



**The Arbitration Council Digest
Volume 8 (1 January to 30 June 2007)**

Introduction

Number of cases filed	59
Number of cases settled without an arbitral award	21
Number of cases in which an arbitral award was issued	38
Number of cases where a return to work order was issued	5

Figure 1 represents statistics from cases registered with the Secretariat of the Arbitration Council during the period from 1 January to 30 June 2007.

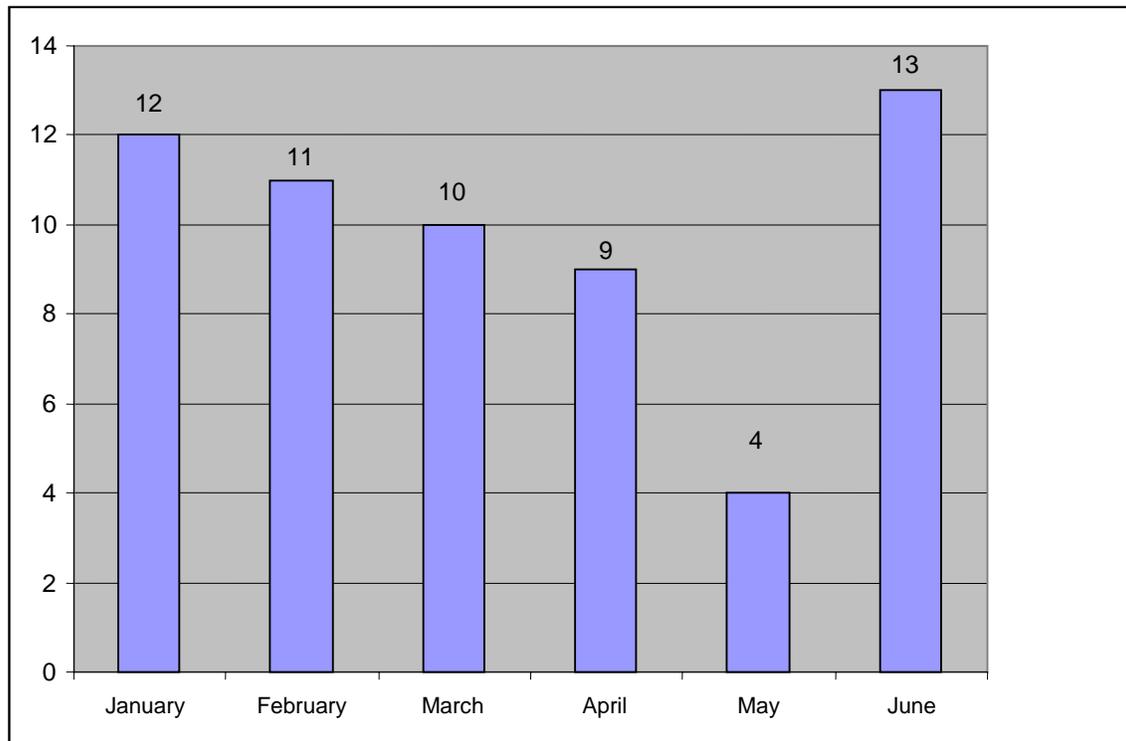


Figure 2 represents the number of cases registered with the Secretariat of the Arbitration Council each month during the period from 1 January to 30 June 2007.

Copies of arbitral awards in Khmer and English as well as detailed information regarding the law and procedures governing the Arbitration Council are available from the Secretariat of the Arbitration Council or on the internet at <http://www.arbitrationcouncil.org/>.

Case Summary:

The following summary concerns awards issued by the Arbitration Council in respect of cases registered with the Secretariat of the Arbitration Council from 1 January to 30 June 2007. This summary is provided for informational purposes only and should not be considered legal advice. This

is a summary only and may not represent a complete summary of all legal points considered by the Arbitration Council.

Arbitration Council jurisdiction and procedure

The worker party bears the burden of proof if the allegation is made against the employer regarding union discrimination.

01/07

Evidence submitted after a deadline set by the AC can prevent AC from having sufficient time for review, and prevents the other party from having sufficient time to review and respond to, such evidence; therefore AC can decline to consider such evidence.

03/07

The Arbitration Council can decline to consider an interests dispute raised by a union without most representative status.

08/07, 17/07, 33/07, 37/07, 39/07, 44/07, 48/07, 51/07, 53/07, 54/07

The complainant has the obligation to provide evidence or appropriate reasons to support their demand.

08/07

Worker party who alleges union discrimination by the employer will bear the burden of proof.

14/07

The Arbitration Council can decline to consider an issue that is not stated in the non-conciliation report and is not a matter that occurs following the non-conciliation report as a direct consequence of the existing dispute.

14/07

The Arbitration Council can decide to close a case if the complainant has received notification about hearing and fails to appear at the hearing without showing sufficient cause for the absence.

16/07

The Arbitration Council can settle interests disputes brought by union without most representative status, based on equity principles.

18/07

The person who appears in front of the Arbitration Council to represent a disputed party must receive written permission from that party.

20/07

If the local union and workers who are members of the union no longer give the union federation the right to represent them in the complaint, then the union federation will not have any legal right to act on their behalf in dealing with the labour dispute.

20/07

If the complainant withdraws their demand then the demanding issue which is the substances for resolving the case no longer exists.

20/07

The Arbitration Council can decide to discontinue the arbitration process if parties do not stop going on strike or locking out during the Arbitration Council's process.

22/07

A demand for Labour Physicians to conduct an inspection at a company is a dispute between workers and Labour Physicians, not a collective labour dispute between workers and employers.

23/07

In principle, the Minister of Labour has the duty to decide if a dispute is an individual or collective labour dispute before forwarding the dispute to the Arbitration Council; therefore the Arbitration

Council will generally follow the decision made by Minister of Labour except in cases where the Arbitration Council has sufficient reason whether to reconsider or not.

24/07

To decide whether a labour dispute is a collective labour dispute, such dispute has to satisfy three necessary conditions: a) the dispute is between a group of workers and one or more employers b) the dispute is related to working conditions, the exercise of recognised rights of professional organisations, recognition of professional organisation or issues regarding relations between employers and workers and c) the dispute could jeopardise the effective operation of the enterprise or social peace; Failure to satisfy any of the three conditions for collective labour disputes means the dispute is not collective

24/07, 45/07, 54/07

The Arbitration Council can close the case if the complainant who is properly notified does not appear at the hearing and does not provide sufficient reason for such absence.

25/07, 27/07

Party is considered to have appeared at the hearing if the party is present at the hearing and participates in the entire hearing process, such hearing process includes the following: a) self-introduction and explanation of interests disputes, b) explanation about procedure and confirmation of disputed issues, c) conciliation, if parties authorise the Arbitration Council to re-conciliate and d) hearing on the merits of the case.

27/07

The act of abandoning a hearing can be considered as a failure to appear at the hearing.

27/07

The Arbitration Council can reject a demand in which the complainant does not provide any precise evidence to support the demand

33/07

If a provision in the law is not clear, the Arbitration Council will interpret those provisions based on legal principles, equity principles and the purposes of the Labour Law.

33/07

The Arbitration Council does not issue decisions on future rights disputes, because the Arbitration Council cannot foresee what will happen in the future.

33/07, 42/07, 57/07

Based on the principle of *res judicata*, the Arbitration Council can decline to consider a dispute that it has already decided involving the same dispute between same parties.

42/07, 45/07, 48/07, 55/07

Regarding whether a labour dispute is collective or not, the presumption is that all claims contained in the Ministry of Labour's non-conciliation report are collective; if a party makes an objection against this presumption, then that party has the burden of proving their challenge.

45/07

A union which does not have most representative status does not have the right to represent workers of the entire enterprise.

47/07

Statute of limitations to submit a complaint for medical check fees is 3 years.

47/07

The Arbitration Council can choose to re-consider the same issue between the same parties that the Arbitration Council has already issued a decision on in the past; especially if there are new relevant facts that have arisen.

48/07

The Arbitration Council rejects demand that workers party, the claimant, does not provide any statement supporting this claim made.

48/07, 51/07, 54/07

Person who is not party to the dispute has the right to represent parties at the Arbitration Council if they receive a written permission from the party.

49/07

The Arbitration Council can order the employer to transfer or dismiss workers in the case that that worker poses a danger to the health, and safety of other workers.

50/07

The Arbitration Council has right and power to order reinstatement of a worker whose dismissal is against the Labour Law.

51/07

Generally, the Arbitration Council will obey decision of the Labour Inspector and Minister of Ministry of Labour in determination of a collective dispute by sending the non-conciliation report to the Arbitration Council if there is no any one party oppose that this is not a collective dispute.

54/07

Leave

A worker who is sick and has a certified letter from a qualified doctor has the right to take sick leave up to 6 months without losing his/her employment.

03/07

In the case where a worker takes leave because of personal matters and with permission by the employer, the employer has an obligation to retain the attendance bonus proportional to the number of days which the worker came to work each month.

05/07, 33/07, 48/07, 57/07

Under the law, workers do not have the right to receive the full attendance bonus when they take leave for personal matters authorized by employer.

05/07

Under the Labour Law, the right to paid annual leave which has not yet been used can be set off in cash only when the employment contract is terminated.

08/07

In cases where workers take paid annual leave, the employer has to provide wage and attendance bonus also.

08/07

Generally, workers who take leave with permission from the employer have a right to receive their attendance bonus in proportion to the number of days that worker came to work per month.

08/07

Workers do not have a right to retain the full attendance bonus when they come late to work.

08/07

The Labour Law requires employers to arrange for paid annual leave for their workers.

17/07

Annual leave that is taken other than on Khmer New Year requires agreement by the employer and workers; both parties have equal rights in negotiations regarding the scheduling of annual leave.

17/07

According to the provisions of the law regarding annual leave, during Years 1, 2 and 3, workers are entitled to 18 days of annual leave per annum. During Years 4, 5 and 6, workers are entitled to 19 days of paid annual leave per annum. During Years 7, 8 and 9, workers are entitled to 20 days of paid annual leave per annum. Workers have a right to such paid annual leave at a rate of 1 additional day per three years of service.

33/07

Annual leave that is taken other than on Khmer New Year requires agreement by the employer and workers; both parties have equal rights in negotiations regarding the scheduling of annual leave.

37/07

If workers take annual leave as arranged by the company without any complaints or objections, this can be taken to mean that workers agree with such leave schedule.

37/07

Generally, workers who take leave with permission from the employer have a right to receive their attendance bonus in proportion to the number of days that worker came to work per month.

44/07

For the purpose of sick leave with a certified letter from a qualified doctor, word 'state doctor' includes city/provincial hospital, District Referral Hospital, Khan Referral health center, commune health center which are under national health structure, particularly ministry of health.

47/07

Money for maternity leave has to be paid to women workers before maternity leave starts.

48/07, 53/07

Schedule for annual leave has to be approved by employer and workers party except for annual leave that are taken during Khmer New Year occasion.

48/07

Employer can deduct entire attendance bonus when Ws take leave without permission.

54/07

In the case where workers take leave by some affairs and was permitted by employer, the employer has obligation to retain attendance bonus in proportion to the number of days that workers come to work each month.

57/07

Labour Rights of Women

Employers do not have an obligation to retain wage and attendance bonus for women workers who take leave for their pregnancy checks.

08/07

The employer party does not have an obligation to provide milk instead of providing one hour for breastfeeding, if the employer already provides one hour per day for women workers to breastfeed their babies.

08/07

The Labour Law and other regulations do not require employers to provide additional days off for pregnant women to have pregnancy checks.

17/07

Women workers who take the 90-day maternity leave are entitled to 50% wage, including overtime wages, as the basis of calculation.

33/07

Wages during maternity leave are calculated by taking wages received during the worker's last 12 months of employment before maternity leave starts, divided by 12, to find average wage per month, then dividing that figure by 2 to determine the 50% wage amount, and multiplied by 3 for the period of 90 days (3 months) which is the maternity leave period.

33/07

Women workers have the right to receive 50% wages, including other secondary benefits for the period of the 90-day maternity leave, prior to taking such leave.

37/07

Employer can pay for the cost of external day care for children above 18 months old, but the ER is not required to pay for external day care costs for children beyond 36 months old.

45/07

Money for maternity leave has to be paid to female workers before maternity leave starts.

53/07

Dismissal and Termination

To terminate a undetermined duration contract in accordance with Articles 74 and 75 of the Labour Law, the employer bears the burden of giving a proper reason related to the worker's physical condition or behavior and based on the requirement of the enterprise, establishment or group.

17/07

The termination of a worker who is entitled to special protections without permission from the labour inspector, is considered void and the worker can be entitled to reinstatement.

17/07

A worker can receive special protections under the laws so long as 1) the worker is among the types of worker who receive special protection, 2) the termination was conducted within the period of special protection and 3) the union notifies the employer, by any formal means, of the identity of the worker who is entitled to special protection.

17/07

In order to earn special protections regarding dismissal, four conditions must be fulfilled: a) worker is the type of worker that is specially protected by the Law, b) the union has notified, by all formal means, the employer about identity of workers who receive this special protection, c) the union has sent the Ministry of Labour a copy of the notification to the employer and d) the union has already applied for union registration at the Department of Labour Disputes.

28/07

The Arbitration Council can order an employer to reinstate a terminated worker if such termination is related to union discrimination.

28/07

Though a fixed duration contract reaches its expiration date, the Labour Law prohibits employer from deciding not to renew contract by reason of union discrimination.

28/07

Workers are entitled to an indemnity for unused annual leave upon their employment termination.

35/07

By the Labour Law, employer has obligation to provide termination money when the company terminate workers from work within 48 hours.

54/07

General Working Conditions

The Arbitration Council generally does not intervene in the employer's right to the management and supervision of his/her business activities including a work transfer in the company, so long as it does not lead to a wage reduction, the change to a workplace that is farther than before, the changing of a shift from day to night or from night to day, and does not substantially affect the worker's professional skills.

14/07

Employers have the right and authority to manage and supervise human resources and operations in the company so long as the management and supervision is lawful and reasonable.

14/07, 17/07, 18/07, 33/07, 39/07, 51/07

A company policy that prohibits a union from making direct requests to the company's administration to discuss and try to resolve disputes is unreasonable.

17/07

Requiring workers to punch out by themselves when leaving the factory is a managerial right of the employer.

33/07

The employer's right to supervise and manage the company includes the right to transfer workers from one position to another as long as some conditions are met such as 1) no wage reduction, 2) the new place is not too far, 3) no work shift change from day to night or from night to day and 4) no substantive change in skill.

33/07, 42/07

The term 'regularly work' generally can mean working 26 days per month if there are no national holidays or any other days off set by the state; or working less than 26 days per month if there are no national holidays or any day off set by the state which the day off are authorized and permitted by employer also

44/07

Workers do not have legal right to receive wage for their break time including the break before starting overtime job.

48/07

Employer has right to determine working hours and right to expect that workers will come to work on time.

48/07

Determination of workers who work based on production quantity or basic wages is the right of employer.

51/07

The right to lead and supervise of the employer is including right in requiring workers to punch out from the enterprise by themselves.

51/07

The term 'regularly work' consists of two types as below:

- a- Working 26 days per month if there are on national holiday or any day off set by the state.
- b- Working less than 26 days per month for national holidays or any day off set by the state which the day off are authorized and permitted by employer also.

51/07

Right of employer of supervision and management the company includes right to transfer workers from one place to another with some conditions such as 1) no wage deduction, 2) not to a far work place, 3) no changing of work shift from day to night or from night to day and 4) not to much change of skill.

51/07

Right to determine which worker of what section has to work based on production quantity and which section should work based on monthly wage can be done so long as it is lawful and reasonable.

53/07

The employer is obligated under the law to ensure good working conditions for workers inside the workplace, not outside the workplace.

54/07

Employer's right to manage includes the right to determine the procedure for leave with permission for their workers so long as it is lawful and reasonable.

54/07

Employment Status and Labour Contracts

Having insufficient work is not a legal reason to terminate a fixed duration labour contract unilaterally.

14/07

Only parties to the contract have the right to amend the contract.

18/07

The hiring and transfer of workers in the company are the exclusive rights of the employer who is party to the labour contract.

18/07

Workers who regularly perform a job on a permanent basis are entitled to all the rights and benefits of regular workers under the law, including provision of paid annual leave.

23/07

The employer's right to supervise and manage the company includes the right to transfer workers from one position to another as long as some conditions are met such as 1) no wage reduction, 2) the new place is not too far, 3) no work shift change from day to night or from night to day and 4) no substantive change in skill.

33/07, 42/07

Worker in sewing, fray-trimming, packing case, quality control and cutting sections are specialized worker for whom the probationary period is a maximum of 2 months.

37/07

Only parties to the labour contract can terminate, end or amend that labour contract.

50/07

The Arbitration Council generally reject demands by workers to order the employer to change, dismiss worker, head of section or group leader

50/07

In the case of unlawful labour contract termination, the employer has obligation to provide full wage for the terminated period.

51/07

Law allows employer party who is a party to the labour contract have right to determine what type of labour contract to use in the workplace as long as it is not contrary to the law.

51/07

To determine the existence of relationship between workers and employer, the Arbitration Council has to find out if those workers are under direction and control of employer or not by considering factors such as who controls recruitment, wage, leave, misconduct, termination, etc.

53/07

Probationary contracts must detail the start and end date of the probationary period, and the employer must notify the worker of this probationary period.

57/07

The Labour Law provides that if the workers has asked for permission for leave from employer and that absent is authorized means that contract between workers and employer is suspended on that requested day.

57/07

Occupational Safety and Health

An injury to a worker caused by an accident during the worker's commute to or from work, without stopping or making a detour to another place for personal matters, is a "work related accident" according to the Labour Law and the employer is responsible for the expenses related to such work related accident.

23/07

Employers are responsible under the law for providing support for medical treatment and care of victims of work related accident during the time spent in the hospital and treatment during the time of injury or if there is any relapse, as well as any temporary or permanent disability.

23/07

Workers who make a claim for reimbursement of medical expenses due to an injury caused by a work related accident has the burden of proving the work related accident occurred.

35/07

Workers who make a claim for reimbursement of medical expenses due to an occupational illness has the burden of showing that the illness is caused by conditions or factors which derive from their workplace.

35/07

The Labour Law provides sufficient grounds to conclude that the employer has an obligation to pay for medical check fee of their workers.

47/07

Having workers to help paying the work related accident insurance cost is not justified, for this is the obligation of employer as required by Labour Law.

47/07

Employer has legal obligation to pay medical check fee to the workers who has paid by themselves.

54/07, 56/07

Lack of canteen can be found to negatively affects health of workers, which the employer is responsible for under the law.

55/07

Unions and Worker Delegates

The worker party bears the burden of proof if the allegation is made against the employer regarding union discrimination.

01/07

The Arbitration Council can decline to consider an interests dispute raised by a union without most representative status.

05/07, 08/07, 17/07, 33/07, 37/07, 39/07, 44/07, 48/07, 51/07, 53/07, 54/07

Employer has an obligation to deduct wages for union contribution fees according to written requests from workers who are union members to the union and voluntarily request the deduction.

06/07

AC can decide to reject the demand requiring the ER to deduct Ws' wages for union contribution fee if the union did not send the written request with the authorisation of deduction from its members.

06/07

Any transfer of a union leader that ends his/her term during the mandate requires approval by the Labour Inspector.

14/07

Union discrimination can be found to have occurred when an employer dismisses a worker who has been working for the company for several years and has never been summoned by the employer for disciplinary action, the dismissal occurs within a short period from the time the worker stood as a candidate for a union leadership election, and there is evidence that the company does not respect the role of a union to resolve disputes.

17/07

The purpose of Articles 12 and 279 of the Labour Law is to prevent discrimination and protect social benefits by requiring companies, worker delegates, unions and workers to cooperate and effectively resolve disputes and avoid incidental problems.

17/07

If the local union and workers who are members of the union no longer give the union federation the right to represent them in the complaint, then the union federation will not have any legal right to act on their behalf in dealing with the labour dispute.

20/07

In order to earn special protections regarding dismissal, four conditions must be fulfilled: a) worker is the type of worker that is specially protected by the Law, b) the union has notified, by all formal means, the employer about identity of workers who receive this special protection, c) the union has sent the Ministry of Labour a copy of the notification to the employer and d) the union has already applied for union registration at the Department of Labour Disputes.

28/07

The Arbitration Council can order an employer to reinstate a terminated worker if such termination is related to union discrimination.

28/07

Though a fixed duration contract reaches its expiration date, the Labour Law prohibits employer from deciding not to renew contract by reason of union discrimination.

28/07

The union who submits a request on behalf of union members for the employer to deduct union contribution fees has an obligation to prepare the name list properly and in writing.

35/07

The employer is not obligated to deduct union contribution fees when the union has not submitted proper documents regarding such request; for example, a name list of union members does not include signatures or thumbprints.

35/07

A union which does not have most representative status does not have the right to represent workers of the entire enterprise.

47/07

47/07 Professional organization gains right and benefit as recognized by the Labour Law when those professional organizations receive union registration from the Ministry in Charge of Labour.

49/07

Union which has not yet received union registration is not entitled for rights and benefit by Labour Law; those rights and benefits also includes union right to represent their member for dispute resolution before the Arbitration Council.

49/07

Employer has obligation to deduct wages from workers who are members to the union so long as those workers volunteer to the deduction for union fee by their written request from workers 15 days prior to the deduction.

49/07

During the period pending union registration, the union does not have full rights under the Labour Law, including the right to ask the employer for deduction of union contribution fees from their worker-members' wages.

49/07

Only the most representative union can bring interest dispute to the Arbitration Council.

54/07

Wage and Bonus

The price of piecework must be set in a way to allow a worker of average skills who works normally to receive the minimum wage.

03/07

The Labour Law does not define who is a worker of average skills who works normally; to determine such worker of average skills who works normally is able to receive minimum wage and therefore to know whether the piece rate is in accord or not with the law, the Arbitration Council considers all facts and evidence collected in the case.

03/07

Employer has to add to the basic wage to meet the level of minimum wage for workers who worked in the past and did not receive sufficient basic wage [(i.e., the minimum wage)] at that time.

03/07

The Labour Law requires employers to notify workers about the piece rate for orders received but does not specifically state how many days are required for notification; For the number of days of this notification, the determination based on the actual demands of the company.

03/07

The Labour Law does not determine which date that employer should provide wages to the workers; however, the employer should avoid any unnecessary postponement or lateness in the provision of wages, which may affect urgent needs of workers' daily expenses.

05/07

Workers do not have a right to retain the full attendance bonus when they come late to work.

08/07

Regarding a demand for wage increase, the Arbitration Council will review whether or not the current wage meets the minimum wage and also equal work for equal pay requirements of the law.

23/07

In the enterprise or company, employer has rights to manage, supervise work and decide other policy including rights to determine wages of workers so long as that supervision and decision is lawful and reasonable.

23/07

The equal work for equal pay requirement under the law does not apply when workers are of a different type, use different skills, and produce different outputs.

23/07

A policy that requires workers to ask permission from multiple supervisors to not work overtime violates the requirement that overtime work must be voluntary.

23/07

Workers who had already received more than the minimum wage of US\$ 50.00 per month prior to the new regulation on minimum wage taking effect in January 2007 do not have a right to an additional minimum wage increase beyond US\$ 50.

33/07

Employers have an obligation to notify the workers about any changes to their wages in a precise and easily comprehensible manner.

33/07

According to labour regulations, the employer has no obligation to provide an additional US\$ 1 seniority bonus every working year from year 5 onward.

33/07

Wages during maternity leave are calculated by taking wages received during the worker's last 12 months of employment before maternity leave starts, divided by 12, to find average wage per month, then dividing that figure by 2 to determine the 50% wage amount, and multiplied by 3 for the period of 90 days (3 months) which is the maternity leave period.

33/07

Workers are entitled to wages during the period they work.

35/07

Employers have an obligation to notify the workers about any changes to their wages in a precise and easily comprehensible manner.

37/07

When workers work overtime on voluntary basis, they are entitled to 1,000 riels as a meal allowance per day or one free meal; this means that regardless whether workers work overtime for more or less than two hours, they are entitled to this 1,000 riels meal allowance or one free meal.

39/07

The employer's right to manage the workplace includes the right to change workers who are paid a monthly wage to payment based on piece work when there is no effect to the wages and other benefits that workers previously received.

39/07

The labour regulation that increased the minimum wage does not nullify existing labour contracts or agreements that specify what items should be included in the basic wage.

39/07

The labour regulation that guarantees a minimum wage of US\$ 50.00 per month does not mean that US\$ 5.00 is added monthly to the wages of every worker in general.

43/07

Workers has right to received attendance bonus in proportion to the number of day that s/he comes to work for the case of taking leave authorized by the employer.

48/07

Meal allowance of overtime job is 1,000 riels per day regardless of the number of overtime hours worked.

51/07

The Arbitration Council considers the number of days which employer must in giving notification about production quantity to the workers is based on the actual demands of the company.

51/07

Notification No. 745/06 which increases the minimum wage in garment industry from US\$ 45 to US\$ 50 does not require the employer to provide a US\$ 5 wage increase to all workers; it only requires that the employer pay all workers at least US\$ 50.

51/07

The Labour Law and regulations do not require employer to annually provide additional USD 1.00 to the workers who in the 5th working years up.

51/07

Employer can deduct entire attendance bonus when Ws take leave without permission.

54/07

Workers in the garment industry can be paid on a monthly basis, once per month.

54/07

Work Suspension

For the provision of accommodation during work suspension, the term 'continue to be in effect' of Article 72 (1) of the Labour Law refers to the case where an employer already has a legal obligation to provide accommodation for workers during their employment at the enterprise. In that case, if there is a work suspension, the employer shall still be bound according to this obligation. But if the employer does not provide any accommodation or there is no policy of providing accommodation to the workers during their employment term, then employer is not obliged to do so.

01/07

Regarding the garment sector, there is no provision in the Labour Law that requires an employer to provide accommodation to workers as is required in the agricultural sector.

01/07

When there is a work suspension on the basis that the enterprise faces economical difficulty and employer's work suspension is not under the control of the Labour Inspector, then workers are entitled to 100% wages.

08/07

A work suspension due to the enterprise facing serious economic or material difficulty must not exceed 2 months and shall be put under the control of the Labour Inspector; placing the suspension under the control of the Labour Inspector means that Labour Inspector gives his/her approval of the work suspension; merely providing notification to the Labour Inspector from the employer is not sufficient to satisfy this condition.

30/07, 37/07

For lawful work suspension, the employer is not obliged to provide wage for workers but if such work suspension is unlawful, employer then has to provide full wages to workers.

30/07, 31/07, 37/07

Not receiving orders from the buyer is an economic difficulty or special difficulty that is an acceptable reason to allow an employer to suspend the labour contracts of workers as long as the employer reasonably follows the legal procedures regarding work suspension.

31/07

If the employer claims to already have notified the Labour Inspector about labour contract suspension of workers but does not provide evidence prove this claim, then the Arbitration Council can consider that the employer did not notify the Labour Inspector about this labour contract suspension.

31/07

If an employer requires workers to to punch-in for work within the period of a labour contract suspension, this means that the obligation of workers to work for employer still continues; and in such a case, there is no labour contract suspension and the employer retains the obligation to give full wages to the workers.

31/07

Material or economical difficulty can be a reason for the company to suspend work if the employer has satisfied two conditions: work suspension is put under control of Labour Inspector and this work suspension does not exceed 2 months.

57/07