on the health and safety of workers. This technical assistance shall be exerted under the monitoring of the Labor Inspector or the Labor Controller in cooperation with relevant ministries.

The experts and technicians, who cooperate with the Labor Inspector or the Labor Controller in enforcing the legal provisions on the labor health and safety, must take an oath. They have the same powers granted the Labor Inspectors as per Articles 346 and 347 below.

The expenses incurred from this assistance shall be paid by the Ministry in Charge of Labor.

Article 346:

Labor Inspectors and Controllers possessing the proper identification are authorized:

a) to freely enter any enterprise within the jurisdiction of their inspection, without prior notification of the time, whether day or night;

b) to enter in the daytime workplaces that they could rationally assume to be subject to inspection of their Inspector's Office;

c) to conduct any examinations, inspections and investigations considered to be necessary to ensure that the provisions are effectively observed, and, in particular,

· to question, either alone or in the presence of witnesses, the employer or the staff about any matter relating to the enforcement of the law;

· to demand access to all books, ledgers, and documents that must be kept by the employer as prescribed by the legislation relating to working conditions so as to verify whether they (the papers) conform to the legislation; as well as to have the right to copy or take extracts from the books or ledgers;

· to demand the posting of notices or papers that are required to be affixed by law;

· to take, for the purposes of analysis, samples of materials or substances used or mixtures provided that the employer or his representative is aware that the materials or substances were taken for this purpose.

During each inspection, the Labor Inspector or Controller must inform the employer or his representative of his presence, unless he thinks that doing so will prejudice the effectiveness of the inspection.

The Labor Inspector and Controller may need to be accompanied by one or more shop stewards during inspection.

Article 347:

In performing their duties, Labor Inspectors and Controllers have the power:

1) to make observations to the employer or his representative and to the workers;

2) to serve notice on the employer or his representative to observe the legislation within a certain time period;

3) to note with an official report the non-observance of certain legal provisions that must, until proved otherwise, be credited;

4) to order that immediate measures be taken when they have every reason to believe or conclude that there is an imminent and serious danger to the health or safety of the workers.

5. to inflict the fine on those guilty of violating the provisions of this law and any enforcement-related text of these provisions.

Article 348:

Labor Inspectors, Labor Medical Inspectors and Labor Controllers cannot have any interest whatsoever in the enterprises within the jurisdiction of their inspection.

They must keep the source of any complaint, referred to them, about any default in the facility or a violation of the law strictly confidential and must not reveal to the employer or his representative that the inspection was the result of a complaint.

Section 3

Labor medical inspection

Article 349:

The Labor Medical Inspection permanently operates for the purpose of protecting the health of workers at the workplace. The tasks of this inspection are assigned to Labor Medical Inspectors who place great emphasis on the organization and operation of labor medical services.

The Labor Medical Inspectors work in conjunction with the Labor Inspectors and cooperate with them in enforcing regulations regarding the health of workers.

Article 350:

Within the framework of their mission, the provisions relating to the powers and obligations of Labor Inspectors provided for in Articles 343 - paragraph 2, 346 and 347 - points 1, 2, 3, 4 of this law, are also extended to the Labor Medical Inspectors.

CHAPTER XV

THE LABOUR ADVISORY COMMITTEE

Article 351:

A Labor Advisory Committee shall be formed under the Ministry in Charge of Labor.

It consists of:

- the Minister in Charge of Labor, or his representative, who is the Chairperson;
- a number of representatives of relevant ministries;
- the equal number of representatives from the workers' unions that are the most representative at the national level, and of representatives from the employers' organizations that are the most representative at the national level.

It elects two vice-chairpersons, one from among the workers' representatives and the other from among the employers' representatives.

Article 352:

The composition and functions of the Labor Advisory Committee shall be determined by an Anukret (sub-decree).

Article 353:

The Labor Advisory Committee must meet at least twice per year. However, it can be convoked at any time by the Minister in Charge of Labor at his own initiative or at the request of one of the vice-chairpersons.

The chairperson sets the agenda of each session of the Labor Advisory Committee in consultation with the vice-chairpersons.

Article 354:

The Labor Advisory Committee shall have a permanent secretariat, which is under charge of the Ministry in Charge of Labor.

Article 355:

At the request of the Chairperson or of one of the vice-chairpersons, duly qualified officers or prominent figures who are competent primarily in the areas of economics, medicine, social or cultural matters can be invited to attend the meetings of the Labor Advisory Committee for consultations.

Article 356:

The post of member of the Labor Advisory Committee is unpaid.

The employer whose worker is a member of the Labor Advisory Committee is required to give the worker the necessary time to attend the meetings.

This meeting period is paid as normal work time and considered as such for the calculation of seniority and the right to take leave.

The workers who are members of the Labor Advisory Committee are subject to the same protection granted by this law to union stewards and union leaders.

Article 357:

The Labor Advisory Committee has the mission primarily to study problems related to labor, the employment of workers, wages, vocational training, the mobility of labor force in the country, migrations, the improvement of the material and moral conditions of workers and the matter of labor health and safety.

The Labor Advisory Committee has the following duties:

- formulate recommendations on the guaranteed minimum wage;
- render advice beforehand in order to extend the scope of a collective agreement or, if there is no collective agreement, give advice eventually on any regulation concerning the conditions of employment in a given profession or in a certain sector of activity.

Article 358:

Participation of the Kingdom of Cambodia in activities of the International Labor Organization shall be in consultations with representatives of employers and workers who are members of the Labor Advisory Committee.

CHAPTER XVI

PENALTIES

Article 359:

Those guilty of violating the provisions of the articles in Chapter XVI of this law shall be fined or imprisoned or both.

Fines are imposed by the Labor Inspector and the Labor Controller.

Article 360:

Fines are set in multiples of the base daily wage. The base daily wage is the minimum wage set by a joint Prakas (ministerial order) of the Ministry in Charge of Labor and the Ministry of Justice.

Article 361:

Those guilty of violating the provisions of Articles 14, 20, 22, 24, 29, 30, 34, 37, 42, 43, 72, 112, 134, 187, 214, 222, 253, and 255 are liable to a fine of ten to thirty days of the base daily wage.

Article 362:

Employers who eliminate or suspend the weekly time off of their workers or who provide this time off under conditions contrary to the provisions of Section 4 of Chapter VI of the present Labor Law or Prakas instructing enforcement of this law are liable to a fine of ten to thirty days of base daily wage.

These penalties also apply to employers who suspend this time off without the necessary authorization, or who do not provide their workers with compensatory time off under the conditions laid in the aforesaid provisions.

Article 363:

Those guilty of violating the provisions of Articles 21, 28, 44, 45, 49, 50, 57, 59, 106, 139, 144, 162, 163, 164, 166, 167, 168, 169, 170, 179, 180 - paragraphs 1 and 2, 182 - paragraphs 2 and 3, 184, 194, 198, 200, 204, 205, 206, 210, 249, 296, and 306 are liable to a fine of thirty-one to sixty days of the base daily wage.

Article 364:

The employer who neglects or refuses to grant an employment certificate under the conditions laid in Article 93 is liable to a fine of thirty-one to sixty days of the base daily wage.

Article 365:

Without prejudice to any civil liability, those guilty of violating the provisions of Articles 113, 114, 115 and 116 are liable to a fine of thirty-one to sixty days of the base daily wage.

Article 366:

Offsetting, installments, deductions from wages by the employer in violation of the rules imposed by Articles 127, 128 and 129 are liable to a fine of thirty-one to sixty days of the base daily wage.

Article 367:

Employers who employ staff under conditions contrary to the provisions of Articles 137, 138 - paragraph 2, 140 and 141 regarding hours of work or the Prakas instructing enforcement of these articles are liable to a fine of thirty-one to sixty days of the base daily wage.

Article 368:

Employers who employ children less than eighteen years of age under conditions contrary to the provisions of Articles 173, 174, 175, 176, 177 and 178 of this law are liable to a fine of thirty-one to sixty days of the base daily wage.

Article 369:

Those guilty of violating the provisions of Articles 12, 15, 17, 18, 39, 46, 104, 126, 260, 264, 281, 292, 331, 333, 334 and 335 are liable to a fine of sixty-one to ninety days of base daily wage or to imprisonment of six days to one month.

Article 370:

The employer who violates the provisions of Article 16 of this law is liable to a fine of sixty-one to ninety days of the base daily wage.

Article 371:

The employer who dismisses staff from work for one of the reasons laid in Article 95 - paragraphs 1 and 2, without informing the Labor Inspector, or who carries out this dismissal during the suspension period of dismissal imposed by the Minister in Charge of Labor in compliance with Article 95 - last paragraph, is liable to a fine of sixty-one to ninety days of base daily wage or to imprisonment of six days to one month.

Article 372:

Any person who hires or keeps in his service a foreigner, who does not possess the employment card authorizing him to carry out a paid job in the Kingdom of Cambodia, is liable to a fine of sixty-one to ninety days of the base daily wage or to imprisonment of six days to one month. In the event of a subsequent offence, such person is liable on conviction to imprisonment of one month to three months.

Article 373:

Those guilty of violating Articles 278, 279, and 280 are liable to a fine of sixty one to ninety days of the base daily wage and to imprisonment of six days to one month, or to one of the both penalties.

Anyone guilty of violating or attempting to breach the provisions of Section 1, Chapter XI, regarding the formation of trade unions and the freedom to join or to not join a union organization, in particular, Articles 266, 267 and 273 through pressure, threat or coercion, shall be subject to the same penalties.

Article 374:

Those guilty of violating the rules concerning the minimum age are liable to a fine of thirty to one hundred twenty days of the base daily wage.

Article 375:

Company heads, directors, managers, or officers-in-charge who personally violated the provisions of Articles 229, 230 and 231 or the Prakas for enforcing these articles are liable to a fine of thirty to one hundred twenty days of the base daily wage.

Article 376:

Any person who commits the offences defined in the preceding article that are harmful to the health or safety of others, is liable to a fine of thirty to one hundred twenty days of the base daily wage.

The penalties laid in Articles 375 and 376 are independent of the provisions related to the compensation for work-related accidents and occupational illnesses that are the subject of Chapter IX of this law.

Article 377:

Those guilty of violating the provisions of articles 240, 241, 242, 243, 244, 245, 246 and 247 or violating the Prakas instructing application of labor health are liable to a fine of one hundred twenty days to three hundred sixty days of the base daily wage and to imprisonment of one to five years, or to only one of the both penalties.

Article 378:

The leaders or administrators of a professional organization or a union of professional organizations who induce these organizations to engage in activities extraneous to its exclusive objective, as defined in Article 266 of this law, are liable to a fine of sixty-one to ninety days of the base daily wage.

The dissolution of the professional organization or the union of professional organizations must be pronounced by the Labor Court in the event of those organizations committing the wrongdoing as stated in the preceding paragraph or in case of serious, repeated violation of the laws and regulations, particularly in the area of industrial relations.

Article 379:

Those guilty of violating Articles 268, 269 and 270 are liable to a fine of sixty-one to one hundred twenty days of the base daily wage.

Article 380:

Anyone who undermines or attempts to undermine the free designation of a union steward or the independent or regular performance in his mandate, or who violates the provisions of Article 282 regarding the dismissal from work, reassignment, transfer of union stewards or former union stewards, shall be liable to a fine of sixty one to ninety days of the base daily wage and to imprisonment of six days to one month, or to only one of the both penalties.

Article 381:

Anyone who does not observe the provisions of Articles 283, 286, 287 and 291 and who undermines or attempts to undermine the free election of a shop steward or the regular performance of his functions, shall be liable to a fine of sixty one to ninety days of the base daily wage and to imprisonment of six days to one month, or to only one of the both penalties.

Article 382:

Anyone who prevents or attempts to prevent the Labor Inspectors or Controller as well as the Labor Medical Inspectors from carrying out their functions or from exercising their powers, is liable to a fine of one hundred twenty to three hundred sixty days of base daily wage or to imprisonment of one month to one year.

Article 383:

When there are several infractions, which are liable to the same penalty by virtue of this law, fines must be proportional to the number of infractions. However, the total amount fined cannot exceed five times the maximum rate of fines.

This rule applies particularly when several workers are employed under conditions contrary to this law.

Fines imposed in the event of subsequent offences are tripled.

Article 384:

Managers of enterprises shall be civilly liable for sentences rendered against their authorized representatives or officers-in-charge.

Article 385:

Any labor dispute covered by Chapter XII of this law that could not be settled through conciliation can be brought before the Labor Court.

Within its mission to settlement of this dispute, the Labor Court can take a number of the necessary measures as follows:

1 . Order the reinstatement of a dismissed worker, by retaining his former position and paying him a retroactive wage.

2. Nullify the results of a union election or the election of a shop steward.

3. Order an employer to negotiate with a union or to cooperate with a union steward or a shop steward.

4. Decide the payment for damages in favor of the party who won the case in the labor conflict.

Article 386:

Without prejudice to the disciplinary penalties laid in the Statute of Administrative Agents, Labor Inspectors and Controllers as well as Labor Medical Inspectors who reveal the secrets and production processes shall be punished by imprisonment for six days to one month, even though the revelation of the secrets took place after they have left their job.

CHAPTER XVII

LABOUR COURTS

Article 387:

Labor courts shall be created that have jurisdiction over the individual disputes occurring between workers and employers regarding the execution of the labor contract or the apprenticeship contract.

Article 388:

The organization and functioning of the Labor Courts shall be determined by law.

Article 389:

Pending the creation of the Labor Courts, disputes regarding the application of this law shall be referred to common courts.

CHAPTER XVIII

TRANSITIONAL PROVISIONS

Article 390:

The provisions of this law are lawfully applicable to current individual labor contracts. However, workers are entitled to continue enjoying benefits granted them by their present contract when these benefits are more favorable than those they would have under this law.

The provisions of this law cannot be a reason for terminating a contract.

Article 391:

Any clause in a current contract that does not conform to the provisions of this law must be modified within six months from the promulgation of this law.

Article 392:

In a transitional period and until a date that shall be set by a Prakas (ministerial order) of the Ministry in Charge of Labor, all workers' unions can nominate candidates to the first round of shop steward elections without needing to prove their representativeness.

During the above period, the professional organizations of workers and employers claiming to be representative in their professional and geographic area can sign collective agreements covering the same jurisdiction. However, the validity of these agreements will end, at the latest, within one year after the date that the Prakas referred to in the first paragraph is published. Any renewal of the agreement or any new agreement can be made only within the framework of Article 96.

While waiting for professional organizations to be recognized as representative at the national level, the Minister in Charge of Labor shall select prominent figures (officials) credited with special merits in the domain of social affairs or in the area of occupation and employment to occupy the seats reserved for representatives of workers and employers.

Article 393:

In the absence of the post for Labor Inspectors, Labor Medical Inspectors and Labor Controllers, officials who are appointed to conduct inspections by the Minister in Charge of Labor shall carry out the functions and the duties of the Labor Inspectors, Labor Medical Inspectors and Labor Controllers as stipulated in this law.

Article 394:

Workers' unions and employers' associations that have already been created before this law coming into effect, must again complete the formalities in conformance with the provisions of this law.

CHAPTER XIX

FINAL PROVISIONS

Article 395:

All provisions contrary to this law shall be abrogated.

Article 396:

This law shall be declared as a matter of great urgency.

This law was adopted on January 10, 1997 by the National Assembly of

the Kingdom of Cambodia during the 7th session of its first legislature,

and promulgated on March 13, 1997.

Phnom Penh, March 13, 1997

in the King's name and by the royal order

Chea Sim

Acting Head of State