

The Republic of the Union of Myanmar

Pyidaungsu Hluttaw

The Settlement of Labour Dispute Law

(The Pyidaungsu Hluttaw Law No. 5/2012)

The 6th Waxing day of Tagu 1373, M.E.

(28th March, 2012)

Preamble

The Pyidaungsu Hluttaw hereby enacts this Law for safeguarding the right of workers or having good relationship between employer and workers and making peaceful workplace or obtaining the rights fairly, rightfully and quickly by settling the dispute of employer and worker justly.

Chapter I

Title and Definition

1. This Law shall be called **the Settlement of Labour Dispute Law**.
2. The following expressions contained in this Law shall have the meanings given hereunder:
 - (a) **Worker** means a person who relies on his labour to engage in economic activity or to generate a livelihood, including a daily wage earner, temporary worker, worker engaged in agriculture, domestic worker, government employee and apprentice. Moreover, it also includes a worker terminated or dismissed from work during the dispute. This expression does not include the Defence Services personnel, member of the Myanmar Police Force or member of the armed organizations under the control of the Defence Services;
 - (b) **Labour Organization** means the Basic Labour Organization, Township Labour Organization, Region or State Labour Organization, Labour Federation and Myanmar Labour Confederation formed under this Law;
 - (c) **Employer** means a person who carries out by hiring one or more worker on wages of mutual consent in any trade under the relevant employment agreement, including a person who manages, supervises and administers directly or indirectly and is responsible to pay wages to the worker and responsible for employing and terminating the employment of the worker. This expression includes the legal managerial agent of the employer and in private business if the employer passed away, his heir and the legal successor of share are also included;
 - (d) **Employer Organization** means the employer organization formed under this Law or any existing law;
 - (e) **Trade** means any business, trade, production, construction, industry, agriculture, service or any other vocational works owned by the State,

cooperative, private or joint venture within the Republic of the Union of Myanmar;

- (f) **Essential Services** means the following essential services, those whose interruption are liable to endanger the life, health or security of the public:
- (i) water supply services;
 - (ii) electricity services;
 - (iii) fire services;
 - (iv) health services;
 - (v) telecommunication services;
 - (vi) services changed from a non-essential service to an essential service;
- (g) **Public Utility Service** means the following businesses;
- (i) transportation business;
 - (ii) port business and port cargo handling business;
 - (iii) postal, telex or fax business;
 - (iv) business relating to information and communication technology;
 - (v) petroleum or petroleum products distribution business for the public;
 - (vi) night soil disposal or sanitation business;
 - (vii) business of production, transmission and distribution of electricity or fuel energy to the public;
 - (viii) business of public financial service;
 - (ix) business which is stipulated by the Union Government as the public utility service, from time to time;
- (h) **Lock-out** means the temporary closing of the workplace of any trade, suspension of work or refusal by the employer to allow the workers at the work site to continue to work in consequence of the situation of any dispute of the employer and workers which remains in dispute;
- (i) **Strike** means collective action taken by decision of some or all workers resulting in a suspension of work, a refusal to work or to continue to work, or a slow-down or other collective actions that are designed to limit production or services relating to social or occupational matters in any dispute. This expression does not include workers' exercise of their right to remove themselves, having reasonable justification to believe that the work situation presents a sudden and serious danger to their life or health;
- (j) **Employment Agreement** means the bilateral written or oral agreement concluded by employer and worker in respect of employment and working in accord with the stipulations;
- (k) **Collective Bargaining** means the process carried out to enable negotiation and conclusion of collective agreement by employer or employer organizations and labour organizations for the determination on conditions

of employment and the terms and conditions, their labour relations or the measures for the prevention and settlement of disputes;

- (l) **Collective Agreement** means the bilateral written agreement concluded relating to the provisions on the workplace and employment conditions of workers prescribing terms and conditions relating to the relations between employers and workers as well as among their respective organizations, recognition and carrying out the legal entity of labour organizations and promoting the guarantees for protecting workers against social risks;
- (m) **Dispute** means the labour dispute or disagreement between an employer or employers or employer organization which represents them and a worker or workers or the labour organization which represents them in respect of employment, working, termination of a worker or workers and in respect of working or service including pension, gratuity, bonus and allowances or compensation for work related grievance, injuries, accidents, deaths or occupational diseases or in respect of any other matters of worker including worker's holiday, leave.
- (n) **Individual Dispute** means a rights dispute between the employer and one or more workers relating to the existing law, rules, regulation and bye-law; collective agreement or employment agreement.
- (o) **Collective Dispute** means the dispute between one or more employer or employer organization and one or more labour organization over working conditions, the recognition of their organizations within the workplace, the exercise of the recognized right of their organizations, relations between employer and workers, and this dispute could jeopardize the operation of the work of social peace. This expression includes a rights dispute or interest dispute.
- (p) **Coordinating Committee** means the Workplace Coordinating Committee formed under this Law.
- (q) **Conciliation Body** means the Conciliation Body formed under this Law.
- (r) **Arbitration Body** means the Dispute Settlement Arbitration Body formed under this law.
- (s) **Arbitration Council** means the Dispute Settlement Arbitration Council formed under this Law.
- (t) **Tribunal** means the Tribunal formed by the Arbitration Council in accord with the stipulation to make decision on each of the disputes.
- (u) **Decision** means the decision made by the Arbitration Council or Arbitration Body or the Tribunal in respect of the dispute.
- (v) **Ministry** means the Ministry of Labour of the Union Government.
- (w) **Minister** means the Union Minister for Ministry of Labour.

Chapter II

Formation of the Workplace Coordinating Committee

3. In any trade in which more than 30 workers are employed, the employer, with the view to negotiating and concluding collective agreement, shall:
 - (a) if there is any labour organization, form the Workplace Coordinating Committee with the view to make a collective bargaining as follows:
 - (i) two representatives of workers nominated by each of the labour organizations;
 - (ii) an equivalent number of representatives of employer;
 - (b) if there is no labour organization, form the Workplace Coordinating Committee as follows:
 - (i) two representatives of workers elected by them;
 - (ii) two representatives of employer.
4. (a) In the Coordinating Committee formed under section 3, if vacancy of representative occurs from the side of employer or worker, it shall be filled as required by the concerned party.
 - (b) The term of the Coordinating Committee is one year.
5. The Coordinating Committee shall promote the good relationship between the employer and worker or labour organization, negotiation and coordination on the conditions of employment, terms and conditions and occupational safety, health, welfare and productivity.
6. (a) If the worker or labour organization or the employer, by themselves or by representative, request and complain their grievances to the Coordinating Committee, it shall be negotiated and settled by the Coordinating Committee within five days, not including the official holidays, from the day of the receipt of the request.
 - (b) The Coordinating Committee shall keep the record of settlement and shall send report on the situation of performance in accord with the stipulation to the relevant Conciliation Body.
7. In trades that is not forming the Coordinating Committee because of the number of worker is less than 30, if the grievance is requested to the employer, the employer shall negotiate, coordinate and settle with the workers or with their representatives within five days, not including official holidays, from the day of receipt of request, and keep the record of settlement and send it to the relevant Conciliation Body if requested.
8. Where there exists in the same undertaking both labour organization representatives and elected representatives, the employer shall not use the existence of elected representatives to undermine the position of the labour organization concerned or their representatives.

9. In negotiating and coordinating under sections 6 or 7, if it is desirous to continue to carry out the conciliation in respect of the dispute which has not been settled, the employer or worker may complain to the relevant Conciliation Body.

Chapter III

Formation of the Conciliation Body

10. The Region or State Government shall form the Conciliation Body in the townships within the Region or State as follows:

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| (a) a person assigned duty by the relevant Region or State Government | Chairperson |
| (b) three representatives elected by the employers or employer organizations | Member |
| (c) three representatives elected by workers or the labour organizations | Member |
| (d) a departmental representative of the relevant township level | Member |
| (e) two distinguished persons trusted and accepted by employer and the labour organizations | Member |
| (f) a person assigned duty by the Ministry | Secretary |

11. (a) If the office of the member formed under section 10 becomes vacant, such vacancies shall be filled as required by the concerned party.

(b) The term of the Conciliation Body is two years.

12. The Conciliation Body shall determine the type of dispute whether it is individual or collective dispute which is complained or received and conciliate within the stipulated period in accord with the stipulations so as to settle the dispute.

13. The relevant Region or State Government shall carry out other necessary measures including the formation of the Conciliation Bodies, prescribing functions and duties, and amending thereof.

14. If there is no particular provision of law for carrying out conciliation of disputes in the special economic zone established within the Republic of the Union of Myanmar, the relevant Region or State Government shall form the special Conciliation Bodies according to section 10.

15. The dispute of interest that cannot be settled by negotiating and coordination between employer and the labour organizations, the employer may appoint the representative of the employer or the labour organizations may appoint the representatives of the workers before the period of conciliation. Where no labour organization exists, the workers shall elect their representatives.

Chapter IV

Formation of the Dispute Settlement Arbitration Body

16. (a) The Ministry shall, with the approval of the Union Government, form the Dispute Settlement Arbitration Body in the Regions or States as follows:
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|---|-------------|
| (i) a person assigned duty by the relevant Region
or State Government | Chairperson |
| (ii) three persons selected from the nomination list
submitted by the employer organizations | Member |
| (iii) three persons selected from the nomination list
submitted by the labour organizations | Member |
| (iv) a departmental representative selected by the relevant
Region or State Government | Member |
| (v) two distinguished persons trusted and accepted by the
employers or relevant employer organizations and
the labour organizations | Member |
| (vi) a person assigned duty by the Ministry | Secretary |
- (b) The Ministry may form the Dispute Settlement Arbitration Body in the Self-administered Division or Self-administered Zone with the approval of the Union Government.
17. (a) If the office of the member formed under section 16 becomes vacant, the vacancies shall be filled as required by the concerned party.
- (b) The term of the Arbitration Body is two years.
18. The Arbitration Body shall carry out in accord with the working methods, procedures and programmes stipulated by the Arbitration Council.

Chapter V

Formation of Dispute Settlement Arbitration Council

19. The Ministry shall, with the approval of the Union Government, form the Dispute Settlement Arbitration Council with 15 qualified persons of good standing from legal experts and experts in labour affairs as follows:
- (a) five persons selected by the Ministry;
 - (b) five persons selected from the nomination list submitted by the employer organizations;
 - (c) five persons selected from the nomination list submitted by the labour organizations.
20. (a) The vacancies in the Arbitration Council shall be filled as required by the concerned party.

- (b) The term of the Arbitration Council is two years.
21. The duties of the Arbitration Council are as follows:
- (a) standing and carrying out as the organization which is independent and impartial based on social justice, decent work and principles of equity in making decisions;
 - (b) forming the Tribunal, in accord with the stipulations, consisting of three persons from among the persons contained in section 19 for hearing the accepted disputes and cause to decide;
 - (c) prescribing the working methods, procedures and programmes to be performed by the Arbitration Body and Tribunal.
22. (a) The Ministry shall stipulate the procedures to be performed by the Arbitration Council.
- (b) The Arbitration Council shall carry out in accord with the procedures stipulated by the Ministry.

Chapter VI

Settlement of Dispute

23. A party, employer or worker, may complain individual dispute relating to his grievance to the Conciliation Body and if he is not satisfied with the conciliation of such body in accord with stipulated manners, may apply to the competent court in person or by the legal representative.
24. The relevant Conciliation Body shall, in respect of the collective dispute known or received by the complaint of either party, employer or worker, in respect of the dispute; information sent by the Minister or the Region or State Government or any other means, carry out as follows:
- (a) conciliating so as to be settled within three days, not including the official holidays, from the day of knowing or receipt of such dispute;
 - (b) concluding mutual agreement if the settlement is reached in conciliating under sub-section (a), before the Conciliation Body.
25. The Conciliation Body shall refer the collective dispute which does not reach settlement to the relevant Arbitration Body and inform the persons relating to the dispute.
26. The Conciliation Body shall handover the case file to the relevant Arbitration Body within two days, not including the official holidays, with detailed report including opinion on the facts which cannot be settled in carrying out conciliation and also submit the summary report in respect of the collective dispute to the relevant Region or State Government.
27. The relevant Arbitration Body shall make decision on the collective dispute handed over by the Conciliation Body under section 26, within seven days, not including the official holidays, from the day of receipt of such dispute and send the decision to the relevant parties within two days, not including official holidays. If it is a decision which

concerns with an essential services or public utility service, the copy shall be sent to the Minister and relevant Region or State Government.

28. If either party is not satisfied with the decision of the Arbitration Body, except for a decision in respect of essential services, the following options may be exercised;

- (a) applying by both parties to the Arbitration Council for its decision within seven days, not including the official holidays, from the day of receipt of the decision of the Arbitration Body; or
- (b) carrying out a lock-out or strike in accordance with the relevant law.

29. Any relevant party who is not satisfied with the decision of the Arbitration Body in respect of the essential services shall apply to the Arbitration Council within seven days, not including the official holidays, from the day of receipt of such decision.

30. The Arbitration Council shall form and assign duty to a Tribunal to try the case and make decision in respect of the application made under sub-section (a) of section 28 and section 29.

31. The Tribunal shall:

- (a) make decision on the collective dispute applied under sub-section (a) of section 28 within 14 days, not including the official holidays, from the day of receipt of collective dispute;
- (b) send the decision to the relevant parties within two days, not including the official holidays.

32. The Tribunal shall:

- (a) make decision on the collective dispute applied under section 29 within seven days, not including the official holidays, from the day of receipt of such dispute;
- (b) send the decision to the relevant parties within two days, not including the official holidays.

33. The Arbitration Council shall send the copy of decision passed by the Tribunal under sub-section (a) of section 32 to the Minister and the relevant Region or State Governments.

Chapter VII

Confirmation, Amendment and Effectiveness of Decision

34. The decision of the Arbitration Body shall come into force on the day of decision if both parties agree with the decision of the Arbitration Body.

35. The decision of the Tribunal shall be deemed as the decision of the Arbitration Council. Such decision shall come into force on the day of its decision.

36. The relevant parties may agree to amend the decision of the Arbitration Body or Arbitration Council after three months from the day of coming into force. In such circumstances, the new agreement shall supersede the relevant part of the Arbitration decision.

37. The following persons shall be complied with the decision which had been come into force:

- (a) all of the persons relevant to the dispute;
- (b) legal successors of the employer involved in the dispute;
- (c) all of the workers working in the trade at the time of the dispute or thereafter.

Chapter VIII Prohibitions

38. No employer shall fail to negotiate and coordinate in respect of the complaint within the prescribed period without sufficient cause.

39. No employer shall alter the conditions of service relating to workers concerned in such dispute at the consecutive period before commencing the dispute within the period under investigation of the dispute before the Arbitration Body or Tribunal, to affect the interest of such workers immediately.

40. No party shall proceed to lock-out or strike without accepting negotiation, conciliation and arbitration by Arbitration Body in accord with this law in respect of a dispute.

41. No person shall carry out lock-out or strike to amend such decision or agreement within the effective period of the decision of the Arbitration Body or the Arbitration Council or any collective agreement.

42. No person shall prohibit the right to work independently of the workers who are not desirous to participate in the strike nor impede the right of a worker to strike.

43. No person shall fail to abide by or carry out any condition contained in agreement concluded before the Conciliation Body in respect of individual dispute or collective dispute.

44. No person, after having informed in advance by the Arbitration Body or Tribunal for settling the dispute, shall fail to arrange to enable to examine the trade under dispute or to produce the documents which is considered by the Arbitration Body or Tribunal that it concerns with the dispute or to appear as a witness when he is so summoned.

45. No person, if he is sent notice for examination before the Arbitration Body or Tribunal, shall fail without sufficient cause to appear in person or to send legal representative within the stipulated period.

Chapter IX Penalties

46. Any employer who violates any prohibition contained in sections 38 and 39 shall, on conviction, be punished with a fine for a minimum of one lakh kyats.

47. Any person who violates any prohibition contained in sections 41 and 42 may, on conviction, be punished with a fine not exceeding thirty thousand kyats.

48. Any person who violates any prohibition contained in sections 40, 43, 44 and 45 shall, on conviction, be punished with a fine for a minimum of one lakh kyats.

Chapter X

Miscellaneous

49. In carrying out the works of the Arbitration Council, Tribunal and Arbitration Body, the Ministry shall support in carrying out office works.

50. The Coordinating Committee, Conciliation Body, Arbitration Body and Arbitration Council newly reconstituted under this Law shall continue to carry out unfinished collective bargaining and disputes of the Coordinating Committee, Conciliation Body, Arbitration Body and Arbitration Council which expires its term in accord with the provisions of this Law.

51. If any employer, in the course of settlement of dispute, commits any act or omission, without sufficient cause, which by causing a reduction in production resulting so as to reduce the workers' benefits shall be liable to pay full compensation in the amount determined by the Arbitration Body or Tribunal. Such money shall be recovered as the arrear of land revenue.

52. No party shall be barred to proceed with the right to institute criminal or civil proceedings in respect of such dispute during conciliation or arbitration.

53. The Ministry may coordinate with the Supreme Court of the Union and carry out to establish Labour Courts to try the labour disputes.

54. As a strike suspends the employment agreement temporarily, the employer shall not be liable to pay salary or allowance during such period to the worker who go on strike.

55. No charges shall be collected from the parties in respect of the processes of negotiation, conciliation and arbitration of the dispute.

56. Members of the Conciliation Body or the Arbitration Body or the Arbitration Council:

- (a) shall be deemed as public servant under section 21 of the Penal Code during the conciliation and decision of dispute is being carried out;
- (b) has the right to enjoy the suitable subsidy and allowances from the Union Government and the relevant organizations.

57. If any party submits, to keep confidential of the document or property produced as exhibit in making decision and carrying out the dispute, to the Arbitration Body or Tribunal, they shall be kept confidential.

58. The rules, procedures, notifications, orders and directives issued under the Trade Disputes Act, 1929 may be applied continuously unless and until they are not contrary to this Law.

59. In implementing the provisions of this Law, the Ministry may:
- (a) issue necessary rules, regulations or bye-laws with the approval of the Union Government;
 - (b) issue necessary notifications, orders, directives and procedures.
60. The Trade Disputes Act, 1929 is hereby repealed by this law.

I hereby sign according to the Constitution of the Republic of the Union of Myanmar.

Sd / Thein Sein

President

The Republic of the Union of Myanmar