NOMIN & ADVOCATES
LLP

Revised Labor Law of Mongolia

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1. Introduction

Mongolia first adopted the Labor Law on 14 May 1999 and since then the Labor Law has been amended a total of 24 times[1].

This Labor Law was enacted in 1999 to regulate labor relations in the context of the transition period in accordance with the social and economic requirements of the time.

On 26 March 2018, the Government submitted a draft of the Revised Labor Law to the Parliament due to the need to align the Labor Law in accordance with the current state of labor relations, international standards, and trends. Subsequently, on 2 July 2021, the Parliament enacted a Revised Labor Law, which will come into force on 1 January 2022, at its plenary session.

Therefore, we set out below what key provisions have been amended and introduced in this newly adopted Revised Labor Law from the current Labor Law.

2. Changed Key Provisions

2.1 Regulations Regarding the Employment Agreement

The current Labor Law stipulates that the following key terms must be provided in the employment agreement. These include:

a) name or title of the position of employment;
b) duties and work to be performed;
c) amount of compensation; and
d) working conditions.

According to Article 49 of the Revised Labor Law, in addition to the above conditions, the employment agreement shall provide the location of the work.

2.2 Termination Benefits (Severance pay)

Under the Labor Law, if the employer terminates the employment agreement with the employee on the following grounds, the employer is obliged to provide the employee with an allowance equal to at least employee's one month's "*average salary*", which can be increased by the employer's discretion.

These include a) if the employee has called to active duty in the army; b) if the employer's business entity or organization, or a branch or unit thereof, has been dissolved, or the job or position within it has been abolished, or the number of employees has been reduced; c) if it has been determined that the employee cannot meet the requirements of the job or position because of lack of professional qualifications or skill, or because of health reasons; d) if an employee reached 60 years of age and is eligible to receive a pension.

However, pursuant to the Revised Labor Law in case of termination of the employment agreement with the employee by the employer on the following grounds, the employee is entitled to severance pay in the amount of his/her "*base salary*" depending on the length of service in the business entity or

[1] Introduction to the draft of the Revised Labor Law can be found here.

organization. These include a) termination of the employment agreement of an employee with an employment agreement with special conditions due to the permanent transfer of ownership by the employer to other persons; b) if the employer's business entity or organization, or a branch or unit thereof, has been dissolved, or the job or position within it has been abolished, or the number of employees has been reduced; c) if it has been determined that the employee cannot meet the requirements of the job or position because of lack of professional qualifications or skills d) in case of termination of the employment agreement with the employee on the grounds that the employee is medically incapable of performing his/her duties and there are no other jobs to be transferred to him/her.

For example:

a) 1 month or more, if the employee has worked for 6 months to 2 years;
b) 2 months or more, if the employee has worked for 2 to 5 years;
c) 3 months or more, if the employee has worked for 5 to 10 years; and
d) 4 months or more, if the employee has worked for 10 years or more[2].

In addition, the Revised Labor Law provides that severance pay to be paid in accordance with the above provisions if an employee reached 60 years of age and is eligible to receive a pension[3] and the employer is obliged to retain the job of the employee who employee has called to active duty in the army[4].

2.3 Regulation Regarding a Collective Dismissal

Even though the current Labor Law regulates collective dismissals at a certain level, there is no specific provision that provides which conditions constitute a collective dismissal. The current regulations also require employers to notify employees 45 days in advance of collective dismissal, and to determine the amount of severance pay in consultation with employee representatives[5].

The Revised Labor Law regulates the issue of collective dismissals in detail and specifies the conditions to be considered as a collective dismissal.

If an employer with 10-50 employees terminating the employment with 5 or more employees, an employer with 51-499 employees terminating employment with 10 percent or more of the total number of employees, an employer with 51-499 employees terminating the employment with 50 or more employees within 90 days shall be considered as a collective dismissal[6].

The Revised Labor Law further stipulates that in the event of collective dismissal, the employer must negotiate with employee representatives to reduce the number of employees to be laid off, to transfer an employee to vacant positions, to create new jobs, to hire in the first place when the number of employee increases, and termination benefits.

[2] Revised Labor Law Art. 82
[3] Revised Labor Law Art. 82.5
[4] Revised Labor Law Art. 60.1.7
[5] Labor Law Art. 40.5 and Art. 42.2
[6] Revised Labor Law Art. 81.1

In this regard, there is a new provision in Article 81.5 of the Revised Labor Law obliges employer that "Employers shall hire a person who has been fired in collective dismissal in the first place if he / she meets the requirements for new jobs and additional positions within 1 year after the collective dismissal dismissal".

In addition, in case of liquidation of a business entity, organization, branch, or unit, the legal regulation stipulates that the employee's salary shall be paid from the organization's assets in the first place[7].

2.4 Regulations Regarding the Disciplinary Sanctions

Under the current Labor Law, an employer can impose one of those disciplinary sanctions; a warning, up to 20 percent reduction of the base salary for up to three months and dismissing.

According to the Revised Labor Law, employers can impose the following types of disciplinary sanctions;

a) individual warning to the employee;
b) open warning to an employee in the form of announcements to all employees;
c) a reduction of the base salary by up to 20 percent for a period of up to three months;
d) demotion; and
e) dismissal.

Thus, the Revised Labor Law increased the types of disciplinary sanctions to be imposed under this law and the law further provided that before imposing a disciplinary sanction, the employer shall notify the employee, obtain an explanation, and choose from the above-mentioned disciplinary sanctions, taking into account the nature and consequences of the disciplinary violation[8].

2.5 Salary Regulations

Article 104.1 of the Revised Labor Law states that wages shall be paid at least two days a month and the payday shall be reflected in internal labor regulations or employment agreement. The law further stipulates that, if the employer fails to pay the employee on time without a justifiable reason or pays less than the established salary by the law, and employment agreement, the employer shall be liable in accordance with this law, the Law of Mongolia on Infringement, and other relevant laws[9].

According to the current Labor Law, if an employee who works at night is not given a rest day, the increased salary to be given to the employee shall be regulated by a collective bargaining and employment agreement.

However, according to Article 109.3 of the Revised Labor Law, if an employee who worked at night is not given a rest day, an employee shall receive compensation equal to an increased average salary by 1.2 percent or more.

[7] Revised Labor Law Art. 81.7
[8] Revised Labor Law Art. 123.3
[9] Revised Labor Law Art. 104.7

2.6 Annual Leave

The current Labor Law does not specify when an employee is entitled to annual leave, and in practice it is common for an employee to be entitled to annual leave from the time specified in the employer's internal labor regulations. Article 99.2 of the Revised Labor Law stipulates that if an employee has worked for six months after concluding an employment agreement, he/she shall be entitled to annual leave[10].

Article 79.1 of the Labor Law states that “An employee is entitled annual leave to enjoy in person. An employee who is unable to take annual leave due to work necessities may be given a bonus in cash. The procedure for giving monetary bonuses shall be regulated under a collective agreement, or in the absence of a collective agreement, on the basis of an agreement of the employee with the decision of the employer”. The revised Labor Law stipulates that an employee who is unable to take annual leave due to the work necessities shall be paid compensation equal to an increased annual leave salary by 1.15, which can be increased by the amount specified in the collective agreement and employment agreement.

Thus, the Revised Labor Law provides for an increase in the salary of an employee who is unable to take annual leave in person, which clarifies the relevant provisions of the current law.

In addition, Article 79.4 of the current Labor Law stipulates that an employee may partially take his/her annual leave within a given year, and the law does not impose any restrictions on the number of days of partial leave. The Revised Labor Law stipulates, in this case, the duration of any of one partial continuous annual leave shall be at least 10 working days[11].

2.7 Employment Agreement with Special Conditions (Contract)

Article 22 of the current Labor Law provides that an owner or a person authorized by him/her may enter into a contract with an employee to hire its labor, unique talent, or skill to exercise a certain part of his/her property rights. According to Article 65.1 of the Revised Labor Law, an owner or a person authorized by him/her may exercise a certain part of his/her ownership right through an employee with an employment agreement with special conditions for performing duties at the executive level of a business entity or organization. In other words, an employment agreement with special conditions may be entered in hiring an employee for executive-level duties, therefore it made positions that may use this agreement clear.

Under the current Labor Law, an employer must notify an employee two months in advance if the contract is terminated due to a full transfer of ownership[12], while the revised Labor Law provides that the employer must notify the employee to notify the employee in writing at least 30 days in advance.

Additionally, Revised Labor Law differs from the current Labor Law in that it provides for the termination of an employment agreement with special conditions on the grounds that the employee has lost the trust of the employer[13].

[10] Revised Labor Law Art. 99.3
[11] Revised Labor Law Art. 99.8
[12] Revised Labor Law Art.41.2
[13] Revised Labor Law Art. 65.4

3. New Regulations

3.1 Regulations Related to Concluding an Employment Agreement

According to the current Labor Law, an employer shall enter into a written employment agreement and provide a copy of the employment agreement to the employee.

However, Revised Labor Law eased this provision by providing that if the employer does not conclude an employment agreement in writing due to justifiable reason, the employer shall conclude an employment agreement within ten working days after the employee started to perform his /her duties. This provision represents a major fundamental change under the Revised Labor Law.

This is because the current Labor Law mainly regulates post-employment relationships, and narrowly regulated labor relations at the business entities, imbalance in rights and responsibilities of employers and employees in labor relations. The bill initiations of the revised labor law concluded that it narrows the scope of the law and contributes to the insufficient implementation of labor law in small businesses[14].

For this reason, the Revised Labor Law expands the scope of regulatory relations and provides for the application of labor legislation from the time of the establishment of employment relations[15].

In addition, the law stipulates specifically that the employer may mutually agree on the terms of property liability, confidentiality, training, and non-competition in the employment relationship and include them in the employment agreement, or enter into a separate agreement to accompany the employment agreement on these issues.

3.2 Regulations Regarding the Term of the Employment Agreement

The current Labor Law stipulates that an employer and an employee may enter into an employment agreement for a fixed period in the following cases.For example, an employment agreement may be concluded for a fixed term in a seasonal or temporary job for the duration of the job, or instead of the employee whose job is retained, by agreement between the employer and the employee.

In these cases, if the parties do not propose to terminate the employment agreement upon its expiration, and if the employee continues to perform the work, the agreement is considered to have been extended for the initial agreement period.

The Revised Labor Law provides an employment agreement with a fixed term other than an employment agreement with an employee who is working in place of a) an employee temporarily transferred to another job due to health reasons; and b) an employee who's taking maternity leave or paternity leave, if the total term is more than two years, a fixed-term employment agreement shall be considered as an indefinite employment agreement[16].

As such, if an employee's fixed-term employment agreement is considered an indefinite employment agreement in accordance with this provision, the employer may not terminate the employment agreement on the grounds that the employment agreement is expired, and the employer must terminate

[14] Introduction to the draft of the Revised Labor Law can be found here
[15] Revised Labor Law Art. 48.3
[16] Revised Labor Law Art.50.4

the employment agreement on one of the grounds for termination of employment relationship stated in the Revised Labor Law.

3.3 Regulations Related to Termination of Employment Agreement

The Revised Labor Law provides a new provision stating that an employer has the right to terminate an employee's employment relationship if the employee is found to have forged documents proving his/her education, profession, or qualifications at the time of starting the employment[17]. In the event of termination of an employment agreement on this basis, the agreement may be terminated immediately, as the employer does not need to notify the employee in advance.

The law further states that if the employer considers that employee doesn't need to perform his/her duties after notifying the employee of the termination of the employment at least 30 days in advance, the employer may pay compensation from the employee's average salary until the date of termination of employment, and not let the employee work. The current Labor Law does not address this issue directly, and thus, in practice, there have been some disputes over this issue.

3.4 Non-Compete Obligation

One of the key new provisions introduced with the Revised Labor Law is a non-compete obligation. Article 72 of the law regulates non-compete obligations and stipulates that a contract must be signed with an employee with an employment agreement with special conditions to work directly with a competing business entity, organization or individual for no more than one year after the termination of the employment relationship. or the employee himself may be obliged not to engage in direct competition with the employer.

This obligation can be specified in the employment agreement or the form of a separate agreement. In this case, the grounds for prohibiting competition, the type of activity to be covered, non-compete obligation applying territory, and period, and the compensation paid by the employer shall be included[18].

For the duration of the non-compete obligation, the employer is obliged to pay the employee compensation equal to at least 50 percent of his/her last month's salary monthly. Even though the non-compete obligation is crucial in protecting an employer's goodwill and trade secrets, the non-compete obligation limits employee's constitutional right to work, as such, it is common practice in international law to impose a limitation valid period and applicable territory of the non-compete obligation.

The non-compete obligation does not apply when an employee is working abroad, thus this obligation will only apply if the employee works in Mongolia. Aside from this, as mentioned above, non-compete obligations apply only to employees working under an employment agreement with special conditions, which is usually employees working at executive-level positions, and thus, this obligation cannot be imposed on entry-level or mid-level employees after termination of an employment agreement.

[17] Revised Labor Law Art.80.1.6
[18] Revised Labor Law Art.72.2

3.5 Working hours

As with the current Labor Law, Article 84.1 of the Revised Labor Law stipulates that normal working hours per week shall not exceed 40 hours. While the current Labor Law states that working hours for employees aged 14-15 is up to 30 hours per week, and for employees aged 16-17, and a person with disabilities is up to 36 hours, the Revised Labor Law specifically stated that minors under 18 may work no more than 30 hours per week.

Furthermore, Article 84.5 of the Revised Labor Law states that employers are obliged to keep records of employees' working hours. This provision is particularly reflected in the principle of keeping records of employers who employ minors in accordance with Convention 138 of the International Labour Organization as well as, in connection with Article 84.4 of the Revised Labor Law that stipulates the maximum working hours per week shall not exceed 56 hours and the maximum working hours per day shall not exceed four hours.

3.6 Types of Employment Agreements

One of the key regulations of the Revised Labor Law is that it reflects the types of employment agreements that are concluded in practice between employers and employees in connection with the current market expansion of labor relations.

For example, the Revised Labor Law newly introduces the following types of employment agreements.

a) Working Under Labor Hire Agreement

The current Labor Law does not regulate labor hire relations, and thus this is the first time that the Revised Labor Law has included this provision.

Under this provision, a legal entity providing labor supply services may employ an employee with an employment agreement on the basis of a labor hire agreement with another employer. This labor hire agreement can be entered in the following cases[19].These include:

a) performing temporary work that will not last more than 6 months;
b) replacement of an employee who is job is retained, except in the case of collective bargaining, negotiations, trade union activities, and participation in strikes organized in accordance with the law;
c) performing work or services that are ancillary to the entity's core business; and
d) immediate action to prevent or eliminate obstacles to the activities of the business entity or its branch or unit in the event of the unforeseeable and unforeseen occurrence of disasters, catastrophes and accidents.

When hiring labor force under this agreement, the employer may employ up to 30 percent of its employees under the labor hire agreement, except in the case specified in (d) above[20].

[19] Revised Labor Law Art.76.2
[20] Revised Labor Law Art.76.3

In addition, the Revised Labor Law sets out the terms and obligations of the parties that must be included in the labor hire agreement.

b) Part-time Employment Agreement

Article 66.1 of the Revised Labor Law stipulates that a part-time employee is an employee who works fewer hours than a full-time employee. The Revised Labor Law further states that a part-time employment agreement must specify working days, working starting and ending times, and working hours per week.

In some labor law practices, in the event where the employer is hiring an employee for working less time than full time, the employer enters into a contract for hire agreement or in some cases doesn't enter into any agreements in which case the employee is employed but unable to exercise his or her rights under the Labor Law.

Therefore, this regulation plays a vital role in preventing and resolving the negative consequences mentioned above. A part-time employee shall have the same rights and responsibilities as a full-time employee, except as otherwise provided in the Revised Labor Law, and shall be subject to the same labor legislation, collective agreements, collective bargaining agreements, and internal labor regulations[21].

A part-time employee is entitled to the annual leave and additional annual leave like a full-time employee, as it is stated that part-time employees are provided with basic and additional annual leave based on their total hours worked during the given year[22].

In addition, the Revised Labor Law set forth that part-time employee may not work more than 32 hours per week[23].

c) Employment Agreement for Remote Employee

The Revised Labor Law also allows employers to enter into a remote work agreement with employees. In this case, the employment agreement concluded with the employee shall specify the location of the employee, the time and form of handing over the work performed, and the amount of compensation to be paid by the employer in case of using its property and equipment[24].

Therefore, the employer must specifically include the above in the remote work agreement with the employee under this agreement.

d) Employment Agreements of Domestic Service Employees, Assistant Herders, and Similar Employees

The Revised Labor Law states that an employer is a business entity, organization, citizen, or stateless person who employs a person based on an employment relationship. This provision makes clear that

[21] Revised Labor Law Art.66.4
[22] Revised Labor Law Art.99.7
[23] Revised Labor Law Art.86.1
[24] Revised Labor Law Art.68.2

an individual person can be an employer[25]. The current Labor Law is unclear as to whether an individual person is an employer.

In connection with the introduction of the above regulation, it has been reflected newly in the Revised Labor Law that individuals can enter employment agreements with domestic service workers, assistant herders, and similar employees.

With the introduction of this new type of employment agreement, a person engaged in domestic service and assistant herding will be able to communicate with an individual employer within the framework of the employment relationship specified in the Labor Law and resolve issues in accordance with the Labor Law. If an assistant herder or a domestic service worker or similar employee lives and works at the employer's home or employer's property and premises, the employer is obliged to ensure normal living conditions of those employees[26].

In addition, the employer and his or her family members are obligated to respect the rights and freedoms of the employee, and the Revised Labor Law specifically stipulates that a domestic service employee is not obliged to be at the employer's home on weekends and public holidays unless otherwise provided in the employment agreement[27].

In addition, with regards to the assistant herder, no more than 30 percent of a herder's salary may be paid in the non-cash form if the assistant herder agrees[28].

3.7 Roster Work

The Revised Labor Law introduces a new term, “roster work”. The Revised Labor Law stipulates that employer in the mining and quarrying sector that place employees in remote locations other than their place of permanent residence may use roster work.

The Revised Labor Law specifies the length of working hours and rest periods of employee working roster work, for example, the length of the working day for employees working on the roster shall not exceed 12 hours[29]. The law further stipulates that if an employee who worked overtime is not given a rest day, an employee shall receive an increased average salary by 1.5 percent or more [30].

The law also provides that employees who work on the roster shall have 14 days of work per roster shift and 14 days of rest.[31]

The draft of Revised Labor Law initially provided for long-term shifts of up to 20 days per roster shift and at least 10 days of rest. Federation of Energy, Geology and Mining Workers' Trade Unions of Mongolia("**MEGM**") has previously reported/suggested that long shifts in the mining sector affect the health, mental and social well-being of workers, including family relationships and child-rearing, leading

[25] Revised Labor Law Art.4.1.1
[26] Revised Labor Law Art.71.3
[27] Revised Labor Law Art.71.7
[28] Revised Labor Law Art. 112.1
[29] Revised Labor Law Art.92.3
[30] Revised Labor Law Art.109.1
[31] Revised Labor Law Art.92.4

to divorce, and imbalance between work and life and with most top companies are requiring employees work long roster shifts of 20 to 40 days[32].

With respect to this proposal, the Revised Labor Law reflects the proposal and stipulates that roster shifts for mining workers must be 14/14, or 14 working days and 14 days off.

In addition, at the beginning and end of the roster work, the time of delivery and return of the employee to the place of work from the location determined by the internal labor regulations shall be considered as working hours.

It also stipulates that the working and vacation hours of employee working on roster, and additional compensation for roster work shall be determined by collective agreements and collective bargaining agreements [33].

3.8 Job Rotation

The current Labor Law does not provide detailed regulations on when and on in what condition, job rotation can be used.

However, the Revised Labor Law provides for detailed regulation, and the employer may, by agreement with the employee, rotate the employee within the business entity, organization, or branch for up to three years on the following grounds:

a) balancing the workload;
b) training and preparing for a particular job;
c) acquiring the ability to work in more than one job; and
d) prevention of undue external influences that may result from prolonged work in the same workplace.

Furthermore, under the Revised Labor Law, when rotating the employee, unless an employee is agreed, it's prohibited to demote an employee or reduce the employee's salary[34].

The law also provides that a) if the employer's business entity or organization, or a branch or unit thereof, has been dissolved, or the job or position within it has abolished, or the number of employees has reduced; c) if it has determined that the employee cannot meet the requirements of the job or position because of lack of professional qualifications or skill, and c) the employee found to be medically incapable of performing his/her duties, the employer must reinstate the employee to his/her old job.

In addition, the employer is prohibited from imposing disciplinary sanctions on an employee who refuses to rotate, on this ground [35].

In conclusion, an employer can only rotate an employee for up to three years within the grounds mentioned above, on the basis of agreement with the employee.

[32] https://mongoltv.mn/post/37431
[33] Revised Labor Law Art.92.8
[34] Revised Labor Law Art.59.3
[35] Revised Labor Law Art.59.6

3.9 Regulations Regarding the Employee Who Refuses to Perform its Duties[36]

One of the key provisions of the Revised Labor Law is that an employee is entitled to refuse to perform his/her duties in the following cases:

a) circumstances that may endanger the life or health of the employee or a third party;
b) the employer instructed an employee to work exceeding the statutory overtime limit; and
c) the employer has not paid the employee within 30 days from the day on which the salary is due.

If an employee refuses to perform his or her duties on the above grounds, an employee shall immediately notify his or her employer and shall have the right not to work until these conditions are eliminated by the employer.

If an employee refuses to perform his or her duties on the above grounds, the employer shall also be obliged to pay compensation equal to the employee's time off[37]. In this case, the employer is specifically prohibited by the Revised Labor Law from imposing disciplinary sanctions on employees on this ground[38].

3.10 Prohibition of Use of Pledge in Employment Relations

The Revised Labor Law further introduces a provision that prohibits employers from seizing original copies of personal documents, such as money, items, ID cards, passports, educational documents, professional licenses, movable and immovable property certificates, from a person or employee seeking employment.

A person who violates this provision shall be held liable in accordance with the Law of Mongolia on Infringement[39].

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[36] Revised Labor Law Art.54
[37] Revised Labor Law Art.113.1
[38] Revised Labor Law Art.54.3
[39] Revised Labor Law Art.10.2

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