Myanmar is undergoing a period of rapid change. In particular, Myanmar’s legal framework has been significantly improved in recent years, but several challenges remain.

Below is a nearly comprehensive overview of garment factory relevant provisions within the current legal framework in Myanmar. These are not the exhaustive texts of the laws themselves, but are rather key provisions most relevant for garment factory owners & workers. For further information, please enquire with MGMA.

Labour related provisions in 2008 Constitution of the Union of Myanmar:

* Section 24 – The Union shall enact necessary laws to protect the rights of workers.
* Section 349 (b) – Citizens shall enjoy equal opportunity in carrying out occupation.
* Section 359 -The Union prohibits forced labour except hard labour as a punishment for crime duly convicted and duties assigned by the Union in accord with the law in the interest of the public.

**The Factory Act, 1951 (garment factory relevant provisions)**

**Working hours…**

* Shall not exceed 8 working hours per day or 44 hours per week
* Shall not exceed 48 hours per week for the work which has to be done continuously
* There must be a minimum 30 minutes interval after each 5 working hours
* The combined working hours and interval time shall not exceed 10 hours per day
* The working days shall not exceed 6 days per week
* There must be one day holiday each week (Sunday). If Sunday service is required, there must be a substitution of another day.

**Overtime…**

* Shall not exceed more than 16 hours per week or, for continuous work, 12 hours per week
* The overtime wage shall be calculated as double the basic wage
* Permission of Factories and the General Labour Law Inspection Department must be obtained for an approval of a constant overtime policy.

**If working on days-off…**

* Comply in accordance with the overtime and general working hour provisions
* There must be substituted an alternative day-off.

**Calculation of overtime wages…**

* For salary earners: Overtime wage per hour = {(salary x 12 month) / 52 week x 44 (48) hrs} x 2
* For daily wages worker: Overtime wage per hour = {(daily wage x 6 day) / 44 (48) hrs} x 2
* Piece-work labourers: Overtime wage per hour = {(daily average wage x 6 day) / 44 (48) hrs} x 2

**Worksite Safety and Health Measures…**

* The factory must be kept clean and the workspace must be situated away from drains, latrines or other things which create a bad or unhealthy smell.
* There must be proper ventilation, light and heat.
* There must be no dust or smoke in the hall or factory.
* There must be clean drinking water in proper places for all workers.
* Population of workers must not be dense and there must be sufficient light.
* The latrines must be in suitable places.
* The generators and other auxiliary units must be kept undercover.
* There must be arrangements made for any emergency cut out of electricity service.
* In weaving or spinning machines, any female workers and any children must not be allowed to handle.
* Females and young workers are not allowed to lift heavy loads.
* Floors, stairs and paths must be well-built and hand rails are to be built and necessary covers must be placed.
* In every factory, the arrangement of escape routes and fire alarms must be kept.

**Welfare…**

* There must be washing and cleaning facilities for workers.
* There must be sufficient seats for workers if a chance is given for sitting.
* There must be sufficient First Aid Boxes.
* If the workers in a factory exceed 250, doctors or nurses in clinic are to be appointed.
* If the workers of a factory exceed 100, recreation centres and canteens are to be kept for food.
* For factories with over 50 female workers, there must be a child nursery centre available for the children under 6 year of age.

**Penalty for violation…**

Individuals violating this law may be sentenced to up to 2 years of imprisonment.

**The Leave and Holiday Act, 1951 (Law Amended July, 2014)**

**Aim/Objective…**

* To allow worker for leave and holiday allowances, religious or social activities with earn allowance, and benefits for Health allowances.
* Concerned workers: Daily wage workers/temporary workers/permanent workers.

**Causal Leave (6) days…**

* Casual leave of 6 days with wages is to be provided
* Causal leave can be taken a maximum of 3 days at a time except in special cases
* Causal leave cannot be joined with any other leave
* Leave will be cancelled if it has not been used within a year

**Earned leave (10) days…**

* For continuous service of 12 months and above, 10 days of ‘earned leave’ shall be entitled
* If the service day is not 24 days 1 day deduction from earned Leave is made; –
* Can be accumulated for up to 3 years.

**Medical Leave (30) days…**

* Workers are entitled to 30 days of medical leave with full pay if 6 months service has been completed
* If 6 months service has not been completed, ‘leave without pay’ can be granted for medical needs
* Medical leave can be joined with Earned Leave
* If not taken within a year, medical leave is void or cancelled.

**Maternity leave…**

* Workers requiring it are entitled to 6 weeks maternity leave before confinement and at least (8) weeks after confinement
* Can be entitled jointly with medical leave.

**Public Holidays (21) days…**

* Workers can enjoy time off with full pay.
* If work is given on a public holiday, twice the rate of regular wages is required.

**Penalty for violation…**

Individuals violating this law may be sentenced to up to 2 years of imprisonment.

**The Social Security Law, 2012 (Came into force on 1 April 2014) *and* The Social Security Rules (Notification No. 41/2014)**

**Objective…**

Benefit for sickness, maternity, death, employment injury, invalidity benefit, superannuation benefit by: giving medical treatment, providing cash benefit or granting a right to residency.

**Contribution of funds…**

* All establishments shall contribute to the social security fund from the salary of insured workers, commencing from 1 April, 2014 as follows:
	+ **(a) Health and social care fund**: 2% from employer, 2% from employee
	+ **(b) Injury fund**: 1% from employer
	+ **Total**: 3% from employer, 2% from employee (total 5% contribution).
	+ Note: The accepted maximum salary per month to qualify for participation in the social security fund is currently set at 300,000 kyats

**Social Security Funds…**

1. Health and social care fund
2. Family assistance fund
3. Injury fund
4. Invalidity benefit, superannuation benefit, and survivors’ benefit fund
5. Unemployment benefit fund
6. Other social security fund (hosing plan).
* (Note: Recently, only (1) to (3) are established. The rest are pending.)

**Benefits…**

**Medical treatment and cash benefit for sickness…**

* Beneficiaries have the right to take medical treatment at the permitted hospital or clinic for a period up to 26 weeks.
* When the insured person/beneficiary is retired, s/he is entitled for 50% payment of medical treatments if social security contributions have been paid for more than 180 months.
* Beneficiaries have the right to enjoy 60 percent of average wages, calculated against the most recent four month working period, as a cash benefit, during a period of illness lasting up to maximum 26 weeks.

**Benefits relating to maternity…**

* Benefits are allowed to be taken if the prior working period of an employee has been a minimum of one year and if there have been paid social security contributions by the worker for a minimum of six months.
* Maternity leave may total six weeks before confinement and eight weeks after confinement, up to 14 weeks in total.
* An additional four weeks are allowed for maternity leave if twins have been delivered
* Up to a maximum of six weeks total leave is allowed to be taken in cases of miscarriage
* Full wages may be taken for prenatal examination at the rate one day per time and up to a maximum of seven times
* 70% of average wages of the previous year can be taken as maternity leave compensation before the birth
* …plus an additional 50% of wages which can be taken once the child is born (additional 75% for twins, 100% for triplets). Hence, 120% of average wages will be administered for the eight weeks of maternity leave which may be taken after birth
* A parent has the right to take leave for medical treatment for their child up until one year after birth
* A father is entitled to take up to 15-days unpaid leave for infant care upon confinement of his wife

**Benefits for funeral expenses…**

* If under any circumstance a Social Security insured person passes away, his or her beneficiary is entitled to receive five times their average month’s wage. This is determined as the average wage of the last four working months of the deceased person.

**Obligations of employers…**

* To inform the Social Security Office within 24 hours when an injury has happened to an employee
* To register their business in the Social Security Office within 30 days from the day of first business operations
* To register every newly appointed employee with the Social Security Office

**Opportunity for the employer…**

***The employer who registered in accordance with the Social Security Law has the right to be exempted from the Workmen’s Compensation Act.***

**Penalties…**

* Any employer who fails to make the stipulated contributions shall be required to pay all defaulted contributions, defaulting fees and must pay all necessary medical or funerary benefits of the Social Security registered employee.
* An employer who defaults to pay contributions for his employees may be punished with one year imprisonment, with fines or with both
* Any person who violates any provisions contained in the rules, regulations, by-laws, and orders shall be punished with three months imprisonment, with a fine, or with both.

*(The Social Security Rules and The Social Security Regulations, 1955 are repealed under these Rules)*

**The Workman’s Compensation Act of 1923**

*This law is still valid, but only for factories which have failed to register with the Social Security Office and to subscribe to the 2012 Social Security Law and Rules. Factories which fail to do such shall be required to make payments out-of-pocket to employees who become injured or who die in any accidents arising during and in consequence of their employment. Such compensation also must be made for diseases which arise as a direct consequence of employment, such as carpal tunnel syndrome.*

**The Payment of Wages Act, 1936**

**Aim/objective…**

Receipt of wages is made regularly. Unlawful deductions are not to be made.

**Provision Period of Payments…**

* The payment period may not exceed 1 month.
* Wages payments must be made within 7 days after the succeeding month; –
* For factories employing more than 1000 persons, wages must be paid after one month within 10 days
* Wages must be paid during the working days (not during off days)

**Prohibition for illegal deductions…**

No deductions shall be made except for the following:

* Absent periods
* Advanced money
* Housing or rental provided
* Income tax
* Social Security Board fund deductions
* For damages caused due to the carelessness of the worker
* Fine deductions

**The amount which can be deducted…**

* Total deductions cannot exceed 50% of wages entitled.

**Penalty for violation…**

* Up to 2 years imprisonment.

**The Minimum Wages Law, 2013 and The Minimum Wages Rules, 2013**

**Aim/objective…**

To fulfill the basic needs of the workers and their families who are working in commercial establishments, production and servicing establishments, agriculture and livestock. And, to develop the work performance and competitiveness of workers.

***The minimum wage law was passed by parliament in late 2013 and amounts were specified/finalized by a national tripartite committee in mid-2015. Implementation of the new wage rates was required to start on September 1st, 2015.****(The tripartite discussions consisted of government representatives, employer association representatives and trade union representatives)*

**Duties of the Employer…**

* 3,600 kyats per 8-hour working day (450 kyat/hour) shall be the minimum wage paid to skilled employees of companies with more than 15 employees in all industries, throughout all of Myanmar.
* 50% of the minimum – 1,800 kyats per 8-hour working day (225 kyats/hour) – may be paid to completely unskilled newly hired workers engaged in a training/induction program up to a maximum of 3 months.
* 75% of the minimum – 2,700 kyats per 8-hour working day (338 kyats/hour) – may be paid to newly hired employees during their 2nd 3 months of employment, regarded as a ‘probationary period’.

**Penalty for violation…**

* If anybody violates the law they may be punished with a maximum of one year imprisonment or with a maximum of five hundred thousand kyats fine or with both
* If anybody violates the rules and orders they may be punished with a maximum of three months imprisonment or with a fine or with both.

**Public notifications on the new minimum wage:**

[(Myanmar language) Public notification on minimum wage 29.8.15](http://www.myanmargarments.org/wp-content/uploads/2015/09/Notify-for-MW-from-Newspaper-on-29.8.15.pdf)

[(Myanmar Language) 3600 MMK for 8 Hours](http://www.myanmargarments.org/wp-content/uploads/2015/09/MW-3600-MMK-for-8-Hour.pdf)

[(English translation) Minimum wage for 8 working hours](http://www.myanmargarments.org/wp-content/uploads/2014/07/Minimum-Wage-for-Eight-Working-Hours-in-English.docx)

[(English translation) MW salary compensation requirements from MoLES](http://www.myanmargarments.org/wp-content/uploads/2014/07/MW-Salary-Compensation-from-MOL-in-English.docx)

*(The Minimum Wages Act, 1949 and The Minimum Wages Act for farm workers are repealed under this law)*

**Employment and Skill Development Law, 2013** (came into force in late 2013)

**Aim/objective…**

* To facilitate employment which is appropriate to the age and ability of the job seeker
* To help workers obtain employment and to provide stability of employment and skills development for employees
* To help employers obtain appropriate employees

**The facts required to be included & specified in the employment agreement…**

1. Type of employment
2. Probation period
3. Wage, salary
4. Location of establishment
5. Term of agreement;
6. Working hours
7. Days-off, holidays and leave
8. Working overtime
9. Meal arrangements within working hour
10. Accommodation
11. Medical treatment
12. Travel arrangements to/from work
13. Regulations to be followed by the employee
14. If the employee is sent to attend training, limitation agreed by the employee to continue his duty after the training
15. Employee resignation and termination of establishment
16. Termination of agreement
17. Obligations under the conditions of agreement
18. Termination of employment agreement by the mutual understanding of employer and employee
19. Any other matters
20. Specifying, amending and adding the conditions of agreement
21. Miscellaneous
* Aforesaid specifications shall not be less than the benefits of existing laws
* The employer shall send a copy of the employment agreement entered into by the employer and employee to the relevant employment exchange office within the stipulated period and shall obtain its approval
* An employment agreement concluded before the entering into force of this law shall continue to be valid until the end of the term of the original agreement.

**Penalty for not following the law…**

May be punished with a fine and/or imprisonment of up to 7 years.

*(The Employment and Training Act, 1950 is repealed under this Law)*

**The Labour Organization Law, 2011 and The Labour Organization Rules, 2012**

**Aim/objective…**

* To protect the rights of the workers in accordance with section 24 of the Constitution
* To promote good relations between the employer and the worker
* To enable to workers to form and carry out the labour organizations systematically and independently.

**Rights and Responsibilities of the Labour Organization…**

* The labour organizations shall have the right to carry out freely in drawing up their constitution and rules, in electing their representatives, in organizing their administration and activities or in formulating their programmes
* The labour organizations have the right to negotiate and settle with the employer if the workers are unable to obtain and enjoy the rights of the workers contained in the labour laws and to submit demands to the employer and claim in accord with the relevant law if the agreement cannot be reached
* The labour organization has the right to demand the relevant employer to re-appoint a worker if such worker is dismissed by the employer and if there is cause to believe that the reasons of such dismissal were based on labour organization membership or activities, or were not in conformity with the labour laws
* The labour organizations have the right to send representatives to the Conciliation Body in settling a dispute between the employer and the worker
* In discussions with the Government between the employer and the complaining workers, the representatives of the labour organization also have the right to participate and discuss
* Have the right to participate in solving the collective bargaining of the workers.
* Shall carry out peacefully the holding of meetings, strikes and the carrying out any other collective activities.
* Shall assist in making agreements between the employer and the workers.

**Duties of the Employer…**

The employer shall:

* Recognize the labour organizations
* Allow the member of executive committee assigned by the labour organization to perform their duty not exceeding two days per month
* Shall assist as much as possible if the labour organizations requests help which is in the interest of the factory’s workers.

**Prohibitions…**

No employer shall:

* Lock-out any service without the permission of relevant conciliation body
* Lock-out any work during the settlement of dispute period
* Carry out an illegal lock-out, dismiss a worker for his membership in a labour organization or for the exercise of organizational activities or participating in a strike.

No worker shall

* Go on strike without informing in advance the relevant employer or the relevant conciliation body
* Go on strike during the settlement of dispute period
* Go on an illegal strike

**Penalties…**

Prison time, fines or both may be assessed but any fine shall not exceed one hundred thousand kyats. Imprisonment may not exceed one year maximum.

*(The Trade Union Act, 1926 is repealed under this Law.)*

**The Settlement of Labour Disputes Law, 2012**

**Aim/objective…**

* For safeguarding the rights of workers
* Promoting a good relationship between employer and workers and creating a peaceful workplace
* Obtaining the rights fairly, rightfully and quickly by settling disputes between employer and worker justly

**Forming Workplace Coordinating Committee…**

The employer shall, in an establishment which has 30 employees and above and if there is a labour organization:

* Allow 2 nominated workers for each labour organization
* Assign employer representatives who are the same number as the representatives of the workers.

If there is no labour organization,

* Organize election of 2 representatives of the workers
* Appoint 2 representatives of the employer

The term of such committees is one year.

**Settlement of Dispute…**

* A party, employer or worker, may complain to the conciliation body.
* If he is not satisfied with the conciliation of Conciliation Body, may apply to the court.
* The Conciliation Body shall refer the collective dispute which does not reach settlement to the relevant Arbitration Body
* No party shall be barred to proceed with the right to institute criminal or civil proceedings in respect of such dispute during conciliation or arbitration.
* As a strike suspends the employment agreement temporarily, the employer shall not be liable to pay salary or allowance during such period to the workers who go on strike.

*(The Trade Disputes Act, 1992 is revoked under this Law. The Trade Dispute Rules, 1963 and the Damages for Delay in Cash Benefit Relating to Trade Dispute of People’s Workers Rules, 1971 are repealed by this Rules.)*