



# គម្ពីរសហគមន៍សិក្សាស្រាវជ្រាវស្តីពីច្បាប់

## COMMUNITY LEGAL EDUCATION CENTER

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### Legal Consequences of Fixed Duration Employment Contract

Fixed duration employment contracts, for a period of three or six months, are being widely used by most private enterprises and establishments instead of long term contracts. This practice may lead to labor disputes between employees and employers. In this article we discuss *“the legal consequences of fixed duration employment contract”*, as promised in the previous issue (#6587, Wednesday February 25, 2009 and #4831, Thursday February 26, 2009).

The Arbitration Council Award No. 36/06, Issue 2, and the Arbitration Council Award No. 10/03, Issue 1, which were based on Article 67 of Cambodian Labor Law and ILO’s guideline No. 166, 1982, indicate that fixed duration contract should not be used for long term employment. The Fixed Duration of Employment Contract was intended for short term employment, such as substitution, occasional, seasonal or nonpermanent employment. This type of contract, by law, should not therefore be used for long term or permanent employment.

#### *What are the consequences of using Fixed Duration Contract for long term or permanent employment?*

The fixed duration contract is likely to **adversely affect employment stability and security**, since employees will feel that their employment may not be extended when their three or six month contract ends. Employees are also likely to feel that they will never be employed full time. The lack of stability and security in this situation is not a motivation and is likely to negatively affect the employee’s productivity levels, undermining the profitability of the enterprise.

Moreover, this practice of inappropriately using fixed duration contracts appears to breach standards outlined in the Cambodian Constitution and international laws and standards.

First, according to the constitution of the Kingdom of Cambodia, Article 36; “...Khmer citizens of either sex shall enjoy the right to choose any employment according to their ability and to the needs of the society...” The Universal Declaration of Human Rights, Article 23 states; “Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment...” The Covenant on Economic, Social and Cultural Rights also states, “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work...” In our view, the inappropriate use of fixed term contracts undermines the freedom to choose employment and cannot be described as a just condition of work.

While working under a fixed duration contract, employees are likely to be afraid of forming or being members of a trade union or carrying out union’s activities, because they fear the employer will not renew their short term contract. Employers are more likely not to renew the contracts of trade union leaders or activists, employees’ representative or any employees who try to protest against any abuse of their right to employment This significantly **reduces the freedom to join an association or a trade union**.

Article 36 of the Constitution states; “...Khmer citizens of either sex shall have the right to form and to be member of trade unions...” Article 20 of the Universal Declaration on human rights, Article 22 of the covenant on civic and political rights, Article 8 of the Covenant On Economic, Social And Cultural Rights, and the Core Bargaining Agreement 87 of the ILO, protect every citizen’s rights to form an association or a trade union and to join the activities of an association or trade union. Article 266-271 of Cambodia’s labor law also further states that employees have the right to freely choose or form and to be member of a trade union

Therefore, to apply the fixed duration contract to a long term or permanent employment situation is likely to be a key hindrance to employees' **freedom of trade union/association**, which is protected by the law provisions mentioned above.

Secondly, a contract which is less than one year can **deprive employees of their rights to legitimate employment benefits**, such as *maternity leave, annual leave and sick leave*.

A pregnant employee is at risk of non-renewal of her employment contract or of losing her employment because she is pregnant. This is an example of the dominant position of power the employer holds over employees in a fixed duration contract, and leaves little room for an employee to seek redress under Cambodia's labor laws. Article 46 of the Constitution states; "... A woman shall not lose her job due to pregnancy... Woman shall have the right to take maternity leave with full pay and with no loss of seniority or other social benefits... Article 11 (2) (a) of the Convention of Elimination of all forms of Discrimination against Women (CEDAW) states that; "the State Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave". Article 182, and 183 of the Labor Law, states the employer is prohibited from discharging women from employment during their delivery or their maternity leave. Thus, using the fixed duration contract for long term or permanent employment undermines employees' benefits which are determined by the provisions mentioned above.

In summary, using the fixed duration contract for employment which is not occasional, seasonal, or substitution, is not appropriate and does not accord with national and international laws. These national and international laws and standards have been adopted and ratified by the National Assembly of the Kingdom of Cambodia. In our view, the widespread inappropriate use of fixed duration contract will decrease the employees' security, freedom to join trade union, association and legitimate benefits.

The continued use of these contracts will not allow for a harmonious and productive workplace.