

Suspension of employment contract

In the Labor Law of Cambodia, Chapter 4 regulates rules of employment contracts. There are 3 sections in this Chapter 4. Section 1 sets forth the rules relating to conclusion and implementation of employment contracts. Section 2 provides rules on suspension of employment contracts and Section 3 deals with termination of employment contracts. By this order, we can understand the concept of the Labor Law under which suspension of a contract precedes the termination of a contract. This article briefly discusses the system of contract suspension. Unless otherwise specified, the articles referenced are articles of the Labor Law of Cambodia.

I. Causes or reasons of contract suspension

The suspension of employment contract is used for many purposes; however, only two main purposes are discussed here. Firstly, contract suspension constitutes a type of disciplinary action against the workers committing misconduct. Secondly, it is a requirement by the Labor Law to suspend the contract if there is a reason or cause specified by this law.

The termination of a contract results in the termination of the employment relationship, which may affect the interests of the worker or the employer or both parties. Workers are more adversely affected than the employer if the contract is terminated. Therefore, before the termination of an employment contract, the employer must first suspend the contract.

On the other hand, under the employment contract, the worker is obliged to provide labor, while the employer is obliged to pay wage. (Article 664, Civil Code) When a party does not fulfill this important obligation, that party is in material breach of its obligation. However, in the performance or execution of an employment contract, there are several circumstances or grounds that the law determines to be the reasons for the suspension of the contract or the reasons the party may suspend its performance.

Under Article 71 of the Labor Law, the reasons for the suspension of the contract include:

1. The closing of the establishment following the departure of the employer to serve in the military or for a mandatory period of military training.

2. The absence of the worker during obligatory periods of military service and military training.
3. The absence of the worker for illness certified by a qualified doctor. This absence is limited to six months, but can, however, be extended until there is a replacement.
4. The period of disability resulting from a work-related accident or occupational illness.
5. The leave granted to a female worker during pregnancy and delivery, as well as for any post-natal illness.
6. Absence of the worker authorized by the employer, based on laws, collective agreements, or individual agreements.
7. Temporary layoff of a worker for valid reasons in accordance with internal regulations.
8. The absence of a worker during paid vacations, including an incidental travel period as well.
9. The incarceration of a worker, without a later conviction.
10. An act of God that prevents one of the parties from fulfilling his obligations, up to a maximum of three months.
11. When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and be under the control of the Labor Inspector.

An employer can terminate a suspended contract provided that the reasons for the suspension have been remedied and he has given prior notice in accordance with the law.

Other than reasons listed in Article 71 above, Article 332 provides that employment contract is suspended during strike. During this period, workers do not work and the employer does not pay. The worker must be reinstated in his or her job at the end of the strike. Accordingly, it can be concluded that after the reason or cause for

contract suspension ends, employer must reinstate the suspended worker into his or her work.

II. Effects of contract suspension

As already mentioned above, suspension of an employment contract affects only the material obligations of the parties. They are the obligation of the worker to work for the employer, and the obligation for the employer to pay wage to the worker, unless there are provisions to the contrary that require the employer to pay the worker. (Article 72) For example, the leave granted to a female worker during pregnancy and delivery, as well as for any post-natal illness are reasons for suspension of contract.(Article 71, point 5) Additionally, the Labor Law stipulates that women are entitled to 90 days of maternity leave. (Article 182) During this time off, women are entitled to half their wages, including any allowance paid by their employer. (Article 183)

Other obligations such as furnishing of accommodation by the employer, as well as the worker's loyalty and confidentiality towards the enterprise, continue to be in effect during the period of suspension. The suspension of the employment contract does not result in the suspension of the union's mandate or the mandate of the workers' representatives, and generally the duration of the suspension of the contract is taken into account in calculating seniority. (Article 72)

Author: Dr. Nop Kaharith