



LEGAL ALERT: REVISED LABOR CODE OF MONGOLIA

In accordance with the “General Direction on Improving the Legislation of Mongolia until 2020” which is approved by Resolution No 11 of the Parliament of Mongolia, dated 2017, the revised Labor code was first drafted and submitted to the Parliament in March 2018. After several amendments made to the first draft since then, the revised law has been finally enacted on 2 July 2021. The law shall become enforceable from 1 January 2022. Preconditions to adopt the revised law and new regulations and amendments in this law are outlined in this alert.

Preconditions to adopt the revised law

According to the concept of the Revised Labor Code, regulations of labor relations are needed to be updated for the reason that the following prerequisites have arisen. These include:

- a) Fundamental principles and rights in employment relations, and definitions, terminologies are to be complied with the eight fundamental international labor conventions to which Mongolia has acceded, especially the four fundamental conventions and recommendations acceded to since 1999 – Mongolia is a member of the International Labor Organization and has acceded to the relevant international conventions on labor relations. For instance:
 - Discrimination Convention (employment and occupation) (No 111);
 - Abolition of Forced Labor Convention (No 105);
 - Forced Labor Convention (No 29);
 - Minimum Age (Underground Work) Convention (123);
 - (Underground Work) Recommendation (No 124);
 - Employment Policy Convention (No 122);
 - Occupational Safety and Health Convention (No 155);
 - Minimum Age Convention (No 138);
 - Freedom of Association and Protection of the Right to Organize Convention (No 87);
 - Maternity Protection Convention (No 183);
 - Right to Organize and Collective Bargaining Convention (No 98);

- Equal Remuneration Convention (No 100), Equal Remuneration Recommendation (No 90);
 - Workers' Representatives Convention (No 135);
 - Workers' Representatives Recommendation (No 143);
 - Employment Service Convention (No 88);
 - Private Employment Agencies Convention (No 181);
 - Tripartite Consultation (International Labor Standards) (No 144);
 - Tripartite Consultation (Activities of the International Labor Organization) Recommendation (No 152);
 - Vocational Rehabilitation and Employment (No 159)¹.
- b) There have been significant changes in the labor market and labor relations, as well as the labor relations are expanding in terms of form and subject matter. New methods and trends including tripartite labor relations, part time work, work from home, work on the basis of an employment agreement between individuals (assistant herder, housemaid, etc.), remote work, etc., are emerging. Due to the lack of a legal environment that regulates these new employment relations, there have arisen tendencies that labor rights and interests of citizens are violated and responsible persons are not held liable, as well as a misunderstanding in labor relations. Therefore, these types and forms of employment relations are to be legislated in order to address the issues that cause the foregoing situations;
- c) As a result of lack of specific regulation on state supervision over employment relations in the current law, implementation of the law is insufficient and the rights of both employees and employers are violated. Thus, the law is to be amended in accordance with international norms;
- d) Labor Disputes Settlement Commission is the first instance unit that resolves labor disputes, however, it is not mandatory under the Labor Code to establish a Labor Disputes Settlement Commission in business entities and organizations. As a result of this, it is common that this commission is not established and labor disputes cannot be resolved in the first instance. Therefore, it is necessary to regulate the legal environment where labor disputes can be resolved as possible as in the first instance²; and
- e) It is common in practice to enter into an employment relation without any written employment agreement especially in agriculture, forestry, hunting, wholesale and retail, and vehicle maintenance, etc., which makes employees unable to enjoy their rights under the Labor Code.

As of the first quarter of 2021, there are 1,156.1 thousand (54.9%) persons in the labor force, whereas 949.7 thousand (45.1%) persons who are not in the labor force. There are 613.7 thousand (53.1%) men and 542.4 thousand (46.9%) women in the total labor force. 1,054.9 thousand (91.2%) persons out

¹ The International Labor Organization Conventions - <https://nhrcm.gov.mn/>

² Concept of the Draft of the Labor Code /revised/ - <https://mlsp.gov.mn/uploads/files/6e832e3b5c21f213af7c0a8d013810dc402448ad.pdf>

of the total labor force are workers, while 101.2 thousand (8.8%) are unemployed³.

As of 2020, there are 4039 foreign citizens are working under employment agreements in Mongolia. The following table shows the number of foreign citizens working under employment agreements as of the end of the year in terms of economic sector:

Sector	2018	2019	2020
All	4502	4601	4039
Mining and exploration	1654	1762	1481
Processing factories	295	267	322
Construction	121	197	483
Wholesale and retail	782	759	688
Transportation and warehousing	121	151	166
Education	918	990	610
Other	611	475	289 ⁴

Employees have not entered into written employment agreement with majority of the total workers in these sectors which makes employees unable to exercise their rights protected under the Labor Code. These indicate that labor relations need to be re-regulated.

Fundamental principles and rights under the Revised Labor Code.

Acts that set the Labor norms and standards shall apply in the following hierarchy:

- Labor Code;
- Other laws of Mongolia;
- normative Administrative Act;
- sectoral and inter-sectoral collective bargaining;
- Collective agreement;
- Employment agreement;
- Internal labor regulations of business entities and organizations.

In the case of inconsistency between the foregoing labor regulations, one that provides more favorable conditions for employees shall prevail.

³ Labor market overview 2021 - https://mlsp.gov.mn/uploads/files/Bulletin_2021_1_Mon.pdf

⁴ Ministry of Social Welfare and Labor

Labor relations regulated by the Law

The Labor Law dated 1999, specifies which employment relationship shall be regulated, while the newly revised Labor Law provides a wider scope of the employment relationship, including work or services provided in the territory of Mongolia, or by agreement between the parties of the Employment agreement.

Non-discrimination

As a member of the International Labor Organization (ILO), Mongolia has acceded to various labor conventions. According to the Convention No. 111 on Non-Discrimination (Occupation and Employment) of the ILO, dated 1958, which entered into force in 1960, the term “discrimination” includes:

- a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.⁵ In accordance with this Convention, the revised version of the Labor Law stipulates that in the event of discrimination in employment or employment, the person concerned has the right to file a complaint and to which organization the complaint may be lodged. These include:
 - Managing and senior officials of the legal entity;
 - Relevant non-governmental organizations;
 - Trade unions;
 - Labor Dispute Resolution Authority;
 - Law Enforcement Agencies;
 - Labor Enforcement Agency;
 - National Human Rights Commission of Mongolia;
 - Court.

Distinction, exclusion or preference in respect of a particular job based on the inherent requirements and support for certain groups of the population shall not be deemed to be discrimination, restrictive or privileged.

Prohibition of harassment, violence and sexual harassment

⁵C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- <https://www.legalinfo.mn/law/details/1185>

In case of harassment, violence or sexual harassment occurrence among employer, employee or third party which is a party of employment and labor relations, the relevant person shall file a complaint. The legal ground for imposing a liability to a defaulted person who committed the harassment, violence and sexual harassment are specified in the Law on Violations and Criminal Code.

In addition, the employer is obliged to include procedures for prevention, elimination and resettlement of harassment and violence in employment and labor relations, and obliged to create a working environment that does not tolerate harassment, violence and sexual harassment.

Prohibition of Forced Labor

According to a Convention of Abolition of Forced Labor No. 105 and 29, it is prohibited to use forced labor and the revised version of the Labor Law regulates it as follows and stipulates that the guilty persons shall be held liable - "Persons and legal entities who have forced, mediated or organized forced labor shall be liable under the Criminal Code". According to Convention No. 105, "forced or compulsory labor" refers to any work or service that a person performing under the threat of punishment, and does not willing to perform it voluntarily. However, the term "forced or compulsory labor" as defined in this Convention does not include the following services:

- a) Any work or service involving the performance of purely military work in accordance with the law which is required compulsory military service;
- b) Any work or service that is a part of the ordinary civil duty of a citizen of a fully self-governing state;
- c) The work or service that shall be performed by any person as a result of a court decision, but not all work or service shall be performed under the supervision of the competent authority, and that person shall not be hired or transferred to that company or association;
- d) in exceptional cases, any work or service shall be performed in any situation that endangers the survival or normal life of the general population during wars, disasters or catastrophes, such as fires, floods, famines, earthquakes, the spread of highly contagious diseases, the migration of animals, insects or plant pests;
- e) A small service that is performed by the members of the group for the direct benefit of the group and may therefore be considered a normal civic duty of the members of the group, but the members of the group or their direct representative shall be consulted as to whether this service is needed.⁶

⁶ International Labor Organization conventions and agreements - <https://nhrcm.gov.mn/%D0%BC%D1%8D%D0%B4%D1%8D%D1%8D/%D0%BE%D0%BB%D0%BE>

Restriction on using collateral

The seizure and pledge of money, property, and original copy of personal documents from the employee such as ID card and passport; educational documents, occupational certificates, and professional licenses; certificates of movable and immovable property is prohibited. Violators shall be liable under the Law on Violations.

Freedom of Association

International Labor Organization Convention No. 87 on Freedom of Association and Protection of the Right to Organize states that workers and employers have the right, without discrimination and prior consent, to form an organization of their own will and to join such organizations and obey its rules, the revised law includes provisions to ensure the right to regulate relations related to the exercise this right. Convention No. 87 prohibits Government authorities to restrict the activities of such associations, and states that workers and employers shall not dissolve or even temporarily ban to conduct such activities. Their representatives are prohibited from engaging in unfair practices (such as interference, coercion, persuasion, restraint, coercion, etc.) in connection with the establishment of a trade union, association, or collective bargaining.⁷ One of the specific provisions of the revised Labor Law is the provision on social partnership.

A social partnership is a bilateral or tripartite partnership between (1) employers and (2) employees and their representatives, and (3) government agencies aimed at building social consensus by harmonizing the interests of the parties concerned in labor relations and related matters. The tripartite social partnership is based on the coordination of the interests of the parties, developing a policy and discuss its enforcement, mutual understanding, execution of collective agreements and mutual consent shall be in place through mutual understanding, collective agreement and collective bargaining at level of sector, inter-sector and legal entity.

Employment Agreement

According to the Labor Law dated 1999, the parties entered into an employment relationship with the employer or his / her authorized official by concluding an employment agreement with the citizen in writing, according to the revised law, an employment relations is considered to have been established when an employee

[%D0%BD-%D1%83%D0%BB%D1%81%D1%8B%D0%BD-%D1%85%D3%A9%D0%B4%D3%A9%D0%BB%D0%BC%D3%A9%D1%80%D0%B8%D0%B9%D0%BD-%D0%B1%D0%B0%D0%B9%D0%B3%D1%83%D1%83%D0%BB%D0%BB%D0%B0%D0%B3%D1%8B%D0%BD-%D0%B3%D1%8D%D1%80%D1%8D%D1%8D-%D0%BA%D0%BE%D0%BD%D0%B2%D0%B5%D0%BD%D1%86%D0%B8%D1%83%D0%B4/](#)

⁷ C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - <https://www.legalinfo.mn/law/details/1191>

begins to perform his / her duties, regardless of whether the employment agreement is or is not concluded in writing.

Under the current law, a “contract” can be concluded for a period of 5 years, but under the new Labor Law, this provision is no longer valid and the employment agreement shall be concluded for an indefinite period, except in the following cases:

- i. Apprenticeship;
- ii. Work with probationary period ;
- iii. Seasonal work (concluding an indefinite employment contract with a permanent employee);
- iv. Hiring instead of retaining employees;
- v. Temporary employment;
- vi. Assign time-limited tasks related to funding and scope of work.

A new provision of this revised version of this law is parallel employment agreements for employees. An employee may enter into a parallel employment agreement upon notification of the main employer. However, permission must be obtained from the main employer in the following cases:

- The employee has an employment agreement with special provisions with the main employer;
- Work in a business entity or organization that engages in similar activities to the main employer or competes in the market;
- The employee performs "duties related to ensuring the safety, health and right to live in a comfortable environment".

Types of Employment Agreement

a. *An apprenticeship employment agreement* means an employment agreement concluded between an employer and an employee for the purpose of providing the employee with work experience and skills by accompanying him/her by an experienced employee. The term of the agreement shall be up to 3 months. In the case of specialization, it shall be 2 years. In addition to essential terms and conditions of an employment agreement, the following shall be specifically defined.

- Term;
- Accompanying employee;
- Work experience and skills to be acquired.

The basic salary of an apprentice shall not be less than 70 percent of the basic salary of a full-time employee performing the same type of work.

- b. *An internship employment agreement* means a tripartite employment agreement concluded by (1) the employer, (2) the apprentice, and (3) the training institution. The agreement period shall be up to 3 years and the salary shall not be less than the minimum wage.
- c. *A probationary employment agreement* means an employment agreement made between an employer and an employee on a probationary basis for the purpose of evaluating if the employee qualifies for the requirements for the job. The agreement shall be made for a period of up to 3 months. The probationary employment agreement shall not be made in the following cases:
- The execution of one-time seasonal work;
 - Employment in place of retained employees; or
 - Employment in a temporary job.
- d. *An employment agreement with special conditions* means an agreement with special conditions concluded between an employer and an employee for the purpose of (1) exercising a certain part of ownership rights of the owner or his/her authorized person through the employee, or for (2) execution of a job at the executive level of a business entity and organization by the employee. In addition to the essential terms and conditions set out in the Labor Code, the following conditions may be additionally specified:
- Final results of the work done, responsibilities, and procedure for evaluation of the agreement;
 - Bonuses, benefits, discounts, and profit sharing for the employee;
 - In the case of an agreement for exercising a certain part of ownership rights of the employer through the employee, the amount of property to be transferred to the employee, right to possess, use, and dispose of the property, and property liability of the employee may be specified; and
 - The employer, in order to protect its industrial and business secrets, may specify in the employment agreement or in an ancillary agreement an obligation of employee not to work for a business entity, organization, or an individual that directly competes with the employer or conduct activities directly competitive with the employer's activities for a period of up to one year after termination of the employment relation. During the effective period of the non-compete clause or the ancillary agreement, the employer shall pay the employee an amount equal to at least 50% of the last month's salary of the employee on a monthly basis.

- e. *A part-time employment agreement* means an agreement under which a part-time employee works for fewer hours than a full-time employee. In the case of this agreement, the total hours to work per day, a week or a month, and the working time must be specially agreed upon.
- f. *Working from home employment agreement* means an agreement to be concluded in case of performing work by the employee from home or chosen location under the supervision and control of the employer using his / her own or the employer's equipment and raw materials. The following conditions shall be expressly specified in the agreement:
- Work location;
 - Work to be performed;
 - Deadline and form of handing over the work done;
 - Wages and salaries;
 - Payment per unit of goods produced and services rendered (tariffs);
 - The amount of compensation to be paid by the employer in case of use of the employee's own property and equipment.
- g. *Remote work employment agreement*

An employer may enter into a remote work employment agreement with an employee allowing him/her to perform his/her work duties remotely online fully or partly. The following conditions shall be expressly agreed:

- Location of work;
 - Deadline and form of handing over the performed work;
 - The amounts of compensation that shall be paid by the employer in case of use of own property and equipment.
- h. It is regulated that an employment agreement may be concluded between citizens. In addition to the essential terms and conditions, the following conditions must be specified in the agreement:
- Hours of work and rest;
 - Payment schedule for salary;
 - Work location;
 - Others as agreed.

This type of agreement is regulated to be concluded with assistant herders, domestic service workers, or similar workers. If the assistant herder agrees, up to 30 percent of the employee's salary may be paid in non-cash form excluding tobaccos, alcoholic drinks, all kinds of drugs, illegal items, products, and products to be sold upon license. The employer is obliged to provide the assistant herder and domestic service worker with more than 24 hours of uninterrupted rest per week, as well as to provide annual leave in accordance with the law.

Strike

Strike is a key tool to protect the social and economic interests of workers and their organizations. This is the strongest and strictest form of cooperation with respect to labor conflict, and is recognized in many international and regional regulations, including the International Covenant on Economic, Social and Cultural Rights⁸. According to the Labor Law of Mongolia, “strike” means full or partial work stoppage by employees for a certain period on a voluntary basis in order to resolve a labor dispute or a dispute related to implementation of a collective agreement, and sectoral, intersectoral, or national agreement. As per the revised law, a strike can be initiated and organized not only for the purpose of resolving collective labor disputes, but also on the following grounds:

- The employer or the employer's representative refused to participate in the labor mediation process or failed to resolve the labor dispute at the mediation stage.
- The employer or the employer's representative refused to participate in the labor arbitration proceeding.

The employer is prohibited from hiring temporary employees from outside in the workplace of an employee participating in a strike. An employee who is not participating in the strike shall have the right to perform his/her work duties and shall not be prevented from exercising such right. The strike shall be led by the relevant trade union. If it is decided to resume the strike, it shall be notified at least 24 hours of advance. The strike shall be ended upon the following grounds:

- Negotiators have reached an agreement to resolve labor disputes;
- A collective agreement or a collective bargaining agreement has been made;
- The court decided that the strike is unlawful; or
- Upon the initiative of the trade union that organized the strike.

In addition to the strike, employees are entitled to refuse to perform their work duties in the following cases:

- Circumstances that may endanger the life or health of the employee or a third party have arisen;
- The employer demands the employee to work overtime that exceeds the limit of overtime provided by the law;
- The employer has failed to pay the employee within 30 days from the due date of payment of salary.

⁸ The Covenant on Economic, Social and Cultural Rights - <https://www.legalinfo.mn/law/details/1284>

An employee shall immediately notify the employer or its representative of his/her refusal to perform his/her work duties. As well the employee shall have the right not to work until the conditions for such refusal are eliminated. Also, it is prohibited to impose labor disciplinary sanctions to the employee in connection with the refusal to work.

Collective agreement, collective bargaining agreement

Employer and its representative are entitled to negotiate with the employee's representative for the purpose of making a collective agreement or collective bargaining agreement, to conclude employment agreement and accompanying agreements, and to establish internal labor regulations on labor and social security relations.

The collective agreement is an agreement registered in accordance with the relevant procedure and made between the employer and the employees' representative for the purpose of resolving the issues not directly regulated in the law including issues related to the provision of more favorable working conditions without degrading the right to work and related rights and the legitimate interest of employees of a business entity and organization specified in the labor legislation, working conditions and social securities.

The collective bargaining agreement is an agreement made between the relevant parties at the state, province, capital city, soum, district, sectors, and intersectoral level and registered in accordance with relevant procedures for the purpose of protecting the right to work and related rights and legitimate interests.

As per article 4 of Right to Organize and Collective Bargaining Convention (No 98), "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements"⁹. Accordingly, the following regulations are legislated in the labor code:

1. Principles of equality, transparency, independence from political influence, and equal representation shall have complied in collective bargaining.
2. Collective bargaining on collective agreement shall be commenced within 10 business days from the receipt of the notice. Collective bargaining on the collective bargaining agreement, on the other hand, shall be commenced within 15 business days from the receipt of the notice.
3. It shall be prohibited to take the following disciplinary actions against trade union workers, elected persons, and employees' representatives in connection with their participation in collective bargaining:

⁹ Right to Organize and Collective Bargaining Convention (No 98) - <https://www.legalinfo.mn/law/details/1187>

- Imposing labor disciplinary sanctions;
- Job transfer;
- Reduction of salary;
- Termination of employment relations at the employer's initiative during the bargaining and within one year after the end of bargaining upon the following grounds:
 - Business entity, organization, or its branch has been liquidated;
 - Position eliminations and reductions;
 - Employee is determined to be incompetent in terms of profession, qualification, skills, and job performance; and
 - Employee is determined to be unable to perform its work duties due to health condition as per a decision of a medical and labor inspection commission as well as there is no other job to be transferred.

Collective agreement and collective bargaining agreement shall be concluded for a period of up to three years. The term for a collective agreement and collective bargaining agreement on salary and wage shall be not less than one year. The agreements may be extended for a period not exceeding the original term. Any collective and collective bargaining agreements shall be registered within 10 business days. The competent registration authority shall register the agreements within 5 business days.

Furthermore, there are several amendments and new regulations stipulated in the revised labor code such as additional grounds to suspend from the performance of duties, transfer to another job, rotate between jobs, retain the job, reinstate to a former position, terminate the employment relation at the employer's initiative, as well as regulation on labor supply agreement and redundancy, etc.

- Grounds to suspend from performance of duties:
 - There is a restraining order issued by the competent authority to suspend the employee from his/her job for a certain period of time in accordance with the Criminal Procedure Code.
 - The employee working in the sector for ensuring the safety, health, and the right to an adequate standard of living has refused unreasonably from an examination whether he/she has consumed alcohol, drugs, or psychotropic substances, as well as whether the employee is capable for his/her position in terms of health, or he/she is found to have consumed the foregoing.
- Additional grounds for temporary transfer to another job are stipulated. These include:
 - Transfer to a job that does not adversely affect the employee's health until the employee's workability is restored on the basis of a decision of a medical and labor inspection commission;
 - Transfer of a pregnant or breastfeeding woman to another job for a period specified in a medical certificate;

- Transfer of an employee who is under the protection of witness and victim to another job for a period specified in the decision of the competent authority;
- Transfer to another job in the same degree as agreed with the employee.

Performing elected duties of government organizations for a period of three months which was one of the grounds to transfer to another job has been removed.

- The employer may rotate the employee for a period of up to three years within the business entity or organization, or between affiliated units or branches upon mutual agreement with the employee for the following purposes:
 - To balance workload;
 - To prepare or retrain for specific jobs;
 - To provide for skills to perform multiple jobs;
 - To prevent unforeseen external influences that may result from working in the same workplace for a long period.

Unless otherwise agreed with the employee, it shall be prohibited to rotate the employee by lowering his/her position or reducing the salary and wage, as well as to impose labor disciplinary sanctions on the grounds of refusal to rotate.

- Additional grounds to retain the job:
 - The employee is under the protection of witness and victim – *for up to one year*;
 - The employee is enlisted in military service;
 - The employee is transferred to another job temporarily;
 - The employee is suspended from performance of duties by a competent authority;
 - The employee is refused to perform his/her duties in accordance with the grounds specified in this law – *for a period until the conditions of refusal to perform are reld*;
 - The employee is attending a training for a period agreed by the employer;
 - The employee is having personal leave – *for the period of leave*.
- Additional grounds to reinstate to a former position:
 - There is a valid decision on reinstatement by a labor dispute commission, tripartite labor dispute commission of soum and district, or a court;
 - A job position that was eliminated is recreated within three months since the termination of employment relations upon such a ground and the employee has applied within 30 days from such recreation.
- A legal entity that provides labor supply service may hire its employees /must be an adult/ who have entered into an employment agreement under this law to another employer on the basis of a labor supply agreement.
Employers may hire employees under a labor supply agreement for the following purposes:

- To hire for temporary work for a period of not exceeding six months */the number of employees to hire under the labor supply agreement ≤ 30% of the total number of employees of the recipient employer/*;
- To hire in place of retained employees except the employees making collective agreement, and participating in collective bargaining, trade union activities, and lawful strike */the number of employees to hire under the labor supply agreement ≤ 30% of the total number of employees of the recipient employer/*;
- To hire for ancillary works and services to support primary activities of the business entity and organization */the number of employees to hire under the labor supply agreement ≤ 30% of the total number of employees of the recipient employer/*;
- To prevent disasters, catastrophes, and accidents, and eliminate their consequences immediately;
- To hire for works for the purpose of preventing unforeseen obstacles which are possible to affect the normal operation of the business entity, organization, or its branches and units unless any urgent actions are taken, or to eliminate such obstacles.

Working conditions of employees employed under a labor supply agreement shall be to the same degree as working conditions of employees of the recipient employer.

- The employment relationship may be terminated at the employer's initiative upon the following grounds:
 - The employee is determined to be incompetent for his/her job in terms of profession, qualification level, skills, and job performance – *in this case, the employee must be notified in advance and given ample time to improve his/her profession, qualification level, skills, and job performance.*
 - The employee is determined to be incapable for his/her job in terms of health upon a decision of a medical and labor inspection commission provided, as well as there is no other job to transfer and the employee with a disability is still unable to work regardless of the provision of necessary equipment;
 - The employee is found to have forged the documents proving his/her education, profession, and qualification level when he/she was hired.
- Grounds for mass dismissal:
 - A business entity, organization, or its branch and unit is liquidated */in this case, the employee's salary shall be paid in the first instance/*;
 - Reduction in force;
 - Job elimination.
- Percentage of dismissed employees to consider as mass dismissal */within 90 days/*:
 - 10-50:5[†]
 - 51-499:10%[†]
 - 500[†]:50[†]

Each employee being dismissed shall be notified in writing of the termination of the employment relationship in advance of at least 30 days.

The dismissed employees shall be employed in the first instance to new or added jobs that are appeared within one year after the mass dismissal upon their request provided that employees meet the requirements.

Hours of work and rest

New regulations of long-term shift work, night shift work, and on-call work have been added in the Chapter on Hours of Work and Rest of the Labor Code of Mongolia as follows:

- In the case of working in a remote area other than the employee's place of residence, employers in the mining and exploitation sector or business entities and organizations shall use a long-term shift work regime. The duration of one working day shall be 12 hours and the term for one shift shall be 14 days and the term for rest shall be 14 days as well.
- Night-time shall be from 10 PM to 06 AM. The employee worked during the nighttime shall be rested the following day for not less than the hours worked during the nighttime. Full-time night-shift employees shall be provided with a preventive medical examination at the employer's expense. Pregnant women and mothers of children under three shall not be worked during the nighttime without their consent. As well as the minors are prohibited to be worked during the nighttime.
- On-call hours mean the period when the employee is being available to work on-call outside of normal business hours at the agreed location and time. The on-call hours shall be considered as working hours. If the employee has waited at the location determined by the employer, he/she shall be given an additional payment in the amount equal to 50% of the employee's base salary, or in the other cases in the amount not less than 30% of the base salary. The employer shall notify the employee at least 24 hours of the advance of the date and hours in the case of work on-call. The employer shall not be worked on-call more than eight times a month.

Salary and allowance

There is a new provision imposing sanctions for a person who has failed to provide the employee's salary and allowance within the established period without any reasonable grounds or has provided the salary and allowance in less amount than the amount agreed in the employment agreement.

Compensation	Amount
Overtime pay	<ul style="list-style-type: none"> - If the employee has not taken his/her rest after night shift, he/she shall be compensated in the amount equal to 1.2 or more times higher than his/her average salary. - In the case of overtime work, and night-time work on weekends or public holidays, the employee shall receive overtime pay plus night pay.

Payment for annual leave	An employee who is unable to take his/her annual leave due to urgent business needs shall be paid 1.5 times his/her payment for annual leave.
Allowance for employees under the protection of witnesses and victims	If the employee has not worked while he/she had been under the protection of witness and victim according to the relevant legislation, he/she shall be paid an amount equal to the salary that he/she would have received during that period. If the employee's salary is reduced due to transfer to another job, the employee shall be paid an amount equal to the difference in salary in accordance with the legislation.

Internal labor regulations, labor disciplinary sanctions, and liabilities of the parties to the employment agreement

➤ The revised law provides for additional grounds to withhold from the employee's salary as provided below:

- There is a valid decision of a Court, or labor dispute settlement body;
- The employee has been imposed labor disciplinary sanction of reduction of base salary by up to 20% for a period of up to three months.

In the case of withholding from the employee's salary, the employee shall be notified in advance.

➤ The employer is obliged to introduce its newly approved or amended internal labor regulation to all employees and place it in a visible area. Grounds to terminate the employment agreement and labor discipline breaches shall be specifically stipulated in the internal labor regulation.

➤ New types of labor disciplinary sanctions including private individual warnings, open public warnings, and demotion are regulated in the revised law. In the case of disciplinary breach by an employee under full property liability shall be imposed a disciplinary sanction within one year from the date of such breach or from the last day of the breach if such breach is carried on.

Further, there are additional liabilities by employers regulated in the revised law. For instance, (1) if the employer fails to pay the salary within the established period, it shall pay the employee a penalty equal to 0.3% of the salary to be paid for each overdue day. (2) if the employee has used his/her own equipment and items due to the employer's failure to provide the employee with the necessary equipment and facilities to perform the job, or the parties agreed to use the employee's equipment and items, the employer shall reimburse the respective expense.

Employment relations of some groups of population

Persons with newborn or adopted infants, their leave

A mother who gave birth to twins shall take 140 days of maternity leave. A father shall be entitled to take at least 10 days of leave for looking after his newborn child and shall be paid an amount equal to the average salary for that period. Parents who adopted an infant may take paid leave, upon a request, in the amount equal to the average salary for a period until the infant is 60 days.

Minor labor

As per the Minimum Age Convention (No 138) of the ILO, National laws or regulations may permit the employer or work of persons 13 to 15 years of age on light work which is

- a) Not likely to be harmful to their health or development; and
- b) Not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

New provisions in accordance with the above requirements are regulated in the revised law. For instance:

- In the case of involvement of persons under the age of 15 in art or sports events and advertisements, there shall be required a permit from the state inspector for children's rights from time to time;
- In the case of employment of a person under the age of 18, information on such person including his/her first and last name, date of birth, jobs to perform, term of employment, and working condition, etc must be recorded and notified to a state organization in charge of labor inspection within 10 business days from the commencement of the employment relation.
- In the case of employment of a person 15 to 18 years of age, it is required to make a tripartite agreement with his/her legal representative and the minor.

Employment of persons with disabilities

Mongolia, as being a member state of the UN, has ratified the Convention on the Rights of Persons with Disabilities¹⁰. State parties to this Convention are undertaken to develop and evaluate the policies, plans, programmes at the national, regional, and international levels to further equalize opportunities for persons with disabilities. Accordingly, the following provisions on the promotion of employment of persons with disabilities are legislated in the revised labor code:

1. Employers are obliged to provide persons with disabilities with accessibility to work by providing necessary equipment or facilities. Payment for each position not filled by persons with disabilities may be released or reduced upon the following grounds:
 - a. The employer supports the activities of persons with disabilities or persons who are taking care of their family member with a disability at

¹⁰ The UN Convention on Rights of Persons with Disabilities - <https://mlsp.gov.mn/content/detail/1115>

home by regularly purchasing goods, products, and services produced by them under an agreement.

2. The employer shall take all possible measures to enable an employee who cares for a person with a disability to work from home, remotely, or part-time at his/her request.

Labor Dispute

Parties to labor disputes are obliged to make every effort to resolve their disputes by mutual agreement in the first instance. According to the revised law, it has become available to settle labor disputes with the help of intermediaries and arbitration. In case of arbitration of labor disputes, the relevant level tripartite labor and social commission shall establish a labor arbitration. The labor arbitration shall settle the dispute within 10 business days from its establishment. The arbitration may be extended for five business days, if necessary.

Complaints on labor rights disputes shall be filed within the following period from the date when he/she knew or should have known about the violation of his/her rights:

- Within 30 days from the receipt of the decision of the employer to cancel or terminate the employment relation, transfer to another job, or to rotate the job if the decision is unreasonable;
- Within 90 days, in the case of labor disputes other than those specified above.

Competent bodies to file the complaint are as follows:

- Labor dispute commission;
- In the absence of labor dispute commission, the tripartite labor dispute commission of soum and district.

The complaint shall be resolved within 10 business days from its submission.

Summary

The revised Labor Code has become more compliant with international conventions on employment relations. For example, several new regulations in accordance with the conventions are legislated. The law also sets out the legal basis for actual implementation of the fundamental principles and rights in employment relations, as well as provisions to hold a defaulted party liable for his/her actions.

Employment relations are more broadly regulated. For instance, new employment relations such as tripartite employment relations, part-time and remote works, employment relations between individuals, and long-term shifts in mining companies, as well as new types of employment agreements for the respective relations are legislated.

Despite the lack of a written employment agreement, the employment relation shall be subject to the Labor code as soon as the parties enter into the employment relation as per the new law. Under this regulation, the possibility for employees to enjoy their rights under the Labor Code to the fullest shall increase.

Additional grounds for taking actions by employers such as suspension of employees from their job and temporary transfer to another job, etc are newly regulated. Also, regulation of long-shift, night-shift, and on-call work is legislated anew.

The rights and obligations of both employers and employees are regulated more comprehensively. For example, an employee is obliged not to engage in any work or service that directly competes or coincides with activities of his/her employer except with the exclusive permission of the employer. Both parties are obliged to keep the confidentiality of the confidential information of each other.

The legal basis for compensation in the event of damage caused to an employee by the employer */failure to pay the salary and allowance within the established period or payment in the amount less than the established rate/* is legislated.

Period of leave by a person with a newborn or adopted infant */both the mother and father/* is increased. The law sets out new requirements to notify state inspectors for children's rights and state organizations, etc. As well as, regulation on labor dispute settlement in the first instance with the help of intermediaries and arbitration is legislated.

Link to the Revised Labor Code:

<https://www.legalinfo.mn/law/details/16817?lawid=16817>

For more information or any queries, please feel free to contact V.Bolormaa, Partner, and T.Buyanjargal, Lawyer, of Grata International Law Firm by bvolodya@gratanet.com, btungalag@gratanet.com or +976 70155031.