

RESPONSIBILITIES OF SUPPLIER FACTORIES AND UNIVERSITY LICENSEES 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, and the protection of workers' legal rights and welfare under them, remains the responsibility of brands—and, in particular, university licensees¹—and, of course, factories, themselves.

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 raised the specter of factories being unable to maintain either their operation or their workers' employment.² 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

¹ CLC, Special Agreement on Labor Codes of Conduct, Schedule I, §§ I (“The term “Licensee” shall for purposes of the Code, and unless otherwise specified in the Code, encompass all of Licensees’ contractors, subcontractors or manufacturers which produce, assemble or package finished Licensed Articles for the consumer.”), II.A (“Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles.”), and II.B.1 (“Wages and Benefits: Licensees recognize that wages are essential to meeting employees’ basic needs. Licensees shall pay employees, as a floor, at least the minimum wage required by local law or the local prevailing industry wage, whichever is higher, and shall provide legally mandated benefits.”).

² Tara Donaldson, “Brands Cancel \$100 Million in Bangladesh Orders—Putting Thousands of Jobs at Risk,” *Sourcing Journal*, March 20, 2020, <https://sourcingjournal.com/topics/sourcing/coronavirus-bangladesh-factories-order-cancellations-garment-workers-201541/>.

in their homes,³ however, the WRC received contradictory reports as to whether garment factories would be required to comply and/or to permit their employees to be absent from work.

Ordinarily, when a factory in Bangladesh terminates workers due to economic reasons, the country's law requires that employers 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).⁴

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 with 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).⁵ 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).⁶ Whether the circumstances of a closure or work stoppage fall under this category is to be determined, in the final instance, by the government.⁷

Cambodia

Cambodia's garment factories have been hit hard in recent months by shortages of cloth from China, resulting from the closure of textile factories in the latter due to Covid-19, which has caused reductions in production and employment at a number of Cambodian plants.⁸ 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.⁹

According to a notice issued by the country's labor ministry on February 28, 2020, applications for suspensions due to economic difficulties caused by the Covid-19 pandemic will be approved so long as the factory applying agrees to pay its employees, on a monthly basis, 40 percent of the current minimum wage (US\$190), i.e., US\$76 per month, for the duration of the suspension, and

³ "Tk 5,000cr for Workers' Pay," *The Daily Star*, March 26, 2020, <https://www.thedailystar.net/frontpage/news/tk-5000cr-workers-pay-1885891>.

⁴ Bangladesh Labour Act, 2006 ("BLA"), § 20.

⁵ BLA, §§ 12 and 16; Bangladesh Labor Rules ("BLR"), §§ 28, 32; Bangladesh Export Processing Zones Labour Act, 2019.

⁶ BLA, §§ 12, 16, and 20.

⁷ BLR, § 32.

⁸ "Covid-19 hammers garment industries in Cambodia, Vietnam," *The Star*, March 2, 2020, <https://www.thestar.com.my/news/regional/2020/03/02/covid-19-hammers-garment-industries-in-cambodia-vietnam>.

⁹ Cambodian Labor Code, Article 71(11).

the representatives of the affected employees agree in writing to this arrangement.¹⁰ Factory owners imposing such a suspension must also offer their employees and provide physical space at their factories for a skills training course to be conducted during the suspension, for which employees who attend will be paid by the government, during the suspension, an additional 20 percent of the minimum wage, or US\$38 per month.¹¹

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 agreement¹² and compensation for any unused annual leave.¹³

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,¹⁴ compensation for any unused annual leave,¹⁵ 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,¹⁶ 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.¹⁷

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.¹⁸

¹⁰ Ministry of Labour and Vocational Training, Instruction No. 014/20 K.B/S.N.N.KH.L.

¹¹ Instruction No. 014/20 K.B/S.N.N.KH.L.

¹² Labor Code, Article 73.

¹³ Labor Code, Articles 166 and 167.

¹⁴ Labor Code, Article 116.

¹⁵ Labor Code, Articles 166 and 167.

¹⁶ Labor Code, Articles 89 and 91, Prakas 443, Articles 2 and 3.

¹⁷ 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).

¹⁸ Labor Code, Articles 116, 166-167.

China

Following the outbreak in China of Covid-19, the country's Ministry of Human Resources and Social Security issued, on January 24, 2020, 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.¹⁹ 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).²⁰

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.²¹ 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.²²

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 than a full year.²³ 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

¹⁹ [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.

²⁰ Ministry of Human Resources and Social Security, Notice.

²¹ Ministry of Human Resources and Social Security, Notice.

²² Labor Contract Law of the People's Republic of China, Article 41.

²³ Labor Contract Law of the People's Republic of China, Article 47.

pay periods during which they were not working, only subminimum wage “living expenses” for that period, as set at the provincial or regional level.²⁴

Dominican Republic

On March 17, the president of the Dominican Republic requested 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-19.²⁵

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.²⁶ Unless the reason for the suspension persists, the period of the suspension is limited to 90 days.²⁷

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.²⁸ 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.²⁹

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.³⁰

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.³¹ 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

²⁴ Chinese Ministry of Human Resources and Social Security, Interim Provisions on Wage Payment, Article 12.

²⁵ 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.

²⁶ Labor Code of the Dominican Republic (“Labor Code”), Articles 50-51.

²⁷ Labor Code, Article 55.

²⁸ 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.

²⁹ Labor Code, Article 74.

³⁰ Labor Code, Article 80.

³¹ Decree 593, State of National Emergency for the COVID-19 Pandemic.

period of two weeks.³² This decree followed previous 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.³³

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.³⁴ 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.³⁵

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).³⁶

³² "Official Diary," Republic of El Salvador, March 18, 2020, <https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/18-03-2020.pdf>.

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

³⁴ Labor Code of El Salvador, Articles 36-37 and 42.

³⁵ Labor Code of El Salvador, Article 44.

³⁶ Labor Code of El Salvador, Articles 48, 49, 51, 58 and 187.

Honduras

In Honduras, on March 16, the country's factory owners' association agreed to a temporary two-week shutdown of the garment sector. Most, but not all, of the more than two dozen factories on which the WRC has gathered information have informed workers that they will pay workers' wages during at least the first two weeks of the shutdown.

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.³⁷ 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 pay the worker half their regular wages, during part or all of the suspension depending on his or her length of service.³⁸

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,³⁹ (2) severance benefits in an amount ranging from 10 days to 25 months' wages, also based on their length of service,⁴⁰ and (3) annual bonuses, with the latter prorated according the number of months of the year that the employee worked prior to termination,⁴¹ payment of all of which will be prioritized over satisfaction of the factory's debts to other creditors.⁴²

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.⁴³ Although garment factories (except perhaps those manufacturing protective gear) would not seem to fall under either exception, the order makes no mention of whether and how factory workers are to

³⁷ Labor Code of Honduras, Articles 100 and 101.

³⁸ Labor Code of Honduras, Article 104.

³⁹ 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).

⁴⁰ 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).

⁴¹ 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).

⁴² Labor Code of Honduras, Article 126.

⁴³ Ministry of Home Affairs, Order 40-3/2020-DM-I(A), Mar. 24, 2020, and Annexure (Guidelines).

be paid during the closure. However, an additional order addressing this question is expected to be issued imminently.

At the state level, where much of labor regulation in India is typically conducted, governments have already begun to grapple 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 days of sick leave.⁴⁴ 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.⁴⁵

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.⁴⁶ 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.⁴⁷

Indonesia

In Indonesia, the government as yet has not ordered the closure of factories (though it has called for a shutdown of tourism and for work-from-home arrangements in the banking and other financial sectors), but instead it has directed factories to implement measures to monitor and avoid transmission of Covid-19 in the workplace, through existing occupational safety and health regulations.⁴⁸ The measures directed by the government include factories providing increased handwashing facilities and directing employees with flu-like symptoms to seek medical care.⁴⁹

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.⁵⁰ However, factories may unilaterally suspend workers with

⁴⁴ "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>.

⁴⁵ "Workers Tested Positive for Covid-19 Can Avail 28-Day Paid Leave."

⁴⁶ Indian Industrial Disputes Act 1947, § 25(C).

⁴⁷ Indian Industrial Disputes Act 1947, § 25(F).

⁴⁸ 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).

⁴⁹ Ministry of Manpower, Directorate General, Letter for Managing Labor Supervision and Occupational Safety and Health Number 5/193 / A5.02.02 / III / 2020.

⁵⁰ Law on Manpower, No. 13/2003, Articles 151-152, 154.

pay while such an application for termination is pending with the court. Finally, factories are 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.⁵¹

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).⁵² 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.⁵³

Mexico

The Mexican federal government has not ordered the closure of garment factories in the country, but in states bordering the US, where many of the country's export *maquiladora* plants are located, nearly 10 percent of garment factories reportedly have already closed due to shortages of materials normally imported from China, due to the effects of Covid-19 there.⁵⁴ Moreover, on March 24, the border state of Chihuahua, home to numerous *maquilas*, ordered the closure of all nonessential businesses, though it was unclear whether the order applied to factories or merely to offices and retail establishments.⁵⁵

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.⁵⁶ However, except where implemented due to health and sanitary concerns, such suspensions must be approved by the country's labor arbitration authorities, and workers must be paid no less than the legal minimum wage for the first 30 days of the suspension's duration.⁵⁷

⁵¹ Law on Manpower, Article 153.

⁵² Law on Manpower, Articles 156 and 164-165.

⁵³ Law on Manpower, Articles 163(2) and 164(3).

⁵⁴ C. Gomez and R. Villapanda, "Paran 9% de maquiladoras por desabasto," *La Jornada*, March 16, 2020, https://www.jornada.com.mx/2020/03/16/estados/024n4est?fbclid=IwAR3wWucBfAiRx2RUj1RBrE6OvYSl_IQSk_e3MtFPUaU6057G0RGTN-GN2F88#.Xm9vT50m1Dt.facebook.

⁵⁵ Julian Resendiz, "Chihuahua goes into 'stay at home' mode to prevent spread of COVID-19," *Border Report*, March 24, 2020, <https://www.borderreport.com/top-stories/breaking-chihuahua-goes-into-stay-at-home-mode-to-prevent-spread-of-covid-19/>.

⁵⁶ Mexican Federal Labor Law, Articles 427-428.

⁵⁷ 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.⁵⁸

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 roughly 25 factories currently shuttered. The reason that garment factory owners are giving for the closures is lack of materials, although it appears that factory owners may be targeting for closure factories where workers are on strike.

Factory owners also appear to be equivocating concerning whether the 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.⁵⁹

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.⁶⁰ The requirement to pay severance benefits according to this schedule also applies in cases where the employees' work ceases due to unforeseen circumstances.⁶¹ Employers are further required to have registered and contributed for their employees to the state social security fund which provides benefits in case of unemployment or natural disaster.⁶²

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

⁵⁸ Mexican Federal Labor Law, Articles 164, 429, 434 and 436.

⁵⁹ "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>.

⁶⁰ 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).

⁶¹ ESD Law, § 5(d).

⁶² Myanmar Social Security Law, 2012, §§ 11 and 13, Social Security Rules, §§ 159-160.

investigate the stated reason for late payment and may grant permission for payment on a designate future date.⁶³

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.⁶⁴ 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.⁶⁵

Thailand

On March 24, 2020, Thai Prime Minister Prayut Chan-o-cha announced that, on March 26, 2020, he would declare a state of emergency, which may require persons to stay at home, not use certain forms of transportation, and/or not enter certain types of buildings, all of which appear likely to affect the functioning of garment factories, which, until now, have remained open.⁶⁶

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.⁶⁷ This requirement to pay workers during a suspension does not apply, however, when, as would be the case in a government-ordered shutdown, the suspension is due to a situation of *force majeure*.⁶⁸

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.⁶⁹ 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.⁷⁰ 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.⁷¹

Vietnam

Although garment production in Vietnam has already been negatively impacted by the Covid-19 pandemic as a result of shortages of material from China, which Vietnam relies on for 60 percent of the cloth used in its apparel sector, the country has not to date shut down its factories.⁷² On

⁶³ Myanmar Payment of Wages Law, 2016, §§ 4 and 5.

⁶⁴ International Labour Organization, Myanmar Labour Organisation Law, § 41.

⁶⁵ Myanmar Factories Act, 1951, § 8(6-7).

⁶⁶ "Emergency Decree Coming Thursday," *Bangkok Post*, March 24, 2020,

<https://www.bangkokpost.com/thailand/general/1885475/emergency-decree-coming-thursday>.

⁶⁷ Thai Labor Protection Act ("LPA"), B.E. 2541, § 75, as amended by LPA (No. 7), B.E. 2562 (2019), § 12.

⁶⁸ LPA, B.E. 2541, § 75, amended by LPA (No. 7), B.E. 2562 (2019), § 12.

⁶⁹ LPA, B.E. 2541, § 7, amended by LPA (No. 7), B.E. 2562 (2019), § 5.

⁷⁰ LPA, B.E. 2541, § 118, amended by LPA (No. 7), B.E. 2562 (2019), § § 14 and 15.

⁷¹ LPA, B.E. 2541, § 67, amended by LPA (No. 2), B.E. 2551 (2008), § 14.

⁷² "Covid-19 hammers garment industries in Cambodia, Vietnam."

March 24, 2020, Prime Minister Nguyễn Xuân Phúc ordered the closure of nonessential services, though this appeared to be directed toward retail establishments, such as restaurants and nightclubs, and not factories.⁷³

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.⁷⁴

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.⁷⁵ The factory must provide advance 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.⁷⁶ 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.⁷⁷

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.⁷⁸

⁷³ “PM requests closure of unnecessary services to prevent Covid-19,” *Vietnam News*, March 24, 2020, <https://vietnamnews.vn/society/654052/pm-requests-closure-of-unnecessary-services-to-prevent-covid-19.html>.

⁷⁴ 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.

⁷⁵ Vietnam Labor Code, Articles 36 and 38-39.

⁷⁶ Vietnam Labor Code, Articles 38.

⁷⁷ Vietnam Labor Code, Article 47.

⁷⁸ Vietnam Labor Code, Articles 48-49.