

KINDOM OF CAMBODIA
NATION-RELIGION-KING

Ministry of Labour and Vocational Training

No. 057/19 **ក.ប/ស.ន.ន.ខ.ប**

Instruction

On

The Payment of Pre-2019 Seniority for Enterprises/Establishments inside Garment Textile and Footwear Sectors

The Ministry of Labour and Vocational Training would like to inform owners or directors of enterprises/establishments, professional organizations and workers/employees of garment textile and footwear sectors that in order to effectively implement the Prakas 443 જ.૬/પ્ર.જ.ઓ.જ, dated 21 September 2018 on Payment of Seniority Indemnity and ensure the industrial relations harmony, please the owner or director of enterprises/establishments, professional associations and workers/employees inside garment textile and footwear sector shall follow instructions below:

I. How to count Seniority

- The maximum of back-pay seniority indemnity to be paid shall not exceed 6 months of average actual wages of each year which equals to 156 days. This means the employees (workers) shall receive the back-pay seniority indemnity from 2008 until 2018 which equals to 156 days.
- From 2008 until 2018, for the first year as the basis for back-pay of seniority indemnity for passed-probation workers (employees) who have been worked consecutively from 1 month to 6 months shall be entitled seniority indemnity equals to 7.5 days, if completed work more than 6 months, shall be considered as 1 year which shall be entitled for seniority indemnity equals to 15 days as the following table:

[illegible]

II. How to calculate back-pay seniority

For employees (workers) who have worked since before 2019 with seniority as stipulated in the conditions in Point "I" above, the calculation of back-pay seniority shall be implemented as follow:

- ❖ First: must calculate average actual wages per month

Average actual wage per month =	$\frac{\text{Total of monthly actual wages during the period of receiving back-pay seniority}}{\text{Total months during the period of Receiving back-pay seniority}}$
---------------------------------	--

- ❖ Second: must calculate average actual wage per day

$$\text{Average actual wage per day} = \frac{\text{Average actual wage per month}}{26 \text{ days}}$$

So, the payment of back-pay seniority to be paid each year is:

$$\text{Payment of back-pay seniority per year} = \text{average actual wage per day} \times 15$$

Example: An employee/worker started to work at the factory since the beginning of 2008 until 2018 with 11 years or 132 months of seniority. In 2008, that worker received the monthly actual wage for 80\$. From 2009 to 2013, he received monthly actual wage for 100\$ and from 2014 to 2018 that employee received monthly actual wages for 170\$. So the calculation of back-pay seniority shall be as follow:

- ❖ First: must calculate average actual wage per month
 - Average actual wage per month equals to total of actual wage in 132 months divided by 132 months (11 years*12months)

$$\begin{aligned} \text{Average actual wages per month} &= \frac{(80\$ \times 12 \text{ months}) + (100\$ \times 12 \text{ months} \times 5 \text{ year}) + (170\$ \times 12 \text{ months} \times 5 \text{ years})}{132 \text{ months}} \\ &= \frac{960\$ + 6000\$ + 10200\$}{132 \text{ months}} = 130\$ / \text{ month} \end{aligned}$$

- ❖ Second: must calculate average actual wage per day
 - Average actual wage per day equal to average actual wage per month divided by 26 days
$$\text{Average actual wage per day} = \frac{130 \$}{26 \text{ days}} = 5\$ / \text{ day}$$
 - So back-pay seniority that employee (worker) shall receive each year starting from 2008 to 2017 (10 years) equals to 15days * 5\$ * 10 years = 750\$. In 2018, that employee shall receive 6 days * 5\$ = 30\$.

Based on this example, employee (worker) is entitled to total back-pay seniority of 780\$ (equals to 156days * 5 USD).

III. How to settle the payment of back-pay seniority

- Employers shall settle the payment of back-pay seniority to employees 2 times per year, and each time equals to 15 days of average actual wage which 15 days with the payment of second wages in June and 15 days with the payment of second wages in December each year. The employers shall provide the payment of back-pay seniority to the employee based on their actual seniority, which starting from 2008 onward.

- How to settle the payment of back-pay seniority before 2019 shall be implemented as below table:

If seniority is applicable	2019		2020		2021		2022		2023		2024	Total days
	Jun	Dec	Jun	Dec	Jun	Dec	Jun	Dec	Jun	Dec	Jun	
11 years	15	15	15	15	15	15	15	15	15	15	6	156
10 years	15	15	15	15	15	15	15	15	15	15		150
9 years	15	15	15	15	15	15	15	15	15			135
8 years	15	15	15	15	15	15	15	15				120
7 years	15	15	15	15	15	15	15					105
6 years	15	15	15	15	15	15						90
5 years	15	15	15	15	15							75
4 years	15	15	15	15								60
3 years	15	15	15									45
2 years	15	15										30
1 year	15											15

- The Employer must clearly separate between monthly wages and seniority payment in order to easily implement the tax obligation.

IV. The payment of back-pay seniority based on type of employment contract

1. If the Fixed Duration Contract (FDC) has been used exceed than the duration determined by law counts until 2018, the payment of back-pay seniority shall be as follows:
 - In case employee already received 5% of severance pay at the expiration of each FDC, employee (worker) shall not entitle for payment of back-pay seniority anymore.
 - In case employee did not receive 5% of severance pay at the expiration of each contract, the employer must provide the payment of back-pay seniority to the employee by implementing in accordance to point "I", "II", and "III" of this instruction. The working seniority shall be counted from the signed date of first contract.
2. In case, FDC has been converted to UDC in any year counting until 2018, the payment of back-pay seniority shall be as follows:
 - In case employees/workers has already received 5% of severance pay at each expiration of FDC, employer must provide the payment of back-pay seniority that has not been paid to the employee according to the working seniority until the end 2018, hence it is not required to settle from the beginning of FDC.
 - In case the employees/workers did not receive the 5% of severance pay at the expiration of each FDC, the employer must provide the payment of back-pay seniority to the employee by implementing in accordance to point "I", "II", and "III" of this instruction. The working seniority shall be counted from the signed date of the first contract.

V. Termination of employee/workers

- A. In case employer terminates employee without valid reasons, employee shall be entitled the following:
 1. Wages that has not been paid

2. Payment in lieu of notice in case employer failed to give prior-notice in accordance to the applicable law and regulations
3. Payment in lieu of annual leave
4. Payment of seniority indemnity in any semester that employee has been terminated which equal to the seven days (7days) of wages and other benefits if employee has the remaining seniority from 1 month to below 6 months.
5. The total payment of back-pay seniority that the employer has not yet paid.

Beside the 1st to 4th point above, the workers/employees can also claim for the damages which equals to the payment of seniority indemnity that the workers/employees will receive, but shall not exceed 6 months of the wages and other benefits. In this case, the workers/employees are free from an obligation to provide evidence to prove their damages. By the way, the employer also has no obligation to pay as requested by the workers/employees. In case of no agreement, the workers/employees can file a complaint to the competent court.

B. In the event that the employer terminates a worker/employee due to serious misconduct, the worker/employee can receive:

1. Wages that has not been paid.
2. Payment in lieu of the remaining annual leave

VI. Overall Principle

1. Working seniority of worker/employee for calculating the payment of seniority indemnity shall be counted from signing employment contract by excluding probationary period.
2. The passed-probation worker/employee who has worked in the enterprise/establishment for at least 21 days shall be considered as has worked for a month and will be entitled for seniority indemnity.
3. The actual wage that is used as the basis for calculating the payment of pre-2019 seniority is the actual wage that excludes other benefits such as benefits of health care, employment injury and over time.
4. For retired or death employee from 2019 onward, employer must settle the total payment of remaining back-pay seniority to the employee or inheritor of the death employee.
5. The period of maternity leave, work-related accident and sick leave shall be included in the working seniority for calculating payment of seniority indemnity.
6. This payment of back-pay seniority shall be settled with the second wages that employee receives in June and December. So in every second payment of wages in June and December, the employees/workers in garment textile and footwear sectors who has seniority before 2019 shall also receive second wages, payment of new seniority in each semester equals to 7.5 days and payment of pre-2019 seniority if applicable.

For payment of seniority indemnity, the employer and worker/employee shall keep all documents as evidence which contain the signature or thumbprint of consent of either parties or equivalent documents.

The Ministry of Labour and Vocational Training strongly hopes that the owners or directors of enterprises/establishments, employer associations, unions as well as workers/employees covered by the Labour Law will implement this instruction properly and ensure high effectiveness.

Phnom Penh, 10 June 2019

CC:

- Office of Council of Ministers
- Cabinet of Sam Dech Akkeak Moha Sena Pakdey Techo
prime minister of Cambodia
- Cabinet of Sam Dech, His Excellency Deputy prime minister
- Relevant institutions
"Be notify"
- Provincial department of labour and vocational training
- All unions and employers associations
"Be implementing"

Minister

(Signed & Sealed)

Ith Sam Heng