



Lao National Chamber of Commerce and Industry

Employers' Opinions Survey For the Development of Labour-Related Policy Recommendations

Administrated by: Lao National Chamber of Commerce and Industry

Supported by: International Labor Organisation



Conclusions and policy recommendations

The three labor-related legal papers: **Lao Labor Law (Amended 2013)**, **Law on Social Security (Amended 2018)**, and **Decree on Occupational Safety and Health (2019)** was briefly reviewed; and the respondents represented 150 enterprises, the representatives from the sector-based associations, and the LNCCI' Employer Committee participating in this research survey gave opinions in general and specifically to the industrial relations issues of their interest and concern. The Lao Labor Law and Social Security included a number of amended articles and new articles, while the decree on OSH is considered relatively new, despite the issue of OSH has been a clause included in other existing laws and regulations associated with different line ministries and industry sectors.

The provisions in the specific articles specified in the three labor-related legal papers are of the employers' interest and concerns, being brought up by the employers across the industries and sectors through LNCCI, formal or informal. They are considered evolving as the numbers of issues have not been resolved yet. The collective opinions of the employers and particularly the following policy recommendations proposed in this report are expected to be channeled through the existing advocacy platform of LNCCI such as Lao Business Forum accordingly.

I) **Labor Skills Development and Labor Development Fund.**

Generally, the employers agreed with the importance and their responsibility of skills development for their labors. Therefore, within the resources they have they help the staff to improve competency that are required for better business performance. Large companies are usually well prepared for staff training by allocating a certain amount of funds to organize in-house training using either trainers from external or internal, while the smaller scaled companies may use another minimal-cost approach, such as on-the-job training, and peer-to-peer learning. When the companies cannot organize the training for the staff by themselves, they tend to rely on external sources, if available, such as the training events that are implemented under the government's and/or international organizations' supported programs.

According to Article 28 of the Labor Law, the employers are required to contribute to **the labor development fund** the amount of 1% of the annal salary or wages of the employees. Together with the other sources of funds (including 1% from the tax amount of income or wages of employee which is

transferred by the Ministry of Finance, 5% of one months' salary or wages of the employees working abroad, and 15% of registration fees for issuing work permits for one person per month of foreign labors working in Lao PDR) the labor fund will be used to serve a labor development and skills improvement, as well as to provide assistance that is needed by the Lao Labor working abroad and foreign laborers working in Lao PDR (Article 136 and 137). The 1% obligation required from the employers as such according to the employers' opinions, 1) it is not so clear if it bases on the gross or net salary of the employees; 2) it is considered a high and unnecessary cost to the company; especially when they already have taken care of their own staff training; and 3) the confidence in the labor development fund's management is not yet assured, how the fund will be effectively utilized and directly benefited the staff development of the companies that made contributions to the fund.

Furthermore, the employers raised the concerns about the commitment of the employees to return to the same workplace after receiving up-skilled training; and thus, the worthy return on investment of the companies. Additional opinion of the employers is that it is rather a direct mandate of the concerned government agencies in producing human resources serving the industry's labor market demands and that are aligned with the country's economic development and transformation over time.

Policy Recommendations:

1) *The labor skills development is a mandatory task of the registered production units and business establishments. The business establishments that have fulfilled the mandate by having staff development plan and implementing the plan in line with the company's needs, are recognized and incentivized by the government agencies concerned.*

- ✓ The labor skills development is stipulated in the document of the registered business establishments, especially in the company's human resource development and the written employment contract. This includes the training areas, methods, estimated number of training day or hours that the employee will receive per year, for example.
- ✓ Individual enterprises that have fulfilled the mandate by putting effort and investing in the staff training and development program with the records of number of staff being trained, hours or days, training methods that are most feasible and effective for them will be recognized and incentivized by, for example, VAT exemption for the investment cost.

2) *The contribution to the Labor Development Fund (1%) has two forms: 1) voluntary is applied to the companies that have implemented the human resource/staff development plan; and 2) mandatory is applied to the companies that have not implemented the human resource/staff development plan. When the 1% contribution from the company is applied the net basic income of the employee is the basis of calculation. The use of the fund is designed creatively and orienting towards optimizing the effective and efficient skills development of the participating enterprises.*

- ✓ The "1% yearly contribution" to the Labor Development Fund is tax deductible and the participating enterprises become the member of the Labor Development Fund.
- ✓ After 12 months of the contribution made to the Labor Development Fund, the contributing enterprise, as a member, is eligible to benefit from the Labor Development Fund services/activities, including 1) training activities to upgrade knowledge, re-skills and/or upskills 2) Labor market information and skills development of the sectors.

- ✓ The member of the Labor Development Fund is eligible to send the staff to training programs that are organized under the sponsorship of the Labor Development Fund in accordance to the individual events' registration requirements. The costs/fees associated with the attendance of the staff will be deducted from the account of the respective members.
- ✓ In case the enterprises do not send the staff to particular training programs that are organized under the sponsorship of the Labor Development Fund due to the unavailability of or inaccessibility to the program, for example. The enterprises can claim for the reimbursement, not exceeding the amount of their contribution to the Fund, upon the proof document of the training service received from elsewhere (with VAT exempted).
- ✓ The contributing amount to the Fund if not used up within 12 months after the yearly contribution made, can be accumulated and carried over up to 24 months. Thereafter the accumulated amount that the enterprise is eligible to use will be reduced to 50% in the subsequent 24 months; to 25% in 24 months thereafter and to 0% in 24 months thereafter, for example.

3) *The Labor Development Fund is administrated and managed by the committee comprised of concerned agencies, including the employer representatives in the balanced composition. It coordinates with the existing mechanisms, organisations and programs that shared similar goals. This is to optimize the transparency, effectiveness, efficiency and goal fulfilment in the short term, medium and long term.*

- ✓ The Labor Development Fund management committee must comprise a balanced number of representatives of employers-LNCCI/sector and industry-based associations.
- ✓ The Labor Development Fund administration mechanism should leverage the synergy of the existing initiatives and programs (of the government, civil society, and international organisations) working towards the common goal (develop new labor supplies to market, improve skills of disadvantaged groups and create employment, upgrade human resources, improve skills of labors specifically to the demand of socio-economic sectors: manufacturing, agriculture & forestry, industry and handicraft, trading and service) to enable the use of the Fund in creative ways, optimize the efficiency and effectiveness in the short term, medium and long term.
- ✓ The Labor Development Fund should be audited by an external third party as agreed by the committee, and the reports can be accessed by the public.

II) **Importation and Foreign Labor, and Acceptance of Foreign Labor.**

Generally, employers agreed with the general rules on preserving certain occupations for Lao labor, while having a proper plan for the positions required to recruit foreign labors. Employers across the business sectors and industries view that labor with high expertise, at technical and managerial levels, are necessary to import from abroad as they are insufficiently available domestically; and see the need to transfer knowledge and skills to Lao Labor so as to minimize dependency on foreign labor.

About half the respondents rated the relevance of the Article 45 "Limitation on the use of foreign labor" and the related Article 68 "Limited ratio of acceptance of foreign labor" more towards "partly relevant and a bit relevant" than "Very relevant and entirely relevant" spectrum. The current practice of the duration limits of 12 months per interval up to 5 years of imported foreign labor as specified in this Article 45 caused unnecessary time and cost involved when an extension is needed; and the

employers of different sector groups witnessed the specified ratio of acceptance of foreign labor specified does not always reflect the real needs of the industries. Depending on the nature of the businesses and industries at specific points in time and the required expertise to operate the technologies and manage the ventures in different stages, the need to import foreign labors will vary in terms of numbers, timeframe and intervals, frequency; and thus, the needs for number of foreign labor and timeframe. In addition, the transferring of knowledge and skills to Lao labor attached to the imported foreign experts, short-term, medium and long-term, is still a considerable challenge.

Policy recommendations:

1) *The “Limitation on the use and ratio of acceptance of foreign labor” provisions are responsive to the specific needs of the enterprises and industries; and base on the enterprises’ employment of foreign labor plan, duration of employment contract, as well as the skills transferring plan of the foreign labors to the Lao labor.*

- ✓ The key factors to consider in conjunction regarding to the “Limitation on the use and the ratio of acceptance” are including the proof of the company’s efforts to recruit labor domestically, but failed; the level of technology and expertise; size and term of the project; registered capital and the priority sector of the country’s economic development; and human resource development plan of individual company. Once these are justified, the company:
 - Determines the duration per interval which can exceed 12 months (the registration fees are paid to cover the specified duration) as the company finds appropriate and that reflects in the employment contract with the foreign employee (with the inclusion of knowledge and skills transferring performance indicators).
 - The ratio allowance for foreign labor should not exceed 30% (from the current 15% for technical experts undertaking physical labor) and not exceed 50% (from the current 25% for technical experts undertaking mental labor).
- ✓ The employment contract with the foreign labor, and the report on knowledge and skills transferring obligations to Lao labor of the foreign employee; and the physical monitoring will be the basis on which the decision to extend, withdraw, or amend the “limitation on the use and the acceptance ratio” application to the company.

2) *The administration process associated with the importation of foreign labor has improved the effectiveness, efficiency, and transparency through the increasing use of digital technology.*

- ✓ The administration process to import foreign labor was reviewed and shortened with specified days and time of the approval and each stage.
- ✓ Replace manual paperwork with paperless, by using more digital communication and processing, such as e-mails, digital platforms and applications that are user-friendly. They should enable individual enterprises to access and get responses in real-time (or closer) to the applications process, and progress. Through digital platforms, the employers can also communicate, and report to the relevant government agencies regarding the use of foreign labor, etc.

III) **Labor regulations and Social Insurance.**

In practice, most companies work 5 days a week, 8 hours a day, but the flexibility of an extra day fulfils the need for the jobs that need to have extra hours. Generally, employers see the increasing need to improve the employees' quality of life by shortening the working hours while also improving productivity. In some establishments when further extra hours are needed to complete the job, such as in the production lines for the manufacturing, accounting and finance unit, overtime is applied. Regarding **overtime hours**, there are conflicting opinions on acceptable limitations. Although some employers agree with the current hours specified in Article 53, some employers believe that overtime should be delegated depending on the type of job and not strictly 45 hours per month for all positions, it could be going up to even 60 hours per month. However, it should not exceed 3 hours per day, 5 days per week of overtime to increase business competitiveness of the businesses.

The general comments for Article 55: **Official Holidays and Customary Holidays** were that compliance with the holidays has not been strictly reinforced and the customary holidays, in practice, were far more than the ones allocated and they were unavoidable. Other comments were for the need for more days off officially and during the customary holidays including the five days for Lao New Year and a one-day allocation for customary holidays. The comments also mentioned that children's day, international women's day, Buddhist Lent, and the end of Buddhist Lent should be considered a holiday to promote Lao culture and family cohesion. Furthermore, foreign laborers should have the right to an official holiday on their national day or compensatory leave.

The calculation of the overtime payment uses different rates for different situations (the rate ranges from 150% to 350% of the normal salary or wages). This is not clearly understood by the employees of when and how exactly the rates are applied, while the employers find the rates are quite high, too costly, and they are perhaps not applied equally across the industries.

The Article 58 specified five different types of **personal leave**. The employers seem to interpret "3 days or less" differently on whether it is per case or year, which has different cost implication for the employers. It is also suggested that Article 58 should specify the number of days for each type/event, such as 5 to 7 days for weddings, disasters taking into account the travelling time. The employers feel that the existing 15 days of annual leave should be long enough to cover the personal leave as needed too.

Retirement ages and benefits (Article 72) comments from the employers show agreement with the age of 55 years or 60 years minimum but reduce the working age from 15 years to 10 years to be eligible for the benefits as it should align with the current practices of how people work. Furthermore, there were concerns over the lack of transparency on how the retirement funds by the Social Security Schemes were calculated.

Policy Recommendations:

1) *Overtime hours are 60 hours per month (current 45 hours) for a certain month with proper advance scheduling; and provision of overtime regulation and calculation for clear understanding of both the employers and the employees.*

- ✓ 60 overtime hours per month for all positions; it should not exceed 3 hours per day, 5 days per week for a certain production period or working unit.

- ✓ The overtime information including the calculation or the formula most relevant to them should be included in the employment contract along with the employee handbook.
- ✓ Accessible point for the labourers to ask for clarification from the labor union within their labor unit.

2) Specified official holidays according to the current updates and accepted practices; and specified number of days of personal leave that balance the needs of employee and employers.

- ✓ Non-Lao nationals who do not have a national day should receive a compensatory day off.
- ✓ Specify the Lao Women Union Establishment as the official holiday in the Article 55, as this has been commonly practiced according to the government special instruction of official holiday.
- ✓ For each types of personal leave, the number of leave days to be applied are the followings: (when needed, the employee uses the annual leave days).
 - The employee's own father, mother, husband or wife and children are injured and hospitalized and there is nobody to take care of them (5 days/year at most)
 - The employee's father, mother, husband or wife and children pass away (3 days/year at most)
 - The employee gets married (3 days/year at most)
 - The employee's wife gives birth or miscarries (3 days/year at most)
 - The employee is affected by natural disasters (3 days/year at most)

3) Equality in retirement age, differentiation between working years with the company and years of SSC-insured person, and transparency in entitlement benefits calculations.

- ✓ The retirement age for males and females should not be different, instead, there should be one minimum age required of 55-year-old, and maximum 60 year-old. Beyond this age range is depending on the negotiation between the employee and employer, and the health conditions of the employee in particular.
- ✓ Define separately between retirement age, and number of working years that the SSC-insured person will benefit from an old-age pension (Articles 72) and lump sum payment (Article 74).
- ✓ The basis for the calculation of types of benefits needs to be clear and transparent by providing the formula under each Article. The employers and employees themselves should be able to track and verify the calculations.

IV) Employment Contracts; and Termination and Expiration of Employment Contracts.

The contract must be written and verbal contracts would not be accepted in order to monitor the contract and protect all parties. The initial language must be in Lao and translated into English or other as required by the company.

Article 81 **Suspension or Postponement of Employment Contracts** is vague in terms of the lack of differentiation in the cause or reason for detention and restriction. If the suspension has nothing to do with the committed crime of the employee, and the suspension lasts longer than 6 months, then

the employee should receive compensation due to the risk of not being able to return to the same position or a deduction in salary or not; and what if the person is committed crime, the employer has the right not to offer job to the person or not.

For Article 84 **Sale or Transfer of Business Activities and Partnerships**, there should be a consensus between the new owner and the current employer on the employee transfer taking into account their years of experience in the company. In case the new employer cancels the contract of the employee due to the sale or transfer of the business. It should be clear if it is the justified or unjustified termination of employment contract and who will bear the associated compensation cost (Article 90 **Compensation for the Cancellation of Employment Contracts**). The opinions on Article 90 seem to differ with some agreeing that the severance pay was too high and some believing that there should be an increase in the severance pay. Justification of the termination is questionable if the employer is abusing their power and assigning jobs that employees are unable to perform and directly or indirectly forcing the employee to resign.

Towards Article 85 **Rights of Employees during the Period of Advance Notice**, the employers in the manufacturing sector shared that the compensation during the period of advance notice is too burdensome on the employer as there is a significant loss of production on the days the employee is not working. The employer must bear the cost of the loss or production as well as the paid leave for the employee.

Owing to Article 86 **Termination of Employment Contract due to the Fault of the Employee**, the employers think they should have the right to cancel the employment contract immediately and seek compensation and responsibility from the employee for serious damages to the company with a conflict mediation mechanism applied on a case-to-case basis.

Policy Recommendations:

- 1) ***Written employment contract is legally recognized for employment contracts both in formal and informal sector; and it is understood and traceable by the people involved for justice assurance.***
 - ✓ All contracts must be in written form. The definition of a contract should be clear and simple to understand. The current contents for the written form of the contract specified by Article 78 should be simplified for employment in the informal sector.
 - ✓ There should be a clause for those who are not capable of understanding the contract thoroughly to have a third-party agent clarify the contents before any agreement, especially in informal sector.

- 2) ***Specification of the communication between the employer and employee for the Suspension and Postponement of Employment Contracts.***
 - ✓ “held, detained, or restricted to a certain area” is unclear and needs to be specified in Article 81 (for example, held in custody or detention according to criminal procedure law, etc).
 - ✓ There should be a clause for how the employer is made aware of the situation especially if it involves the criminal procedure and which parties should be involved. The employer has right to continue to offer job – same or new position to the employee or not; there should be mechanism for discussion of the cases.

3) *Effective and efficient use of a tripartite mechanism by the original and new employers to assure the sale or transfer of business activities and partnerships does not affect the social welfare of the employees, fair to parties involved, and maintain industrial relations between employee and new employer*

- ✓ Use the tripartite mechanism in process of discussion and negotiation between the original employer and new employer regarding the consequences of the transfer of the business or partnership on the existing employment relationship (Article 84, and Article 90).
- ✓ The employee should be well informed about their security in terms of employment contracts and other social welfare benefits that the new employer should continue to carry on.
- ✓ The accumulated years of experience should be part of the decision during the transfer because it affects the employee's Social Security Scheme (Article 90).

4) *Employer's rights reminder and internal conflict mediation mechanism in the termination of the employment contract due to the fault of the employee.*

- ✓ A clause in Article 86 to remind the right employer to press charges against the employee who has caused serious harm to the company needs to be added.
- ✓ Instructions for effective conflict mediation mechanisms to be applied on a case-to-case basis should be added on.

5) *Severance Pay – Fair compensation rate (especially for unjustified dismissal to discourage discrimination or any other form of abuse of power)*

- ✓ A mechanism is in place to determine the abuse of power or other unjustifiable reasons. Trade unions should represent the employees and witness and mediate.

V) **Protection of Labor Safety and Health, Labor Accidents and Occupational Diseases.**

Majority of the respondents viewed the provisions in the Labor Law, particularly Article 119 Obligations of the Employer and Article 128 **Treatment of the Victims of Labor Accidents and Occupational Diseases** are very relevant-entirely relevant to them. Overall, employers acknowledged the importance of OHS as it safeguards the employees from accidents and occupational diseases and provides measures for the costs of treatment and working time of the employees. It ensures the factory takes the risk assessment and occupational health and safety system in the workplace. The employers of the factories especially said they have applied OSH measures by, for example, installing the equipment, providing safety gear according to international standards, and providing regular training on fire prevention; there are also security and staff and officers stationed at the office. Strict safety measures in place are necessary to prevent accidents and occupational diseases, and losses, according to the respondents' comments.

In case the employee is injured from labor accidents, the person will be covered by the cost and loss by the Social Security agency as well as the company according to the company's internal regulations. Ideally, the accidents that occurred should be the responsibility of both the employee and employer; especially when the employee is not compliant with the safety regulations set by the employer. There were no known issues for the protection of the Labor Safety and Health Article shared and there is a general

acknowledgment and agreement for the importance of labor safety and the responsibility of the Social Security Organization.

VI) **Obligations of Social Security and Benefits.**

More than half of the participating companies viewed the provisions of the Social Security Law in this regard favourably. The policy is largely seen as beneficial to the insured person. The concerns however on the consistent and equal care of the hospitalization and the limited-service outreach to currently only three hospitals in Vientiane capital. The contribution rates are considered too high (Article 74), and the benefits are not obvious, and given the difficult economic situation, mandatory SSO participation may not be feasible for those who feel less economically secure, and they prefer to save money for themselves. However, higher-income individuals should have an option for a higher insurable earning ceiling and a choice to receive higher benefit options from the SSO.

Policy Recommendations:

1) *Hospitalization services are sufficiently available and accessible with increasingly quality services to SSO-insured persons; promote and communicate the SSO scheme and the benefits to wider public using the ICT effectively.*

- ✓ The hospital services should extend to, more than three hospitals in Vientiane's capital, the provincial hospitals, and certified clinics.
- ✓ The concerned agency should review the rights/benefits of medical treatment, and obtain "customers' opinions/customer satisfaction poll" from the insured people so as to improve the services accordingly.
- ✓ The concerned agency should provide up-to-date information regarding Social Security Scheme using digital technology.
- ✓ Develop communication strategy and promotional tools and materials to attract and reach out to the potential insured persons. Specifically, this is to convey the SSO's schemes and the benefits that the insured persons and their family will receive in short, medium and long terms.

2) *Social Security Scheme, contribution rates, and insurable earning ceiling should be aligned with the current socio-economic situations and the potential insured persons.*

- ✓ The adjustment of the contribution rates (increase to reduce) to be applied to employers and employees should reflect the current socio-economic situations, and balance the interest and capacities of the parties involved by effective use of the powerful industrial relations mechanism.
- ✓ There should be options for the existing insured persons and the future potential insured persons who have comparatively higher income and/or capacity to pay for higher insurable earning ceilings. Upon the agreement on the share of contribution between the employer and employees, the SSC schemes could be designed to respond to these groups of employees to attract more contributions from them to the SSO.

VII) Occupational Safety and Health: Training, Use of Safety Gear, and Medical Examination of Employee.

The respondents viewed the “**Training obligations and Measures on use of safety gear**” provision in the OSH decree on the opposite scale as “a bit relevant-partly relevant versus very relevant-entirely” to about the same degree. Generally, the employers viewed that safety training was regarded as very much needed to have to be done before the start of the job and organized according to the company’s plans. The common practice of training, which is noted mostly for manufacturing on a relatively large scale, for the existing staff is to do it at least once a year and for the new staff is during the first month of the probation period. However, different departments require different OSH training and certain departments do not need it at all. In addition, the factories usually have a safety system in place, including tools and equipment, and proper work layout required to ensure OSH, and install signs, and alarms. Also, the staff on duty are provided OSH gear.

The Medical Examination of Employees (Article 24) as part of the staff welfare is applied within the companies and sometimes to the families as well. The employers viewed it does not sound to limit to only two government hospitals providing yearly medical examinations under the SSO. In practice, some companies do not restrict the employees from using any certified medical center, clinic or hospital as long as they found it convenient, effective and it is within the budget provision of the company.

Policy Recommendations:

- 1) ***OSH culture development and consistent OSH prevention practices are in place in different labor units, sector/industry and scales.***
 - ✓ The labor unit, manufacturing and any business establishments that showed consistent OSH best practices should be widely recognized as OSH champions/role models by the government agency and others.
 - ✓ The concerned government agent in collaboration with the OSH champions develops the best practices guides and tool kits; and promotes them through different channels, digital platforms, and social media.
 - ✓ The concerned agency should provide information that is necessary for the employers to seek OSH advice, training and access to safety gear with minimum cost, etc.
 - ✓ The concerned agency should make the report on labor incidents, and occupational health diseases and proactively prevent and protect measures, and progress made by industry-based available to a wider public.
- 2) ***The recommended Medical Examination service providers should be extended to more than currently two, to increase the competitiveness of the services, accessibility, and the value for money of the users.***
 - ✓ The concerned agency should suggest more hospitals, clinics, and medical centers, and beyond Vientiane capital only, that met the requirements of the provider of the Yearly Medical Examination under SSO’s scheme.
 - ✓ The employer and the employee upon agreement, are free to choose from the recommended service providers.
 - ✓ The concerned agency, when identifying the faults of Medical Examination reports from the employer, shall proceed the law pursuit.