



# Unions & Collective Bargaining in Cambodia

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## **Are unions allowed in Cambodia?**

The right to form a union and to be member of a union is guaranteed by the Cambodian Constitution. The Labor Law recognizes the right of workers and employers to form unions, but bans those including both employers and workers. A proposed Law on Trade Union is still in the drafting stage as of the date of publication.

## **What percentage of workers are unionized in Cambodia?**

A very small percentage of workers are unionized, estimated at about one percent of the total workforce. The vast majority of organized workers are found in the garment industry, where about 60 percent of workers are unionized. Sectors where unionization is on the rise include building and construction, transport, hotel and tourism, and rubber plantation workers. Civil servants and informal economy workers are not allowed to organize into unions but can form associations. At the moment, a very small percentage of them are organized.

## **What is the role of unions?**

Unions are dedicated to the purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, both collectively and individually, of the persons covered by the organization's statutes.

## **What rights does a union have?**

Unions have the right to draw up their own statutes and administrative regulations, as long as they are not contrary to laws in effect and public order, to freely elect their representatives and to formulate their work program. They also have the right to sue in court and to acquire personal property or real estate without authorization, for free or for payment, and more generally, to enter in contracts. Unions are free to consult each other about the study, research, promotion and protection of their interests. In order to obtain legal recognition and enjoy their rights, statutes of unions and names of their leaders must be filed with the Ministry of Labor.

## **Who can join unions?**

All workers, regardless of sex, age, and nationality are free to be a member of unions. They also can refuse to join unions and withdraw when they want.

## **What protections exist for unionized workers and workers seeking to form a union?**

Union affiliation or participation in union activities must not affect employers' decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of bene-

fits, disciplinary measures and dismissal. All employers are forbidden to deduct union dues from the wages of their workers and to pay the dues for them. Measures tending to provoke the creation of unions dominated by an employer or an employers' organization, as supporting unions by financial or other means for instance, are banned.

The dismissal of a candidate for shop steward can take place only after authorization from the Labor Inspector. The same protective measures apply to unelected candidates during the three months following the proclamation of the results of the ballot.

### **What are the conditions for becoming a union leader?**

A union leader must be at least 25 years of age and be able to read and write Khmer. He or she must not have been convicted of any crime and must have engaged in the profession or the job for at least one year. The union's statutes can limit the conditions for participation of retirees in this function.

### **Can a foreigner be elected as a union leader?**

Yes, a foreigner can be elected as a union leader. In addition to the qualifications imposed on Cambodian nationals, the individual must have permanent residency status, and have worked in Cambodia for two consecutive years.

### **What is the connection between presence of unions and election of shop stewards in an enterprise?**

To be authorized to propose a candidate for election as shop steward, a union has to be representative of the workers of the firm in question, which must be officially recognized by the Ministry of Labor, upon the union's request. To be representative, a union should be legally registered, have more members holding valid membership cards than the others, receive dues from at least 33% of its members and have programs and activities indicating that the union is capable of providing professional, cultural and educational services to its members. Officially recognized as representative of the establishment, a union is also competent in matters of collective bargaining.

### **What does a shop steward do?**

The shop steward should present to the employer any individual or collective grievances relating to wages and to labor legislation as well as collective agreements applicable to the establishment. He or she must refer to the Labor Inspector all complaints relating to the enforcement of the Law. He or she has to make sure that provisions relating to the health and safety of work are enforced and should suggest measures that would be beneficial to protect and improve working conditions of the workers.

### **How is a shop steward protected?**

Employers must obtain authorization from the Labor Inspector to dismiss a shop steward. This measure persists three months after the end of the shop steward's term. Any reassignment or transfer that would end the term is subject to the same procedure. The employer, the worker and the union can appeal the Labor Inspector's decision to the Ministry of Labor up to two months following the receipt of the decision. Union stewards who relinquished their position for less than six months are entitled to benefits provided for the provisions above.

## **How are shop stewards appointed?**

The shop stewards are elected from the candidates nominated by the representative unions within each establishment. In a firm with 8 to 50 workers, one shop steward and one assistant shop steward are required. When the number of workers is between 51 and 100, there must be two shop stewards and two assistant shop stewards. If there are more than 100 workers in the enterprise, one extra shop steward and one extra assistant shop steward for each group of 100 workers is required.

Workers who are at least 18 years old and who have worked for the enterprise for at least three months and have not forfeited their right to vote, are eligible to vote. Voters who are at least 25 years old and who have seniority of at least six months in the enterprise shall be eligible to be candidates.

The election of shop stewards and assistant shop stewards shall be organized with separate secret ballots, but at the same time. Different electoral polls can be set up if specific agreements or provisions allow it.

Any candidate who obtains the largest number of votes are declared elected up to the number of seats to fill. In case only one seat remains to be filled and several candidates received the same number of votes, this seat is allocated to the older of the candidates. The ballot is valid only if the number of voters is at least equal to half of the number of those registered. A union cannot nominate more candidates than the seats available for the prospective shop stewards to fill. If the representative unions did not nominate any candidates, the voters can vote for any candidate whether or not nominated by the union.

## **When does the shop steward's elections take place?**

The election shall take place during working hours and must be organized by the employer. In case there are no shop stewards, the employer shall set a date for the elections and publicize it within fifteen days upon receipt of the request of a worker, a union, or the Labor Inspector. The elections shall be organized within 45 days upon receipt of the request. If there is an election to elect all new shop stewards, the balloting must take place in the fifteen day period preceding the expiration of the current term.

## **How long does a shop steward serve?**

Shop stewards and assistant shop stewards are elected for two year terms and can be re-elected. Their functions are terminated by death, resignation or termination of the labor contract. When an official shop steward leaves office or is temporarily absent, he or she is replaced by an assistant shop steward from the same electoral body, and the priority for replacement is given to the assistant shop steward who was been nominated by the same union organization and who received the largest number of votes.

## **What are the employer's obligations with regard to the election?**

It is the duty of the employer to organize shop steward's elections. Within eight days following the elections, the employer must make an official report on the results to the Labor Inspector and post another copy of the report in the establishment.

## **When no union exists in an enterprise, how can workers defend their interests?**

In every enterprise of at least eight workers, with unions or not, a shop steward should be elected to represent workers. The employer is responsible for organizing the election. The workers can also present their own grievances directly to the employer even if a shop steward was elected.

## **Do collective agreements exist in Cambodia?**

Yes, a collective agreement may be signed between employers and representative unions according to the Cambodian law. The purpose of the collective agreement is to determine the working and employment conditions of workers and to regulate relations between employers and workers. The collective agreement can also extend its legally recognized roles to trade union organizations and improve the guarantees protecting workers against social risks. Collective agreements must be written in Khmer and specify their scope of application.

## **Must employers enter into collective bargaining agreements?**

No specific legal disposition require employers to enter into collective bargaining agreement. In the absence of a collective agreement, the Ministry of Labor can issue a Prakas to lay the working conditions for a particular occupation. But, even if employers are not responsible for drafting collective agreements, they should cooperate with workers and unions who ask for setting up such agreements. Employers shall provide a copy of the registered collective agreement to the shop steward and post them in every workplace and information board throughout the establishment.

## **Is it possible to sign collective agreements in an enterprise where no unions exist?**

Yes, it is possible. Collective agreements would be signed between the employer and the shop steward if there is no union in the enterprise but the terms of such agreement cannot exceed one year.

## **How long can a collective bargaining agreement last?**

The collective agreement can be concluded for a definite term or for an indefinite term. When it is for a definite term, this term may not exceed three years. Upon expiration, it shall remain in effect unless it has been canceled, on the condition of keeping a three months' notice, by either party. When the collective agreement is concluded for an indefinite term, it can be canceled, but it continues to be in effect for a period of one year for the party who forwarded a complaint to cancel it. The notice of cancellation does not prevent the agreement from being implemented by the other signatories.

## **What effects do collective bargaining agreements have?**

The provisions of a collective agreement shall apply to employers concerned and all workers employed in the establishments as specified by the collective agreement. They can be more favorable toward workers than those of laws in effect. However, the collective agreements cannot be contrary to the provisions on the public order of these laws.

Any provisions of labor contracts between employers and workers, already covered by a collective agreement, that are less favorable than the provisions provided for in the collective labor agreement

should be nullified and must be replaced automatically by the relevant provisions of the collective agreement.

A collective agreement of an enterprise can adapt the provisions of a collective agreement covering the wider scope of application that is applicable to the enterprise under the special conditions of the enterprise in question. It can also include new provisions and clauses that are more favorable to workers.

At the request of unions of workers or employers that is representative in the relevant scope of application, or on its own initiative, the Minister of Labor may extend all or some of the provisions of a collective agreement to all employers and all workers included in the occupational area and scope of this agreement.

## **How do collective agreements enter into force?**

Employers have to register the collective agreement with the provincial or municipal Labor Inspector where they are signed, or with the Department of Labor Inspection if they are signed in Phnom Penh. The agreement comes into force the next day after its registration. Upon registration, the provincial or municipal Labor Inspectorate or the Department of Labor Inspection shall deposit the agreement with the office of the Clerk of the Labor Court. Labor Inspectors may monitor the application of collective agreement through a direct interview with shop stewards, managers of establishments or with the workers directly.

## **How are conflicts over collective agreements resolved?**

The signatory parties shall make every effort to put in the collective agreement procedures involving settlement of disputes by an arbitrator and its interpretation. Otherwise, all conflicts resulting from the performance of collective agreements may be brought by a party to the court in the province or municipality where the agreement was signed.

## **Do employees have a right to strike in Cambodia?**

The right to go on strike is guaranteed by the Cambodian Constitution and the Labor Law. A strike is defined as a concerted work stoppage by a group of workers that takes place within an enterprise for the purpose of obtaining satisfaction for their demand from the employer as a condition of their return to work. During a strike, the allowance for work is not provided and the salary is not paid.

## **Under what conditions can workers go on strike?**

The right to strike can be exercised only when all peaceful methods for settling the dispute with the employer have already been exhausted. It also can be exercised when the Council of Arbitration has not rendered or informed of its arbitration decision 15 days after its receipt of the case and when the union representing the workers deems that it has to exert this right to enforce compliance with a collective agreement or with the law and, in a general manner, to defend the interests of workers.

The right to strike cannot be exercised when the collective dispute results from the interpretation of a juridical rule originating from existing law, or the collective agreement or the rule relating to an arbitral decision accepted by the concerned parties. It also cannot be exercised for the purpose of revising a collective agreement or reversing an arbitral decision accepted by the parties, when the agreement or the decision has not yet expired.

Strikes that don't respect conditions presented above or which are non-peaceful may be declared illegal by the Courts. When this declaration is made, strikers must return to work within the follow-

ing forty-eight hours. A worker who, without valid reason, fails to return to work by the end of this period is considered guilty of serious misconduct and could be punished by work suspension or disciplinary layoff.

### **Is there a procedure to follow in order to go on strike?**

A strike shall be declared according to the procedures set out in the union's statutes, which must state that the decision to strike is adopted by secret ballot. Union leaders have to hold a meeting and propose to the worker members for approval on such strike.

A strike must be preceded by prior notice of at least seven working days and be filed with the employer. The demands which constitute the reasons for the strike must be precisely specified on the prior notice. This notice has to be sent to the Ministry of Labor who shall actively seek all means to conciliate employer and employees. They are required to be present at the Minister's summons.

### **What protections exist for striking and non-striking workers?**

Freedom of work for non-strikers shall be protected against all form of coercion or threat. The workers should return to their jobs again at the end of the strike and the mandate of shop steward shall not be suspended during the strike.

### **What are the employer's obligations concerning a strike?**

The employer is prohibited from imposing any sanction on a worker because of his participation in a strike. Any such sanction shall be nullified and the employer shall be punishable by a fine of sixty-one to ninety days of the base daily wage or to imprisonment of six days to one month.

During a strike, the employer is not allowed to recruit new workers for replace the strikers. Any violation of this rule obligates the employer to pay the salaries of the striking workers for the duration of the strike.

### **Can minimum service be set up?**

A minimum service has to be organized by the employer and employees before the beginning of the strike. If they cannot find an agreement, the Ministry of Labor shall determine services in question.

A worker who is required to provide minimum service and who does not appear for such work is considered guilty of serious misconduct. To replace an absent worker for minimum service, employers are allowed to recruit a new one.