

RESPONSIBILITIES OF SUPPLIER FACTORIES AND BRANDS TO WORKERS SUSPENDED OR TERMINATED DUE TO THE COVID-19 PANDEMIC

The following are brief summaries of the obligations of garment factories to their workers, under applicable labor laws and regulations, in cases of temporary suspension or permanent termination of employment due to either the public health effects or the financial impacts of the Covid-19 pandemic. The summaries cover the labor laws and regulations addressing this issue in most of the key countries that are exporters of apparel to North America and, in particular, collegiate licensed products.

These summaries also note where, to date, governments in these countries, in response to the pandemic, have adopted emergency orders, laws, or regulations that have bearing on these issues. As this is a rapidly developing situation, the legal information below is subject to change if, as is already occurring in some countries, the emergency orders, laws, or regulations that governments adopt conflict with and supersede the standing requirements under existing labor laws. The summaries note these changes where they have already occurred as of the time of writing, and the WRC will continue to monitor and report on future developments.

However, until such time as conflicting and superseding measures of this kind may be issued, each of laws cited in these summaries remain in effect. Ensuring factories' compliance with them will be a crucial test of international brands' commitment to the rule of law and the protection of the rights and welfare of the workers who produce their apparel.

Bangladesh

In Bangladesh, massive cancellations of apparel orders from brands as a result of the economic and commercial impact of Covid-19 in North America and Western Europe have caused factories to suspend operations, in many cases, causing more than one million workers to be suspended without pay or terminated without severance benefits.¹ On March 25, 2020, the Bangladeshi government announced a one-week closure of public and private offices from March 26 through April 6 and instructed the population to stay in their homes.²

After initial resistance from some factory owners, the country's leading industry organizations, the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA), called upon all factories to

¹ Annie Kelly, "Primark and Matalan among retailers allegedly cancelling £2.4bn orders in 'catastrophic' move for Bangladesh," *The Guardian*, April 2, 2020, <https://www.theguardian.com/global-development/2020/apr/02/fashion-brands-cancellations-of-24bn-orders-catastrophic-for-bangladesh>.

² "Tk 5,000cr for Workers' Pay," *The Daily Star*, March 26, 2020, <https://www.thedailystar.net/frontpage/news/tk-5000cr-workers-pay-1885891>.

comply with the shutdown, and to pay workers their regular March wages by no later than April 16.³ The BGMEA and BKMEA subsequently endorsed an extension of the closure until April 25.⁴

When a factory in Bangladesh terminates workers due to economic reasons, the legal requirement is that the employer provide workers with (1) one month's advance notice of their termination or 30 days' basic wages, as well as (2) additional compensation of 30 days' basic wages for each year of service (45 days per year of service for workers in factories in export processing zones, and for each year of service beyond 10 years for all workers), whose calculation must be determined in consultation with employees).⁵ However, if the closure is due to an "epidemic", any other "disaster ... out of human control", "urgent necessity", or any "cause beyond [the employer's] control", so long as the employer informs the labor authorities within three days, the employer can permanently close the facility and terminate workers without advance notice but with payment of standard compensation (30 days' basic wages for each year of service).⁶

Alternatively, in such circumstances, the employer may impose a temporary "work stoppage" during which the affected workers must be paid their full wages for the first three days of layoff, then half of their wages for the following 45 days, and one-fourth of their wages thereafter until they are called back to work or are permanently terminated (at which point they must be paid the standard compensation plus an additional 15 days' wages).⁷ Whether the circumstances of a closure or work stoppage fall under this category is to be determined, in the final instance, by the government.⁸

Cambodia

Cambodia's garment factories have been hit hard by both loss of orders from western buyers and shortages of cloth from China, resulting from the closure of textile factories in the latter due to Covid-19, which have resulted in the closure of many plants.⁹ In cases of economic difficulty, factories in Cambodia can suspend their workers' employment for up to two months, provided the employer has notified and obtained the approval of the labor authorities in advance of the suspension.¹⁰

On April 8, 2020, the country's prime minister stated that factories would be permitted to suspend operations, if they provide their workers with \$30 per month during the suspension,

³ BGMEA, "Disburse wages ensuring workers safety,"

https://www.bgmea.com.bd/home/activity/Disburse_wages_ensuring_workers_safety.

⁴ Prothomalo, "RMG industry shut till 25 Apr," April 10, 2020, <https://en.prothomalo.com/bangladesh/rmg-industry-shut-till-25-apr>.

⁵ Bangladesh Labour Act, 2006 ("BLA"), § 20.

⁶ BLA, §§ 12 and 16; Bangladesh Labor Rules ("BLR"), §§ 28, 32; Bangladesh Export Processing Zones Labour Act, 2019.

⁷ BLA, §§ 12, 16, and 20.

⁸ BLR, § 32.

⁹ Phung Vantha, "Hun Sen Orders Closure of Casinos, but Factories to Stay Open," *Cambodianess*, Mar. 30, 2020, <https://cambodianess.com/article/hun-sen-orders-closure-of-casinos-but-factories-to-stay-open>.

¹⁰ Cambodian Labor Code, Article 71(11).

which the government will supplement by paying workers an additional \$40 monthly.¹¹ These amounts are a substantial reduction from the suspension pay that the government had originally promised workers at the end of February, of US\$76 per month, from employers,¹² and, from the government, an additional US\$38 monthly,¹³ for the duration of the suspension.

In cases of permanent termination of employment due to factories facing financial or production difficulties (loss of orders, lack of materials), factories are required to pay workers who have been employed at factories under fixed term contracts (known in Cambodia as “fixed duration contracts” or “FDCs”) for a total duration of less than two years, within 48 hours of their termination, their final wages for hours worked, their wages they would have earned had they remained employed for the remainder of the term of the contract, plus five percent of the total amount of wages they would have earned under the entire term of the agreement¹⁴ and compensation for any unused annual leave.¹⁵

For workers employed under open-ended contracts (known in Cambodia as undetermined duration contracts or “UDCs”) and workers who have been employed under FDCs for more than two years of service (at which point, the law considers them to be employed under UDCs), the employer’s obligations when a worker is permanently terminated under such circumstances are to pay the worker their final wages,¹⁶ compensation for any unused annual leave,¹⁷ an “indemnity” equal to 30 days’ wages per year of service prior to 2019, and 15 days’ wages for services in 2019 or 2020, up to a maximum of six months’ wages in total, and “damages” equal to the total amount of “indemnity” payments earned by the worker during the entire period of their service at the factory,¹⁸ as well as additional wages in lieu of notice of termination when the worker has not been provided with such notice, in an amount determined according to the worker’s years of service.¹⁹

However, should the reason for their termination be closure of their factories by the government (i.e., in the case of a health emergency), then the cause of the termination would be considered an “act of god”, and workers are due much more limited compensation. Whether the affected workers are employed under FDCs or UDCs, the employees in such circumstances would be paid, within 48 hours of their termination, only their final wages and compensation for any unused annual leave.²⁰

¹¹ Sen David, “Each laid-off worker to get \$70 a month,” *Khmer Times*, April 8, 2020, <https://www.khmertimeskh.com/710752/each-laid-off-worker-to-get-70-a-month/>.

¹² Ministry of Labour and Vocational Training, Instruction No. 014/20 K.B/S.N.N.KH.L.

¹³ Instruction No. 014/20 K.B/S.N.N.KH.L.

¹⁴ Labor Code, Article 73.

¹⁵ Labor Code, Articles 166 and 167.

¹⁶ Labor Code, Article 116.

¹⁷ Labor Code, Articles 166 and 167.

¹⁸ Labor Code, Articles 89 and 91, Prakas 443, Articles 2 and 3.

¹⁹ Labor Code, Articles 75 and 77 (requiring notice for workers of: with less than six months of service, seven days; with six months to two years of service, 15 days; with more than two years and up to five years of service, one month; with more than five years and up to 10 years of service, two months; and more than 10 years of service, three months).

²⁰ Labor Code, Articles 116, 166-167.

China

Although, as in other major garment manufacturing countries, many apparel factories in China are suspending production -and workers' employment- as a result of loss of orders from Europe and North America caused by the pandemic,²¹ the country's garment industry has been severely impacted by Covid-19 since the disease's initial outbreak in China at the end of 2019. On January 24, 2020, the country's Ministry of Human Resources and Social Security issued a notice establishing protections for workers' employment status and wages with respect to instances where employees are absent from work for medical treatment or isolation and/or factories impacted by the government's imposition of emergency measures (including factory closures and restrictions on movement) related to the outbreak.²² The January notice, prohibits employers, under such circumstances, from terminating workers' employment and/or ceasing their pay, absent just cause (i.e., misconduct on the part of the worker).²³

If a factory's operations are disrupted for beyond a single pay period, the Notice permits the employer, however, for those employees who can and do continue to work, to reduce their wages to the applicable legal minimum wage in the province or region.²⁴ And, in the case of those employees who are not able to or simply do not work during such periods, the Notice permits employers to reduce their wages even lower, to a subminimum wage defined as payment of "living expenses"—which is set at a provincial level, typically at 70 to 80 percent of the legal minimum wage.

In cases where factories face difficulties due to economic reasons (for example, loss of orders from customers), even if these problems are a result of the Covid-19 epidemic, whether in China or in other countries, employers legally may permanently terminate workers, though the regular legal requirements for notice and compensation will apply. Specifically, if the factory intends to terminate more than 20 employees and/or more than 10 percent of its workforce, the factory must provide 30 days' notice to its enterprise trade union or, if no union is present, the employees, themselves, and must first terminate those workers who *are not* employed under long-term contracts, sole breadwinners, or have dependent family members.²⁵

Terminated workers must also be provided compensation in the amount of one month's average wages or three times the local monthly minimum wage, whichever is less, for each year of service with the employer, up to a maximum of 12 months' average wages or 36 times the legal monthly minimum wage, whichever is less, and with prorated compensation for periods of less

²¹ "A large number of apparel orders are cancelled: China's foreign trade factories are under the second wave of the epidemic," *Sina Fashion*, Mar. 27, 2020, <http://fashion.sina.com.cn/s/in/2020-03-27/1508/doc-iimxyqwa3539424.shtml>.

²² [Ministry of Human Resources and Social Security, Notice on the Relevant Issues of Labour Relationship amid the Novel Coronavirus Pneumonia Outbreak](#), January 24, 2020. In the case of workers employed under contracts of specific duration, the Notice states that the term of the employment agreement must be extended until the period of isolation or other emergency measures have been lifted.

²³ Ministry of Human Resources and Social Security, Notice.

²⁴ Ministry of Human Resources and Social Security, Notice.

²⁵ Labor Contract Law of the People's Republic of China, Article 41.

than a full year.²⁶ If, in such circumstances, rather than permanently terminate workers, the factory, instead, temporarily suspends their employment, workers must be paid their regular wages for the pay periods during which the employees actually performed their jobs but, during pay periods during which they were not working, only subminimum wage “living expenses” for that period, as set at the provincial or regional level.²⁷

Dominican Republic

On March 26, the Dominican Ministry of the Treasury announced a program of subsidies for companies that suspend operations due to the Covid-19 pandemic, under which employers receiving the subsidies are required to 30 percent of workers’ wages and the government will pay the remaining 70 percent, up to a maximum of 8,500 Dominican pesos per month.²⁸ The announcement of this program followed issuance of a request by the country’s president, on March 17, that private sector employers, including factories, limit the number of employees in their workplaces at one time to the minimum needed, including by asking employees to work on staggered shifts, in order to limit transmission of Covid-19.²⁹ Most garment factories in the country, however, are currently closed.

Dominican law permits factories to suspend workers’ employment without pay for only limited reasons, which include, however, a situation of *force majeure* or an outbreak of contagious illness.³⁰ Unless the reason for the suspension persists, the period of the suspension is limited to 90 days.³¹

In cases where a factory permanently terminates workers’ employment, the factory’s obligation to provide workers with severance benefits varies depending on the precipitating cause of the dismissals. If a factory terminates workers due to bankruptcy, the employer is obligated to pay workers 15 days’ wages for each year of service.³² However, if the workers’ termination is the result of a situation of *force majeure*, the employer is exempted from the requirement to pay severance, except in the case of employers who are insured against the cause of *force majeure*, who are required to use the proceeds of any insurance claim to either restart operations—and restore the workers’ employment—or pay the aforementioned benefits.³³

²⁶ Labor Contract Law of the People’s Republic of China, Article 47.

²⁷ Chinese Ministry of Human Resources and Social Security, Interim Provisions on Wage Payment, Article 12.

²⁸ Listin Diario, “Así funcionará el programa Asistencia Solidaria al Empleado por COVID-19, según Hacienda,” March 26, 2020, <https://listindiario.com/economia/2020/03/26/610580/asi-funcionara-el-programa-asistencia-solidaria-al-empleado-por-covid-19-segun-hacienda>.

²⁹ Dominican Ministry of Public Health, Directorate General of Epidemiology, National Circular on Guidelines to Prevent COVID 2019 in the Workplace (2020); Dominican Ministry of Labor, Resolution Number 007/2020 on the Preventative Measures to Safeguard the Health of Workers and Employers Given the Impact of Coronavirus (Covid-19) in the Dominican Republic.

³⁰ Labor Code of the Dominican Republic (“Labor Code”), Articles 50-51.

³¹ Labor Code, Article 55.

³² Labor Code, Article 82. If a worker has six to 12 months of service at the time of termination, the employer must provide 10 days’ wages, and, if the worker has three to six months of service, five day’s wages.

³³ Labor Code, Article 74.

In all other cases, where workers are terminated through no fault of their own, factories are required to provide them with severance benefits according to the following schedule: for employees with five or more years of service, 23 days' wages for each year; for one to four years of service, 21 days' wages for each year; for six months up to one year, 13 days; and from three months up to six months, six days.³⁴

El Salvador

On March 14, the Legislative Assembly of El Salvador approved a decree instituting a national state of emergency which restricts free circulation and imposes an obligatory quarantine.³⁵

On March 18, the president of El Salvador, Nayib Bukele, issued an emergency decree ordering the closure of all garment factories and requiring employers to provide workers with paid leave, for a period of two weeks,³⁶ which has since been extended until April 29. Also on March 26, the country's legislative assembly approved a bill directing the state social security program (Instituto Salvadoreño del Seguro Social, "ISSS") to pay workers' wages during the two-week extension of the shutdown, however, President Bukele reportedly threatened to veto this measure and it has not been implemented by ISSS.

These measures decree followed decrees, issued by the president on March 15 and 16, in which he required all private sector employers (including garment factories), to provide paid leave for a period of 60 days to all workers who are pregnant, over the age of 60, or have various serious health risks, including immunodeficiencies and heart or kidney problems.

In addition, the president asked in the decree, as a voluntary measure, that all employers that are not involved in or supporting the production and/or distribution of food, medicines, or other necessities also provide paid leave for their employees for the same period. Finally, in a further decree on March 21, the president clarified that factories producing healthcare equipment were exempt from the closure order, although it was not immediately clear whether this exception would apply to garment factories producing protective masks, hospital gowns, etc.

The decree instituting the national state of emergency reportedly gives the government authority to issue orders that supersede existing law, so where government orders issued under the decree conflict with the existing laws, the government orders may prevail and create exceptions to the ordinary legal requirements as described below in this section.

El Salvador's labor code ordinarily requires that when a factory's production is interrupted, either partially or completely, due to circumstances beyond the control of the factory or its employees (*force majeure*) or due to lack of material, for a period of up to three days, the factory must pay the employees their regular wage for the hours during this period that they *are* able to work, and 50 percent of their regular wages for the working hours during which they are idled.³⁷

³⁴ Labor Code, Article 80.

³⁵ Decree 593, State of National Emergency for the COVID-19 Pandemic.

³⁶ "Official Diary," Republic of El Salvador, March 18, 2020, <https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/18-03-2020.pdf>.

³⁷ Labor Code of El Salvador, Articles 33-34.

In cases where a factory seeks to suspend workers' employment for a longer period (which can be for reasons other than *force majeure* or lack of material, such as illness of workers or lack of funds), if the cause of the suspension is lack of funds, the factory is required to provide 30 days' advance notice to employees and to pay them for the duration of the suspension, which cannot exceed 90 days.³⁸ If the cause of the suspension is a *force majeure*, however, the factory is not required to pay the workers, and the period of suspension can be as long as nine months.³⁹

In cases where a factory permanently terminates workers' employment—unless the reason is that the factory is legally bankrupt or has otherwise been found financially unviable by a court of law, or the termination is the result of a *force majeure*—the factory is required to pay workers severance benefits of one month's wages for each year of service that an employee has with the factory. The factory must also compensate workers for any unused vacation and for their statutory annual bonus, in both cases, in proportion to the number of months of the year that have elapsed at the time of termination (for example, a worker terminated at the end of June is due 50 percent of her vacation pay and annual bonus).⁴⁰

Honduras

In Honduras, all garment factories have been shut down since March 16. Most, but not all, of the more than two dozen factories on which the WRC has gathered information voluntarily paid workers' wages during at least the first two weeks of the shutdown. The country's ministry of labor, however, has authorized factories, with written agreement of employees, to deduct wages paid during the shutdown from workers' statutory holiday and vacation pay.⁴¹

On April 6, the labor ministry announced a relief program for factories under which the government contributes 3,500 Honduran lempiras (US\$140) per month to workers pay, and factory are only required to pay workers an additional 2,500 lempiras (US\$100) per month, providing workers with a total of 6,000 lempiras (US\$240) per month.⁴² Participation in this program is voluntary for employers, however, all of the factories concerning which the WRC has obtained information reportedly are participating and providing workers with these payments.

Otherwise, under Honduran law, factories may suspend employment of their workers for reasons such as lack of material, a situation of *force majeure*, lack of funds, or illness of workers, without pay, for periods of up to 120 days, but they must provide 30 days' notice to the affected workers and must have authorization to do so from the country's Ministry of Labor.⁴³ If the suspension is authorized, the factory does not have the obligation to pay wages to the employee, unless the reason for the employee being suspended is an illness, in which case the factory is required to

³⁸ Labor Code of El Salvador, Articles 36-37 and 42.

³⁹ Labor Code of El Salvador, Article 44.

⁴⁰ Labor Code of El Salvador, Articles 48, 49, 51, 58 and 187.

⁴¹ Secretary of Labor and Social Security, Communique, March 26, 2020.

⁴² Letter from Secretary of Labor and Social Security to President of Honduran Maquiladora Association, No. STSS-155-2020, April 6, 2020.

⁴³ Labor Code of Honduras, Articles 100 and 101.

pay the worker half their regular wages, during part or all of the suspension depending on his or her length of service.⁴⁴

In case of a situation of *force majeure* or when its production has been suspended for more than 120 days, a factory may also permanently terminate workers. However, in all cases of permanent termination, including as a result of bankruptcy or liquidation of the business, factories must provide workers with (1) advance notice or wages in lieu thereof for a period ranging from one day to two months depending on the employee's length of service,⁴⁵ (2) severance benefits in an amount ranging from 10 days to 25 months' wages, also based on their length of service,⁴⁶ and (3) annual bonuses, with the latter prorated according the number of months of the year that the employee worked prior to termination,⁴⁷ payment of all of which will be prioritized over satisfaction of the factory's debts to other creditors.⁴⁸

India

On March 24, 2020, India's Home Affairs Ministry ordered the mandatory closure of all factories until April 14, except those producing essential goods and those given special authorization to remain open due to the need to maintain continuous operations.⁴⁹ On April 14, however, the country's prime minister extended the lockdown period to May 3, but announced that restrictions could be eased in certain geographic areas yet to be designated which had contained the spread of Covid-19.⁵⁰ The country's labor ministry has asked employers to refrain from laying off workers or reducing their pay during the pandemic,⁵¹ however, nonpayment and underpayment of wages is reportedly widespread.

India's state governments are also grappling with workplace issues related to the pandemic. On March 5, in the state of Karnataka, which is a major center of garment production, the state government ordered that factories provide all workers who test positive for Covid-19 with 28

⁴⁴ Labor Code of Honduras, Article 104.

⁴⁵ Labor Code of Honduras, Articles 116 and 117 (requiring prior notice of termination of 24 hours for a worker with less than three months service; one week's notice with three to six months of service, two weeks' notice with six months to one year of service, one month, with one to two years of service, and two months with more than two years of service).

⁴⁶ Labor Code of Honduras, Articles 114, 120 (requiring severance payment of: for three up to six months of service, 10 days' wages; for six months but less than one year of service, 20 days' wages; after one year of service, one month's wages for each year worked, up to a maximum of 25 months; and for any additional period of employment of less than one year, an amount proportional to the number of months elapsed at time of termination).

⁴⁷ The 7th day and 13th Month as Aguinaldo Law, Decree No. 112 (Oct. 28, 1982), Gazette No. 23848 (Nov. 11, 1982); Regulation of the Fourteenth Month of Salary as a Social Compensation, Decree No. 135-94, Agreement No. 02-95 (Feb. 6, 1995).

⁴⁸ Labor Code of Honduras, Article 126.

⁴⁹ Ministry of Home Affairs, Order 40-3/2020-DM-I(A), Mar. 24, 2020, and Annexure (Guidelines).

⁵⁰ "PM Modi extends national lockdown till May 3, next one week crucial in Covid fight," *Economic Times*, April 14, 2020, https://economictimes.indiatimes.com/news/politics-and-nation/pm-modi-extends-national-lockdown-till-may-3/articleshow/75133926.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

⁵¹ "Covid-19: Public, pvt cos told not to cut salaries, lay off staff," *Economic Times*, March 24, 2020, https://economictimes.indiatimes.com/jobs/covid-19-public-pvt-cos-told-not-to-cut-salaries-lay-off-staff/articleshow/74782801.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

days of sick leave.⁵² For workers enrolled in the country's Employees State Insurance fund ("ESI"), the ESI will pay 70 percent of their wages during their leave. For workers not enrolled in the ESI, their employers will be required to pay their wages during this period.⁵³

Moreover, as a general matter, if factories in India suspend operations and temporarily lay off workers on the factories' own initiative, under Indian law, they may do so for no more than 45 days, during which time they must pay their employees 50 percent of their regular wages.⁵⁴ Finally, to permanently close a factory and terminate its employees, employers must (a) provide the affected workers with 30 days' advance notice of their termination or wages in lieu thereof and (b) additional compensation of 15 days' average pay for every completed year of continuous service, plus any additional time worked beyond six months.⁵⁵

Indonesia

In Indonesia, beginning on April 10, the central government began authorizing the implementation, on a region-by-region basis, of "large-scale social restrictions" (known by their Indonesian acronym "PSBB") which include closure of all workplaces aside from those in certain specified industries, whose categories ("health, food and beverage supply, energy, communications, finance and banking, logistics, retail, and strategic industries") did not appear to include garment manufacturing.⁵⁶ Prior to this step, the government had merely directed factories to implement measures to monitor and avoid transmission of Covid-19 in the workplace through existing occupational safety and health regulations.⁵⁷ The latter measures included factories providing increased handwashing facilities and directing employees with flu-like symptoms to seek medical care.⁵⁸

Indonesian law requires generally, that in cases where a factory seeks to end operations or otherwise reduce its workforce, the employer, the workers, and worker representatives must "make all efforts to prevent termination of employment", and that any termination, unless it is truly voluntary in nature or the affected worker is on probationary status, must be either agreed to by the workers' union (if one is present) or, if the union disagrees with the closure, authorized by the Industrial Relations Court.⁵⁹ However, factories may unilaterally suspend workers with pay while such an application for termination is pending with the court. Finally, factories are

⁵² "Workers Tested Positive for Covid-19 Can Avail 28-Day Paid Leave," *News Karnataka*, March 5, 2020, <https://www.newskarnataka.com/bangalore/workers-tested-positive-for-covid-19-can-avail-28-day-paid-leave>.

⁵³ "Workers Tested Positive for Covid-19 Can Avail 28-Day Paid Leave."

⁵⁴ Indian Industrial Disputes Act 1947, § 25(C).

⁵⁵ Indian Industrial Disputes Act 1947, § 25(F).

Tri Indah Oktavianti, "COVID-19: More regions request PSBB status as Indonesia sees big jump in infections, deaths," *Jakarta Post*, April 12, 2020, <https://www.thejakartapost.com/news/2020/04/12/covid-19-more-regions-request-psbb-status-as-indonesia-sees-big-jump-in-infections-deaths.html>.

⁵⁷ Ministry of Manpower, Directorate General, Letter for Managing Labor Supervision and Occupational Safety and Health Number 5/193 / A5.02.02 / III / 2020 (Preparedness in the Face of the Spread of Covid-19 in the Workplace), March 12, 2020, citing Permenakertrans No. PER 02 / MEN / 1980 (Labor Health Checks in the Implementation of Occupational Safety) and Permenakertrans PER 03 / MEN / 982 (Occupational Health Services as part of the Application of Occupational Safety and Health Requirements).

⁵⁸ Ministry of Manpower, Directorate General, Letter for Managing Labor Supervision and Occupational Safety and Health Number 5/193 / A5.02.02 / III / 2020.

⁵⁹ Law on Manpower, No. 13/2003, Articles 151-152, 154.

prohibited from terminating workers on account of any illness that has been certified by a physician, including Covid-19, unless the employee has been absent from work due to the illness for more than 12 months.⁶⁰

In the event that a factory shuts down and/or terminates workers permanently, if the reason is a situation of *force majeure*, bankruptcy, or that the factory has had two consecutive years of documented financial losses (i.e., losses that preceded any impact of Covid-19), the factory must pay workers: (a) compensation for all unused annual leave; (b) severance benefits in the amount of one month's wages plus one month's wages for every year of completed service with the employer, up to a maximum of nine months' wages; (c) in the case of workers with more than three years of service, "reward pay" of one month's wages for every three years of service, to a maximum of an additional eight months' pay; and (d) for workers who ordinarily receive housing or medical allowances, an additional 15 percent of the total of (b) and (c).⁶¹ If the factory terminates employees for economic reasons other than those listed above or moves locations without offering workers the opportunity to retain their employment by relocating, the factory must pay workers double the aforementioned severance benefits, as well compensation for unused annual leave.⁶²

Mexico

On March 31, the Mexican government declared a public health emergency for the period until April 19, 2020, during which nonessential workplaces (whose definition in the declaration did not include garment factories) are ordered to be closed.⁶³ The declaration orders employers to maintain workers' employment contracts during the shutdown and to continue to pay employees their regular wages (which differs from the usual legal requirement in case of temporary shutdowns, where only payment of the minimum wage is required).⁶⁴

Ordinarily, under Mexican law, a factory may temporarily suspend the employment of a portion or all of its workforce due to a situation of *force majeure*, lack of material or funds, or health or sanitary concerns.⁶⁵ However, except where implemented due to health and sanitary concerns, such suspensions must be approved by the country's labor arbitration authorities, and, in any case, workers must be paid no less than the legal minimum wage for the first 30 days of the suspension's duration.⁶⁶

⁶⁰ Law on Manpower, Article 153.

⁶¹ Law on Manpower, Articles 156 and 164-165.

⁶² Law on Manpower, Articles 163(2) and 164(3).

⁶³ Ministry of Health, "Acuerdo por el que se establecen las medidas preventivas que se deberán implementar para la mitigación y control de los riesgos para la salud que implica la enfermedad por el virus SARS-CoV2 (COVID-19)," Federal Official Diary, March 24, 2020.

http://www.dof.gob.mx/nota_detalle.php?codigo=5590339&fecha=24/03/2020.

⁶⁴ Ministry of Health, "Acuerdo por el que se establecen las medidas preventivas que se deberán implementar para la mitigación y control de los riesgos para la salud que implica la enfermedad por el virus SARS-CoV2 (COVID-19)," Federal Official Diary, March 24, 2020.

http://www.dof.gob.mx/nota_detalle.php?codigo=5590339&fecha=24/03/2020.

⁶⁵ Mexican Federal Labor Law, Articles 427-428.

⁶⁶ Mexican Federal Labor Law, Articles 429-430.

If a factory seeks to permanently shut down or reduce its workforce due to a situation of *force majeure*, financial instability, or bankruptcy, the employer must again, first apply for and obtain the approval of the labor arbitration authorities and, assuming such approval is granted, pay the affected workers three months' wages, plus an additional 12 days' wages for every year of service.⁶⁷

Myanmar (Burma)

In Myanmar, after the World Health Organization confirmed the Covid-19 outbreak as a pandemic on March 11, 2020, many factories across industrial sectors announced temporary closures, but garment factories have been the most heavily affected, with more than 40 factories reportedly shuttered as of the end of March. The reasons that garment factory owners are giving for the closures are lack of materials and cancellation of orders, although it appears that factory owners may be targeting for closure factories where workers are on strike. On April 8, the European Union announced an €5 million / 7.9 million Myanmar kyat (US\$5.5 million) fund to provide direct cash relief to garment workers who have lost their jobs as a result of the pandemic.⁶⁸

Factory owners appear to be equivocating concerning whether their plant closures are temporary or permanent, since, as discussed below, under the former situation, factories are legally required to negotiate the payment of wages with employees (which the owners are avoiding doing), while the latter scenario triggers a legal obligation to pay severance benefits. Labor rights organizations are asking the government to investigate whether employer claims regarding the nature and cause of closures are legitimate. The government is providing employers with tax credits for welfare allowances that they provide to workers at factories where production is suspended.⁶⁹

When employers in Myanmar terminate workers, in cases not involving employee misconduct, they must provide 30 days' advance notice and explanation of the reason, along with payment of severance benefits based on the workers' years of service with the employer, according to a schedule established under government regulations.⁷⁰ The requirement to pay severance benefits according to this schedule also applies in cases where the employees' work ceases due to unforeseen circumstances.⁷¹ Employers are further required to have registered and contributed

⁶⁷ Mexican Federal Labor Law, Articles 164, 429, 434 and 436.

⁶⁸ European Union Delegation to Myanmar, "EU sets up €5 million [7.9 billion kyat] emergency cash fund for Myanmar garment workers impacted by COVID-19," news release, April 8, 2020, https://eeas.europa.eu/delegations/myanmar-burma/77348/eu-sets-%E2%82%AC5-million-79-billion-kyat-emergency-cash-fund-myanmar-garment-workers-impacted-covid_en.

⁶⁹ "Labour-intensive Factories likely to see biggest impact of Covid-19 economy havoc," *Eleven Media Group*, March 16, 2020, <https://elevenmyanmar.com/news/labour-intensive-factories-likely-to-see-biggest-impact-of-covid-19-economy-havoc>.

⁷⁰ Employment and Skills Development ("ESD") Law, 2013, § 5, and ESD Notification No. 84/2015 (requiring payment of severance benefits as follows: for six to 11 months' service, one-half of a month's wages; for 12 months to 23 months service, one month's wages; for two years up to three years' service, 1.5 months' wages; for three years up to four years' service, three months' wages; for four years up to six years' service, four months' wages; for six years up to eight years' service, five months' wages; for eight years up to 10 years' service, six months' wages; for 10 years up to 20 years' service, eight months' wages; for 20 years up to 25 years' service, 10 months' wages; for 25 years or more of service, 13 months' wages).

⁷¹ ESD Law, § 5(d).

for their employees to the state social security fund which provides benefits in case of unemployment or natural disaster.⁷²

If an employer is unable to pay wages on a timely basis, the employer can reach an agreement with employees for payment on a later date or can apply to the local labor authorities, which will investigate the stated reason for late payment and may grant permission for payment on a designate future date.⁷³

Employers are not permitted to lock out workers unless the lock out is in relation to a labor dispute and the employer has provided 14 days' notice of the lock out and received approval for the lock out from the local labor authorities.⁷⁴ However, factories may suspend work at a factory by providing the labor authorities with 30 days' notice or, in case of unforeseen emergency, within 48 hours, after the suspension.⁷⁵

Thailand

On March 22, the Thai Social Security Board (“SSB”) announced that it would be providing various levels of income support to workers whose employment has been suspended or terminated due to the Covid-19 pandemic. Workers who have been terminated as a result of their employer shutting-down due to financial reasons, or whose employment has been suspended temporarily due to their employer complying with government-ordered closures related to Covid-19, reportedly will receive the lesser of 50% of their monthly wages or 15,000 Thai baht (THB) (US\$461) per month, for up to 180 days.

Workers who have had to resign from their jobs as a result of the Covid-19 outbreak (for example, due to being unable to commute to their place of work) will receive 45% of their wages, up to the THB 15,000 maximum, each month for up to 90 days, while workers who have been laid off by their employers will receive 70% of their wages per month, up to the same THB 15,000 cap, for 200 days, he said.

On March 24, 2020, Thai Prime Minister Prayut Chan-o-cha announced that, on March 26, 2020, he would declare a state of emergency until April 30, requiring persons to stay at home, not use certain forms of transportation, and/or not enter certain types of buildings.⁷⁶ The country's garment factories, however, have not been ordered to close, though many have suspended operations.

Thai law ordinarily requires that factories that suspend operations and/or their workers' employment must pay such employees 75 percent of their regular wages during the period of suspension.⁷⁷ This requirement to pay workers during a suspension does not apply, however,

⁷² Myanmar Social Security Law, 2012, §§ 11 and 13, Social Security Rules, §§ 159-160.

⁷³ Myanmar Payment of Wages Law, 2016, §§ 4 and 5.

⁷⁴ International Labour Organization, Myanmar Labour Organisation Law, § 41.

⁷⁵ Myanmar Factories Act, 1951, § 8(6-7).

⁷⁶ “Emergency Decree Coming Thursday,” *Bangkok Post*, March 24, 2020, <https://www.bangkokpost.com/thailand/general/1885475/emergency-decree-coming-thursday>.

⁷⁷ Thai Labor Protection Act (“LPA”), B.E. 2541, § 75, as amended by LPA (No. 7), B.E. 2562 (2019), § 12.

when, as would be the case in a government-ordered shutdown, the suspension is due to a situation of *force majeure*.⁷⁸

By contrast, if a factory seeks to permanently terminate workers, even if this is on account of its being unable to continue operations, the factory is required to provide employees with advance notice of one pay period, or one pay period's wages in lieu thereof.⁷⁹ The factory must also pay severance benefits in the amount of: (1) for workers with six to 11 months of service, 30 days' wages; (2) with one to three years of service, 90 days' wages; (3) three to five years' service, 180 days' wages; (4) six to nine years of service, 240 days' wages; (5) 10 to 19 years of service, 300 days' wages; and (6) 20 or more years of service, 400 days' wages.⁸⁰ Finally, the factory must compensate the affected workers for unused statutory annual leave in proportion to the share of year that has elapsed at the time of their termination.⁸¹

Vietnam

On March 31, 2020, Vietnam's Prime Minister Nguyễn Xuân Phúc issued an order requiring social-distancing but that still permits factories to remain open.⁸² On April 6, 2020, the government of Ho Chi Minh City directed that determination of whether factories in that city would be allowed to remain open would be made by public health authorities based on an index that considers factors such as the size and concentration of the workforce, and the employer's implementation of social distancing and provision of PPE.⁸³

Vietnamese law ordinarily requires that if a factory seeks to suspend production due to a situation of *force majeure*, which includes an epidemic, or due to economic reasons, the factory must pay workers, during the duration of the suspension, at a rate agreed to by its workers, which, in any case, can be no less than the applicable minimum wage.⁸⁴ On April 10, Prime Minister Nguyễn announced that the government would also provide workers who had been suspended with income support of VND 1.8 million (US\$77.21) per month through June 2020.⁸⁵

Factories may permanently terminate employees, except those who are being treated for illness (including from Covid-19) or injury or are pregnant or on maternity leave, when it is necessary due to economic reasons or a case of *force majeure* to end operations or reduce their workforces, and the factory has made every effort to avoid this outcome.⁸⁶ The factory must provide advance

⁷⁸ LPA, B.E. 2541, § 75, amended by LPA (No. 7), B.E. 2562 (2019), § 12.

⁷⁹ LPA, B.E. 2541, § 7, amended by LPA (No. 7), B.E. 2562 (2019), § 5.

⁸⁰ LPA, B.E. 2541, § 118, amended by LPA (No. 7), B.E. 2562 (2019), § § 14 and 15.

⁸¹ LPA, B.E. 2541, § 67, amended by LPA (No. 2), B.E. 2551 (2008), § 14.

⁸² Directive No. 16/CT-TTg, March 31, 2020.

⁸³ Order No. 1249/UBND-VX, April 6, 2020.

⁸⁴ Vietnam Labor Code, Article 98. The requirement that the wages paid during a suspension be agreed to by workers is, in its usual implementation, strictly pro forma, as workers in export-oriented garment factories in Vietnam are typically represented by company-level unions that are run by Vietnamese members of the factory management. Bernadine Van Gramberg, Julian Teicher, and Tien Nguyen, "Industrial disputes in Vietnam: The tale of the Wildcat," *Asia Pacific Journal of Human Resources*, April 2013, 51(2), 4 ("It is common for human resource managers to be the union president in F[oreign] I[nvested] E[nterprises]..."). However, factories must still pay workers the legal minimum wage during such suspensions.

⁸⁵ Resolution 42/NQ-CP, Apr. 10, 2020.

⁸⁶ Vietnam Labor Code, Articles 36 and 38-39, also Ministry of Labor Letter No. 1064/LĐTĐBXH-QHLĐTL.

notice of termination to the affected employees, of 30 days for workers under contracts with definite durations and 45 days for workers with open-ended contracts.⁸⁷ If the factory elects to terminate a worker employed under a contract with a definite term by not renewing it at the time of its expiry, the required notice period is only 15 days.⁸⁸

Upon termination, in such circumstances, workers who have completed at least one year of service must be paid half their average monthly wages for each year they worked for the employer during which they were not covered by state-approved unemployment insurance *and*, if the termination is due to economic reasons, an additional two months' average wages, plus one month's wages for every year of service beyond two years.⁸⁹ In addition, as part of the package of social security measures announced on April 10, the government committed to provide workers who had been terminated with VND one million (US42.\$77) per month through June 2020.⁹⁰

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⁸⁷ Vietnam Labor Code, Articles 38.

⁸⁸ Vietnam Labor Code, Article 47.

⁸⁹ Vietnam Labor Code, Articles 48-49.

⁹⁰ Resolution 42/NQ-CP, Apr. 10, 2020.