Payment of Seniority Indemnity

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Ministry of Labour and Vocational Training, 23 September 2018

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1. Scope of the Implementation of Seniority Indemnity

Article 1 of Prakas 443

For enterprises/establishments covered by	For Undetermined Duration Contract (UDC)						
the Labour Law							
It covers all enterprises/establishments and persons defined by the provisions of the Labour Law.	The seniority indemnity as stipulated in new Article 89 of the Labour Law shall apply to workers/employees who have undetermined duration contract only.						

Not applicable to Fixed Duration Contract (FDC)

- **❖** Duration of Fixed Duration Contract
- Article 67-2 of the Labour Law stipulates that the labor contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years.

For example:

- In case the first contract has its duration of 2 years, this contract can be renewed one or many times but the total renewals cannot exceed 2 years. So the total duration of this contract is 4 years.
- In case the first contract has its duration of 1 year, this contract can be renewed one or many times but the total renewals cannot exceed 2 years. So the total duration of this contract is 3 years.
- In case the first contract has its duration of 6 months, this contract can be renewed one or many times but the total renewals cannot exceed 2 years. So the total duration of this contract is 2 years and 6 months.
- The payment of severance pay must follow Article 73 of the Labour Law
- The severance pay of the fixed duration contract (FDC) must be settled as per Article 73 of the Labour Law:
 - The amount of the severance pay is stipulated in the CBA
 - If not stipulated in the CBA, this severance pay must be at least 5% of the wages that the workers/employees have received during the period of the contract.

2. Amendment Requiring the Payment of Seniority Indemnity

A. Reason for the amendment

For workers/employees

- Prevent the risk of workers/employees in case the factory closes down and the owner runs away without responsibility.
- Allow workers/employees to get seniority indemnity settlement every 06 months.
- Provide better protection for workers/employees in the labour relation by allowing workers/employees to get this indemnity forever in the life of their work without maximum duration.
- Provide better protection for workers/employees than the old rule because this amendment will encourage people to choose more Undetermined Duration Contract (UDC) than Fixed Duration Contract.
- Be more flexible for workers/employees in choosing a new job as per location or type of factory.

For employer

- Avoid keeping indemnity for dismissal that is calculated as per the seniority, which is too much upon each termination of employment with workers/employees. This is just a new formula to ease the burden of the responsibility of the employer who shall be responsible for workers/employees as stipulated in the Labour Law since 1997.
- The employer worries about the payment of the old seniority at the same time. Should provide possibility for the employer to pay by installments every six months.
- Can also have more burden for the employer as old Article 89 stipulates that regardless of how many years of employment, the maximum duration for the calculation of seniority for dismissal or contract termination is not longer than 12 years.

B. Requirement for payment of seniority that exists before 2019

Article Two of the Law on Amendment

"The calculation and payment of seniority of workers/employees who have worked before this law takes effect shall follow the formality determined by a Prakas of the Minister in charge of labour."

* Purpose:

The purpose of this Article 2 is to protect the interests of workers/employees who are protected by the Labour Law 1997. If it does not stipulate so, workers/employees who have seniority before 2019, especially workers/employees who have many years of seniority will lose their benefit due to the amendment to the Labour Law.

3. Content of Prakas 443 on Payment of Seniority Indemnity

A. Payment of seniority indemnity from 2019 (Article 2 of the Prakas)

Date of implementation	From 2019 onwards
Payment	 Equal to 15 days of wage and other benefits per year Make two payments per year for workers/employees who are working: 7.5 days in June of each year and 7.5 days in December of each year For the first year of employment, workers/employees who have seniority from 1 month to 6 months shall receive 7.5 days of seniority indemnity. Have no maximum (provide forever for the rest of the job's life.
No entitlement	 Workers/employees commit serious misconduct (Article 83 of the Labour Law) Workers/employees resign.

B. Payment of back pay of seniority indemnity that exists before 2019

For workers/employees who have been working at enterprises/establishments

1 of workers/employees who have been working	at Chterprises/establishments				
In the textile, garment and footwear sector	In other sectors other than the textile, garment				
THE REPORT OF THE STATE OF THE	and footwear sector				
The employer will pay back pay of 30 (thirty)	The employer will pay back pay of 15 (fifteen)				
days of the total seniority indemnity every 1	days of the total seniority indemnity every 1				
(one) year as follows:	(one) year as follows:				
- 15 (fifteen) days in June of each year and	- 7.5 (seven and a half) days in June of each year				
- 15 (fifteen) days in December of each year.	and				
	- 7.5 (seven and a half) days in December of				
WBL REEL TROUTS BRANCOW IN CO. CO. CO. CO. CO. CO.	each year.				

- The maximum for paying back pay of seniority indemnity
 - The maximum of seniority is counted from 2008 to 2018
 - 6 months maximum of the average net wages of each year.
 - 156 days maximum

Note: What is net wage?

According to Article 103 of the Labour Law, wage includes:

- 1. Net wage (not include other remunerations)
- 2. Other remunerations are as follows:
- overtime payments;
- commissions;
- bonuses and indemnities;
- profit sharing;

- gratuities;
- the value of benefits in kind;
- family allowance in excess of the legally prescribed amount;
- holiday pay or compensatory holiday pay;
- amount of money paid by the employer to the workers during disability and maternity leave.
- 3. Wage does not include:
- health care;
- legal family allowance;
- travel expense;
- benefits granted exclusively to help the worker do his or her job.

For the first year of employment which is the basis for seniority indemnity

Seniority from 1 month to 6 months	Receive 7.5 days of seniority indemnity
Seniority more than 6 months	Receive 15 days of seniority indemnity

The remaining seniority indemnity will not be paid in case:

- The worker/employee commits serious misconduct (Article 83 of the Labour Law)
- The worker/employee resigns.

B. Payment of back pay of seniority indemnity that exists before 2019 (Article 3 of the Prakas (Cont.)

* Table of index of days in accordance with the law in each year

Seniority	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total nu days for l of sen inden	back pay iority
11 years upwards	15	15	15	15	15	15	15	15	15	15	15		156
10 years		15	15	15	15	15	15	15	15	15	15		150
9 years	And the	22 10	15	15	15	15	15	15	15	15	15		135
8 years	100			15	15	15	15	15	15	15	15	8/12	120
7 years				118	15	15	15	15	15	15	15		105
6 years						15	15	15	15	15	15		90
5 years				4.00			15	15	15	15	15		75
4 years				- 42				15	15	15	15		60
3 years						3. 4.			15	15	15		45
2 years								-		15	15		30
1 year				2.23			-				15		15

For example:

An enterprise/establishment employs 110 workers/employees starting in different years

Staff Type	Number of staff (persons)	Year of joining	Seniority before 2019 (counting as of the end of 2018)	Total seniority indemnity (15 days/year)
1	20	2008	11 years	* 156 days (15 x 10) + 6
2	30	2012	7 years	105 days (15 x 7)
3	40	2016	3 years	45 days (15 x 3)
4	10	2018	1 year	15 days (15 x 1)
5	10	2019	0 year	0

^{*} For staff type 1 who has seniority of 11 years receive the total seniority indemnity of 156 days (26 days of working days per month x 6 months which is the maximum), not 165 days. To find the number of working days per month, take 52 which is the number of weeks per year to be multiplied by 6 which is the number of working days per week (so, the number of working days per year is $52 \times 6 = 312$). Then take 312 which is the number of working days per year to be divided by 12 which is the number of months per year. So the number of working days per month is 312/12 = 26.

For the calculation from 2019, the 110 staff will receive as follows:

For the textile, garment and footwear sector (shall pay 30 days of the total seniority indemnity per year)

Staff	2019		2020		2021		2022		2023	
	June	December								
Type 1 (156 days)	7.5 +15	7.5 +15	7.5 +15	7.5 +15	7.5 +15	7.5 +15	7.5 +15	7.5 +15	7.5 +15	7.5 +15
Type 2 (105 days)	7.5 +15	7.5 +15	7.5 +15	7.5 +15	7.5 +15	7.5 +15	7.5 +15	7.5 + 0	7.5 + 0	7.5 + 0
Type 3 (45 days)	7.5 +15	7.5 +15	7.5 +15	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0

Unofficial Translation

Type 4 (15 days)	7.5 +15	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0
Type 5 (0 days)	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0

For other sectors other than the textile, garment and footwear sector (shall pay 15 days of the total seniority indemnity per year)

Staff	2019		2020		2021		2	022	2023	
	June	December	June	December	June	December	June	December	June	December
Type 1 (156 days)	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5
Type 2 (105 days)	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5	7.5 + 7.5	7.5 +7.5
Type 3 (45 days)	7.5 + 7.5	7.5 + 7.5	7.5 + 7.5	7.5 + 7.5	7.5 + 7.5	7.5 + 7.5	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0
Type 4 (15 days)	7.5 + 7.5	7.5 + 7.5	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0
Type 5 (0 days)	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0	7.5 + 0

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Thanks!