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Employment & Labour law in Mongolia

General labour market trends and latest/likely trends in employment litigation

Even with a slowdown in 2014, Mongolia has experienced dramatic economic growth in the 2000s. A small country with a population of 3.1 million, Mongolia has had real per capita gross domestic product (GDP) averaging annual increases of more than 6.7 percent from 2000 to 2013, more than 5.4 percentage points above global economic growth. The growth of 15.8 percent from 2010 to 2011 and 10.6 percent from 2011 to 2012 was especially high.

Advances in foreign direct investment and the mining of natural resources, along with infrastructure spending and, more recently, strong fiscal and monetary incentives, have driven much of this growth.

Based on the Statistics from General Council of the Court for 2017, 2,214 employment disputes in 2016 and 2,220 employment disputes in 2017 were resolved by the first instance court, which is about 5 percent of the total civil litigation.

The total labour litigation is divided in the following three categories:

1. Dismissal of employment without legal ground;
2. Salary or compensation related disputes; and
3. Illegal transfer to another job.

Based on the above statistics, the Company or employer breaches the employment termination procedure.

Key case law affecting employers' decision making over dismissals, redundancies, etc.

In accordance with the Labour Law 1999, an employer may terminate employment for one of the following grounds:

- a) if a business entity or organisation, or its branch or unit is dissolved, or the respective position is abolished, or the number of employees is reduced;
- b) if the employee cannot meet the job requirements due to his/her poor professional qualification, skill or health reasons;
- c) if the employee reached the age of 60 and is entitled to receive pension;
- d) if the employee has repeatedly violated the labour discipline, or has committed a serious violation, which would automatically terminate the labour relations as specified by the employment agreement;
- e) if the employee in charge of assets and money has misacted or failed to act, which has resulted in the loss of the employer's trust;
- f) if the employee has been elected or appointed to perform other work at a job or position;
- g) other grounds set forth in the individual employment agreements.

The most common legal grounds used by the employer to terminate the employment are (a) and (b). As economy is not doing well due to reduction of minerals price in the global market and Mongolian economy is heavily depending on the mining industry, last 2 years, some positions within companies were abolished, and many companies in Mongolia had to make staff redundancy.

To terminate employment, the employer shall follow the following steps:

- a) give 30 days written notice of termination; or 45 days written notice of mass discharge of employees;
- b) upon receipt of the notice, the employee shall sign a copy thereof;
- c) the employer shall allow employee to work during the notice period;
- d) in case of the mass discharge of employees, the employer shall negotiate redundancy compensation with representatives of the employees.
- e) the Executive Director or an authorised officer shall issue the resolution on employment termination (hereinafter - 'Director's Resolution');
- f) complete and provide the employee with the social insurance and health insurance records together with the termination resolution on the last day of employment.

When terminating an employment agreement, the employer shall establish a certain period for the transfer of duties to the new Employee and indicate such a period in the respective Director's Resolution.

The employer shall provide the employee dismissed with the decision on dismissal, social and health records together with the dismissal compensation on the date of dismissal.

If the employer skips or misses one of the above steps, it will be considered as a breach of the procedure. The employee may file a claim with the court for protecting his/her interest and there is high probability of the employee's success in the court hearing.

The employer shall issue a letter of reference concerning the profession, specialisation, position, and remuneration at the employee's request.

Recent statutory or legislative changes

The Law on Offence was passed on 1 May 2017 and became effective from 1 July 2017. The law provides for new sanctions in case of violation of the current labour law. They are:

1. If the resolution on hiring an employee is not issued, social insurance records and health insurance records are not started, appropriate notes on social insurance records and health insurance records are not made on the date of employment agreement, the law provides for a penalty for officials in the amount of 150,000MNT (app 62USD), and for legal entities - 1,500,000MNT (app 617USD), as well as for loss and costs compensation.
2. The same sanction shall apply, in case an employee was required to work overtime in excess of the established overtime limit.
3. If employer paid remuneration to the employee under employment agreement, hire agreement or other similar agreements

in the amount lower than the base salary or minimum wage, or did not pay the base salary on time or delayed payment without justification, or did not pay the standby salary, or paid the standby salary in the amount lower than it is stated under the law, the caused loss and incurred costs shall be compensated, and the penalty shall be imposed on officials in the amount of 500,000MNT(app 208USD), on legal entities - 5,000,000MNT (app 2083USD).

4. If the labour internal policy, list of job and position, job descriptions, directory of the position, labour norm and normative, national salary range were not adopted and adhered, and intentionally social insurance and health insurance records were not started, the law provides for a penalty on officials in the amount of 150,000MNT(app 62USD).

New draft Labour Law

The draft Labour Law of Mongolia was developed by the Government and submitted to the Parliament in 2017.

The major changes reflected in the new draft Labour Law are as follows:

- ▶ Scope of the relations is broadened. If there is any relation similar to employment relations, they shall be subject of the draft Labour Law.
- ▶ In order to balance the rights and obligations of the employer and employee, the basic rights and obligation of employee to the employer are specified.
- ▶ The detailed regulations are provided in respect of the basic rights of international labour law such as non-discrimination, child labour prohibition, as well as prohibition of force labour.
- ▶ It is clearly stated that an employment agreement shall have the validity term certain cases; however, the permanent positions shall have an employment agreement with an indefinite term.
- ▶ New types of relationships are arisen in labour market such as triple labour relations, part-time job, remote job, and shift job.
- ▶ Mass discharge (dismissal) shall be notified to the Trade Union or employees' representative 14 days prior. The notice shall contain the discharge (dismissal) grounds, positions affected, term and form of termination.
- ▶ Hourly rates for the part-time job shall be same as for full time job within the same position.
- ▶ The minimum paid annual leave shall be 20 days.
- ▶ The herder job under an employment agreement can have non-monetary compensation; however, in certain cases it shall not exceed 30% of the total compensation non-monetary salary.

Байршил

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