

Payment of Seniority Indemnity

By H.E. **Heng Sour**

Ministry of Labour and Vocational Training,
23 September 2018

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1. Scope of the Implementation of Seniority Indemnity

Article 1 of Prakas 443

For enterprises/establishments covered by the Labour Law	For Undetermined Duration Contract (UDC)
It covers all enterprises/establishments and persons defined by the provisions of the Labour Law.	The seniority indemnity as stipulated in new Article 89 of the Labour Law shall apply to workers/employees who have undetermined duration contract only.

Not applicable to Fixed Duration Contract (FDC)

❖ Duration of Fixed Duration Contract

- Article 67-2 of the Labour Law stipulates that 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.

For example:

- In case the first contract has its duration of 2 years, this contract can be renewed one or many times but the total renewals cannot exceed 2 years. So the total duration of this contract is 4 years.
 - In case the first contract has its duration of 1 year, this contract can be renewed one or many times but the total renewals cannot exceed 2 years. So the total duration of this contract is 3 years.
 - In case the first contract has its duration of 6 months, this contract can be renewed one or many times but the total renewals cannot exceed 2 years. So the total duration of this contract is 2 years and 6 months.
- #### ❖ The payment of severance pay must follow Article 73 of the Labour Law
- The severance pay of the fixed duration contract (FDC) must be settled as per Article 73 of the Labour Law:
 - The amount of the severance pay is stipulated in the CBA
 - If not stipulated in the CBA, this severance pay must be at least 5% of the wages that the workers/employees have received during the period of the contract.

2. Amendment Requiring the Payment of Seniority Indemnity

A. Reason for the amendment

For workers/employees	For employer
<ul style="list-style-type: none"> ❖ Prevent the risk of workers/employees in case the factory closes down and the owner runs away without responsibility. ❖ Allow workers/employees to get seniority indemnity settlement every 06 months. ❖ Provide better protection for workers/employees in the labour relation by allowing workers/employees to get this indemnity forever in the life of their work without maximum duration. ❖ Provide better protection for workers/employees than the old rule because this amendment will encourage people to choose more Undetermined Duration Contract (UDC) than Fixed Duration Contract. ❖ Be more flexible for workers/employees in choosing a new job as per location or type of factory. 	<ul style="list-style-type: none"> ❖ Avoid keeping indemnity for dismissal that is calculated as per the seniority, which is too much upon each termination of employment with workers/employees. This is just a new formula to ease the burden of the responsibility of the employer who shall be responsible for workers/employees as stipulated in the Labour Law since 1997. ❖ The employer worries about the payment of the old seniority at the same time. Should provide possibility for the employer to pay by installments every six months. ❖ Can also have more burden for the employer as old Article 89 stipulates that regardless of how many years of employment, the maximum duration for the calculation of seniority for dismissal or contract termination is not longer than 12 years.

B. Requirement for payment of seniority that exists before 2019

Article Two of the Law on Amendment

“The calculation and payment of seniority of workers/employees who have worked before this law takes effect shall follow the formality determined by a Prakas of the Minister in charge of labour.”

❖ **Purpose:**

The purpose of this Article 2 is to protect the interests of workers/employees who are protected by the Labour Law 1997. If it does not stipulate so, workers/employees who have seniority before 2019, especially workers/employees who have many years of seniority will lose their benefit due to the amendment to the Labour Law.

3. Content of Prakas 443 on Payment of Seniority Indemnity

A. Payment of seniority indemnity from 2019 (Article 2 of the Prakas)

Date of implementation	<ul style="list-style-type: none"> From 2019 onwards
Payment	<ul style="list-style-type: none"> Equal to 15 days of wage and other benefits per year Make two payments per year for workers/employees who are working: <ul style="list-style-type: none"> - 7.5 days in June of each year and - 7.5 days in December of each year For the first year of employment, workers/employees who have seniority from 1 month to 6 months shall receive 7.5 days of seniority indemnity. Have no maximum (provide forever for the rest of the job's life).
No entitlement	<ul style="list-style-type: none"> Workers/employees commit serious misconduct (Article 83 of the Labour Law) Workers/employees resign.

B. Payment of back pay of seniority indemnity that exists before 2019

For workers/employees who have been working at enterprises/establishments

In the textile, garment and footwear sector	In other sectors other than the textile, garment and footwear sector
The employer will pay back pay of 30 (thirty) days of the total seniority indemnity every 1 (one) year as follows: <ul style="list-style-type: none"> - 15 (fifteen) days in June of each year and - 15 (fifteen) days in December of each year. 	The employer will pay back pay of 15 (fifteen) days of the total seniority indemnity every 1 (one) year as follows: <ul style="list-style-type: none"> - 7.5 (seven and a half) days in June of each year and - 7.5 (seven and a half) days in December of each year.

- ❖ The maximum for paying back pay of seniority indemnity
 - The maximum of seniority is counted from 2008 to 2018
 - 6 months maximum of the average net wages of each year.
 - 156 days maximum

Note: What is net wage?

According to Article 103 of the Labour Law, wage includes:

1. Net wage (not include other remunerations)
2. Other remunerations are as follows:
 - overtime payments;
 - commissions;
 - bonuses and indemnities;
 - profit sharing;

Unofficial Translation

Type 4 (15 days)	7.5 +15	7.5 +0	7.5 +0	7.5 +0	7.5 +0	7.5 +0	7.5 +0	7.5 +0	7.5 +0	7.5 +0
Type 5 (0 days)	7.5 +0	7.5 +0	7.5 +0	7.5 +0	7.5 +0	7.5 +0	7.5 +0	7.5 +0	7.5 +0	7.5 +0

❖ For other sectors other than the textile, garment and footwear sector (shall pay 15 days of the total seniority indemnity per year)

Staff	2019		2020		2021		2022		2023	
	June	December	June	December	June	December	June	December	June	December
Type 1 (156 days)	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5
Type 2 (105 days)	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5
Type 3 (45 days)	7.5 + 7.5	7.5 + 7.5	7.5 + 7.5	7.5 + 7.5	7.5 + 7.5	7.5 + 7.5	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0
Type 4 (15 days)	7.5 + 7.5	7.5 + 7.5	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0
Type 5 (0 days)	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0

For further information, please contact us via:

078 50 82 13 078 62 06 75

078 94 88 24 078 67 45 26

095 92 40 33 078 65 22 41

The Ministry of Labour and Vocational Training

Thanks!