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Many local and international NGOs in Cambodia currently employ staff under contracts and policies based on the laws and practices of their home countries. This can result in non-compliance with the Cambodian Labor Law, which differs from foreign laws in many respects.

Non-compliance most often becomes an issue when a departing employee claims the benefits and protections provided by the Law. The organization can find itself owing quite significant sums, or be prevented from terminating a problematic employee.

Reviewing the organization's compliance with the Labor Law is the best way to foresee and minimize these risks. This guide answers frequently asked questions regarding the Labor Law and how an NGO can comply.

Does the Labor Law apply to my organization?

Yes, if your organization is active in Cambodia, the Labor Law almost certainly applies. The Law governs any employment relationship where the work is "to be performed" in Cambodia. It does not matter who the employer is, where the contract was signed, nor the nationality of the employee.

Why does the Labor Law matter?

First and foremost, as an organization dedicated to improving the lives and welfare of Cambodian citizens, NGOs should seek to abide by the laws of the land.

Second, the Law will matter a great deal in any dispute between the organization and a current or former employee.

Finally, the Ministry of Labor has jurisdiction to inspect and ensure that employers are in compliance with the Labor Law.

What is a Compliance Review?

Unfortunately, many organizations only become aware of the Labor Law once a problem arises. The organization needs to fire an employee, or is inspected by the Labor Inspector, and suddenly realizes its contracts and practices don't conform



with the Law.

A compliance review is a pro-active step to determine and minimize the risks of violating the Law. It involves a comprehensive examination of the organizations' employment contracts, human resource policies, and actual practices. Based on these documents and interviews with key personnel, an opinion is formed on the risks faced, and changes are proposed as to how the organization can comply. This might entail redrafting employment contracts or human-resource manuals, as well as training of the organization's staff.

What issues does a Compliance Review consider?

The Labor Law's 395 articles deal with the full range of employment issues, from hiring, to strikes, to unionization. Below are but a few of the issues a compliance review should consider.

Hiring Practices

All employees should be required to sign a formal employment contract *before* they begin work. Employing and paying an employee without a written contract will still be deemed an employer-employee relationship, but the employer will have far less control over the terms of employment. All hirings and dismissals must be reported to the Ministry of Labor within fifteen days.

The contract can be for either a specified or unspecified duration. A contract of specified duration must have a specific end-date, not more than two years from the date of employment. Any employment for longer than two years, even a series of short-term renewals, is deemed a contract of unspecified duration. This has important

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consequences for severance pay and termination, discussed below.

Declaration to the Ministry of Labor

When first establishing a presence in Cambodia, organizations need to make a declaration to the Ministry of Labor. Subsequently, the organization must keep the Ministry informed of all hirings and dismissals. The compliance review will ensure that the organization is properly following these obligations, and that all documentation is in order.

Visas & Work Permits

Foreign employees must have a valid visa, work permit, and employment card issued by the Ministry of Labor. Employers must take care to renew the work permits annually. Cambodian employees must have an employment card, upon which hiring and dismissal dates are recorded.

Employee Termination

The Labor Law sets very strict notice procedures and narrow grounds for dismissal. Employees on fixed-term contracts can only be dismissed for serious misconduct, such as theft or fraud. The dismissal must be done within seven days of learning of the misconduct, or it is waived. Employees on contracts of undetermined duration can be dismissed on wider grounds, but proper notice must be given.

Employers should have pre-established procedures for investigating evidence of misconduct, and for taking timely actions in response. Poor preparation can result in having to continue employing a known thief.

Human Resource Policies

Every organization over a certain size must have a human resource guide, setting forth benefits, working hours, reporting duties, hiring practices, and so forth. These policies should be in accordance with the employment contracts and the Labor Law, and approved by the Labor Inspector.

Work Hours & Overtime

Normal working hours are eight hours a day, six days a week. For any additional work, employees are owed overtime at 150% of base salary, or 200% if done at night or during a usual day off. Organizations should have a system for recording the time employees worked.

Annual Leave

Employees are entitled to at least 1.5 days of paid leave per month. This increases by one day for each three years of employment. For a 10-year veteran, this works out to 4.5 days off each month, or more than a day a week. Official holidays and sick leave do not count as paid leave. Organizations need to maintain a complete and accurate record of leave taken.

Severance Pay

Upon the completion of a fixed-term employment contract, the departing employee is owed severance pay. Unless the contract specifies otherwise, they are entitled to 5% of the wages paid during the entire length of the employment.

Volunteers

Many organizations recruit and depend on volunteers, interns, and other short-term staff at little to no compensation. Though the organization might not treat them the same as regular employees, the Labor Law makes no distinction.

The Law looks to three main factors to determine if someone is an employee: i) worked is performed, ii) under the direction and supervision of an employer, iii) in exchange for remuneration. The first two are easily satisfied in most cases. If the volunteer or intern receives even a modest (by foreign standards) stipend, they most likely would be deemed an employee. This would entitle them to all the same benefits and protections as permanent staff.

Independent Contractors

Independent contractors offer flexibility and outside expertise, and are commonly hired by NGOs. But as with volunteers, organizations need to be careful how they contract with and treat these individuals, lest they be determined to be employees.

Maternity Leave

New mothers are entitled to maternity leave of at least 90 days, during which the employer is prohibited from laying them off. Mothers who have worked for the organization for at least one year are entitled to half of their normal wage during maternity leave. Mothers who have worked for less than one year are not entitled by law to this wage, though the organization is free to offer it to them. Further, the Law does not grant fathers the right to paternity leave, though the organization is free to offer it.