

Suspension of Labour Contract, Payment of Wages and Additional Allowance during the Lockdown of Phnom Penh Capital and Ta Khmao City of Kandal Province

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On 19 April 2021, the Ministry of Labour and Vocational Training has issued an instruction No.043/21 (the “Instruction No.43/21”) regarding the payment of wages for the early April and additional allowance during the lockdown period. The ministry advises that the suspension of business operation due to the implementation of temporary lockdown measures in the Phnom Penh Capital and Ta Khmao City of Kandal Province has led to a suspension of labour contract.

The ministry instructs factories, enterprises, handicrafts and companies to:

1. maintain the position and seniority of their employees during the lockdown;
2. pay the wages of early April (*wages from 01 to 14 April 2021*) for their employers; if their wages have not been paid, it must be paid after the end of lockdown); and
3. provide an additional allowance for their employees based on their abilities in accordance with the spirit of humanity, solidarity, and social responsibility during this hardship (the payment of this allowance should be made after the end of lockdown).

Please note that according to Article 71, paragraphs 10 and 11 of the Labour Law, the labour contract shall be suspended on the occurrence of:

- an act of god that prevents one of the parties from fulfilling his obligations up to a maximum of three months; or
- when the enterprise faces a serious economic or material difficulty or any particular unusual difficulty, which leads to a suspension of the enterprise.

The Instruction No.043/21 only refers to the suspension of employment contract caused by the implementation of the lockdown measure imposed by the government. It does not refer to economic hardship or act of god as ground for suspension. However, we are of the view that the lockdown measure is beyond control of the employer and the employee and it fits appropriately to the definition of an act of god and economic hardship.

Pursuant to Article 72 of the Labour Law, the suspension of a labour contract affects only the main obligations of the parties, that are the obligation to perform work by the employee and the obligation to pay by the employer. Other obligations such as furnishing of accommodation by the employer, as well as the employee’s loyalty and confidentiality towards the enterprise, continue to be in effect during the period of suspension.

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