



Employers Guide for Labour and Employment Relations

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About the Chamber

The Samoa Chamber of Commerce and Industry (SCCI) is Samoa's National Private Sector Organization (NPSO). It is an incorporated association of businesses and private sector organizations representing all areas of Samoa's private sector. The Chamber's purpose, as outlined in its Constitution is "to act as Samoa's National Private Sector Organization that will promote the interests, well-being and growth of Samoa's private sector at the national, regional and international levels to improve the economic and social well-being of the people of Samoa."

Becoming a valued Chamber Member: By joining Chamber, you have access to the following benefits:

- A range of capacity building training, courses and workshops
- Assist with & endorsement of funding applications to PIPSO and PSSF
- Policy support and lobbying member issues with Government – have your say
- Endless Networking opportunities – build your web of customers!
- Dissemination of relevant information including marketing and business development support
- Participation in local and regional workshops

About the Employers' Guide: The Employers' Guide provides key information on national minimum labour standards with which private sector employers in Samoa must comply.

Disclaimer: Whilst we have put together key information on labour standards in this guide, employers in the Private Sector are strongly encouraged to refer to the Ministry of Commerce Industry and Labour (MCIL) for more information. National labour standards are found in the Labour and Employment Relations Act 2013 (LERA 2013) and the Labour and Employment Relations Regulations 2016 (LERR) administered by MCIL. Please also note that there are special requirements when employing children under the age of 18 years, women and people with disabilities which are also found in the LERA 2013 & LERR 2016. If an employer wishes to know more about 'Child Labour', please refer to SCCI's "Employers Guide to Eliminating Child Labour" from the SCCI's secretariat.

Information in this guide is drawn from the LERA 2013, Labour and Employment Relations Regulations 2016; the Occupational Safety and Health Act 2002 and Occupational Safety and Health Regulations 2014.

Principles of Employment

- ***Prohibition of Forced Labour***

An employer must not require an employee or applicant for employment to perform forced labour.

- ***Prohibition of sex discrimination in employment***

- a) An employer must pay male and female employees equal remuneration for work of equal value
- b) A person must not discriminate against an employee or an applicant on 1 or more arbitrary grounds, including ethnicity, race, colour, sex, gender, religion, political opinion, national extraction, sexual orientation, social origin, marital status, pregnancy, family responsibilities, real or perceived HIV status and disability.

- ***Freedom of Association***

Employers and employees may establish organizations without any distinction for the promotion and protection of their economic and social interests, and to join any such organization of their choice.

- ***Right to bargain collectively***

Employers (or employer associations) and employees' associations have the right to bargain collectively on matters of mutual interest.

Wages

- As an employer, you are required to pay wages to your employees in accordance with the terms of the employee's contract of services.
- The Head of State, acting on the advice of Cabinet, may by Order prescribe the minimum wage to be paid in an industry, occupation or class of employees. Refer to the MCIL for the current minimum wage.
- Wages earned by an employee must be paid to the employee within 7 days following the last day of the wage period. Unless otherwise expressly consented to by an employee, all wages must be paid directly to them on a working day at his/her place of employment. However, at the written request or consent of the employee, wages may be paid:
 - a) By money order, by cheque, or by lodgment at a bank to the credit of an account standing in the name of the employee; or
 - b) In any other currency not being Samoan tala
- Payment details or issuance of an employee's wage details must be in an approved form or pay slip and must include the following information:
 - a) Employee's name
 - b) Pay period
 - c) Hours of work
 - d) Hourly rate
 - e) All deductions made from the employee's wages

Authorized Deductions

- Deductions from the wages of an employee are only to be made for the following:
 - a) Periods of absence from work, not being a leave entitlement
 - b) Damage to or loss of goods or loss of money entrusted to the employee where the damage or loss is directly attributed to his/her neglect or default. The conditions for making these deductions are prescribed in LERA 2013.
 - c) The cost of meals, accommodation and amenities supplied by the employer. The conditions for making these deductions are prescribed in LERA 2013
 - d) Recovery of advances or overpayments of wages;
 - e) Deductions made on behalf of the employee by employer - Pay as You Earn tax (PAYE), National Provident Fund (NPF) and Accident Compensation Corporation (ACC)
 - f) Any other lawful deductions (by Court order or deductions with the consent of CEO of MCIL).

- The total amount of all deductions other than deductions for absence from duty must not exceed 35% of the wages payable for that period.

Employment Records

- An employer is required to keep employee records that include the following information
 - ✓ The number of employees
 - ✓ The sex and age of employees
 - ✓ The type of industry in which the employer is involved
 - ✓ The type of work undertaken by the employees
 - ✓ The wages being paid for each employee, including method and the period of payment
 - ✓ The average weekly hours worked by and the average hourly earnings for each employee
 - ✓ Any entitlements, allowances or benefits, including things such as lodging or food provided by the employer
 - ✓ The overtime worked by each employee, including the overtime rates for each employee
 - ✓ Any attendance books, timecards, timesheets or any other record of attendance held by the employer relating to its employees for a period of no less than the preceding 12 month period
 - ✓ Copy of Signed Employment Contract between the employer and employee with one copy to be given to MCIL when requested by the CEO.
- An employee may request from an employer the employee's record.. Upon receipt of the request, the information must then be provided within 10 business days from the date of the request.

Types of Employment Arrangements

- ***Normal Full Time Work***

This type of employment arrangement refers to work that is scheduled for 8 hours a day (9am-5pm and in some cases 8am-4pm) normally from Monday to Friday.

- ***Shift Work***

Some businesses may be required to operate outside of normal working hours. Some may even be required to operate 24 hours 'continuously' each day of the week. Such businesses may implement a 'shift work' arrangement dividing their work day into a number of shifts.

Businesses such as morgue or funeral services; hospital; pharmacy; fire and emergency services; search and rescue services; police services; security services; waste management services; public transport services; shipping services; civil aviation services; hotel and hospitality services; communication services may implement a shift work arrangement.

- ***Part-time Work***

A part-time work arrangement means that an employee is expected to work less than 6 hours a day.

- ***Piece Work***

Piece work means an arrangement whereby the employee is paid a wage based on a specific task or number of tasks to be undertaken by the employee, after which, the employment arrangement is deemed to be terminated. The employee is entitled to be paid wages in proportion to the amount of piece work which he/she has performed.

- ***Time-bound or Task-bound Contract Arrangement***

An agreement whereby one person agrees to employ another as an employee and that other agrees to serve his/her employer as an employee, and includes an apprenticeship contract.

Hours of Work

Type of Work	Hours of Work
Normal Full time Work	<p>Normal Time</p> <ul style="list-style-type: none"> • An employee must not be required to work for more than 8 hours a day or 40 hours a week • Employee to have at least 36 consecutive hours of rest from work within any 7 days, (i.e. at least one day off a week). <p>Overtime</p> <ul style="list-style-type: none"> • If the hours worked exceed 8 hours a day or 40 hours a week, the employee must be paid at least 1.5 times his/her ordinary rate for those overtime hours. • The employer must have requested the extra work.
Shift Work	<ul style="list-style-type: none"> • An employee who is employed in shift work may be required by the employer to work: <ol style="list-style-type: none"> a) More than 6 consecutive hours in 1 day; b) more than 8 hours in 1 day; c) more than 40 hours in 1 week; d) at least 12 hours in 1 day under any circumstances • However, the average number hours of work over a period of 3 weeks MUST NOT exceed 40 hours in a week. • If the hours worked exceed the average 40 hours a week, the employee must be paid at least 1.5 times his/her ordinary rate for those overtime hours.
Work on Sundays	<p>Normal Full Time work</p> <ul style="list-style-type: none"> • An employee who works at the request of his/her employer on a Sunday is to be paid not less than double his/her ordinary rate of pay unless the employee and the employer have agreed that a whole day within 3 days immediately before or after that Sunday is to be substituted instead. <p>Shift Work</p> <ul style="list-style-type: none"> • An employee who is scheduled to work in a regular shift on a Sunday is to be paid the ordinary rate of pay.
Work on Public Holidays	<p>Normal Full Time work</p> <ul style="list-style-type: none"> • An employee who works at the request of his/her employer on a Public Holiday is to be paid not less than double his/her ordinary rate of pay. • However an employee may in agreement with the employer choose to work on a public holiday and be paid his/her normal rate for that work and instead substitute another working day to take his/her public holiday.

	<p>Shift Work</p> <ul style="list-style-type: none"> An employee who is scheduled to work in a regular shift on a Public Holiday is to be paid the ordinary rate of pay.
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Leave and Holidays

Leave Categories	Standard Period
Annual Leave	<ul style="list-style-type: none"> After working for a period of 12 months (including any probationary period) an employee is entitled to at least 10 days of paid annual leave to be taken on days mutually agreed between the employer and employee. Any annual leave entitlement that is not taken within a year will be forfeited The employer MUST inform the employee of his/her entitlement upon confirming the employment of the employee and must remind the employee of untaken annual leave to utilize before new leave are granted to avoid forfeiture An employee may request the employer for payment in lieu of annual leave and should the employer authorize the request, approval from the CEO of MCIL is to be sought before any payment is made out to the employee.
Sick Leave	<ul style="list-style-type: none"> After working for a period of at least 12 months (including any probationary period), an employee is entitled to at least 10 days sick leave in a year. Where an employee takes 3 days of sick leave, the employee must produce a medical certificate by a qualified medical practitioner in order for his/her sick leave to be approved An employee may carry forward his/her unused sick leave entitlement provided that this does not exceed 20 days in a given year. An employee must be paid his/her normal rate of pay for each day that they are absent on approved sick leave
Maternity Leave	<ul style="list-style-type: none"> After working for a period of at least 12 months (including any probationary period), a female employee is entitled to a period of and payment of maternity leave according to these options: <ul style="list-style-type: none"> a) at least 4 weeks with full pay and 2 weeks without pay

	<ul style="list-style-type: none"> b) at least 6 weeks on two-thirds pay • A female employee returning from maternity leave must be allowed periodic rests of not less than 1 hour to breastfeed her child.
Paternity Leave	<ul style="list-style-type: none"> • After working for a period of at least 12 months (including any probationary period) a male employee is entitled to a minimum of 5 days paid paternity leave.

Health and Safety at work

- An employer must take all reasonably practicable steps to protect the safety, health and welfare of employees while at work. This includes substances, systems of work and any building or public or private area in which work takes place. Each employer must establish and maintain effective methods for:
 - a) Systematically identifying existing and potential hazards to employees
 - b) Systematically identifying, at the earliest practicable time, new hazards to employees
 - c) Regularly assessing the extent to which a hazard poses a risk to employees
- The information, instruction, training and supervision necessary to protect each employee's health, as well as how to deal with emergencies that might reasonably be expected to arise in the course of work, should be clearly provided by the employer in appropriate languages. Each employer must:
 - a) Provide, maintain and make accessible to employees the protective clothing and equipment necessary to avoid injury and damage to their health; and
 - b) Take all reasonably practicable steps to ensure that employees use that protective clothing and equipment whenever the circumstances for which it is provided arise; and
 - c) Make provision, in the place of work, for protective clothing and equipment provided to be cleaned and securely stored without risk of damage when not required.

For Designers, manufacturers and suppliers

- Every person who designs, manufacturers or supplies any article, or substance or machinery for use at a place of work, shall:
 - a) Ensure that the article, substance or machinery is so designed and constructed or manufactured as to be safe and without risk to health and safety when it is

- used properly and in accordance with relevant information or advice relating to its use which has been provided by the designer, manufacturer or supplier;
- b) Take such steps as are necessary to ensure the provision of adequate information in the English and Samoan language to purchasers and users about the use of such article, substance or machinery and about any requirements necessary to ensure that it will be safe and without risk to health when properly used.

Accident register

Every employer shall keep a register containing details of every accident/incident which causes or which nearly causes death, serious injury, or illness to any person whether employed at the workplace or not. Such register shall comprise copies of all accident report forms and all accident investigation sheets as approved from time to time by MCIL.

The employer shall notify as soon as possible or give written notice of the occurrence within 7 days to MCIL, upon occurrence of an accident that causes death or serious injury or illness to any person in or about an employers' place of work. Additional conditions on accident notifications and investigation are in the OSH 2002 administered by MCIL.

Employing Foreigners

If an employer wants to employ a foreigner, please refer to the LERA 2013, Part IX and/or MCIL. There are certain requirements for this category of employees with which issuance of Foreign Employee Employment Permits (FEEP) is subject to the assessment processes and procedures by the Ministry of Commerce, Industry and Labour and the Samoa's Immigration Office. The processes and procedures on the issuance of FEEP include:

- How to apply for FEEP
- Categories for Employment Permit
- Penalties, Application Fees, Exemptions
- FEEP Assessment Process

Workplace Policies

It is important for **employees to understand what the rules are that cover their workplace**. A set of policies, procedures, codes, rules and guidelines must be provided for employees to understand and prevent misunderstandings. Clear and consistent expectations for employees across the organization must be set through a person's job description and employment agreement.

General and additional expectations that apply to all employees in a workplace are set by creating policies, procedures, manuals, rules, codes and guidelines. These can cover a wide range of areas such as conduct, health and safety, lateness and absence, managing performance issues, etc.

Any other entitlements or benefits for employees not stipulated in the LERA 2013 but which will be offered by the employer are also to be documented as a policy or be part of their employment contracts.

When developing new policies or reviewing existing policies, the employer must involve the employees in the consultation process. It is important to make employees aware of the existence of policies, procedures and rules in the workplace, as one of the first tasks for an employer and as stipulated in the LERA 2013.

Elimination of Sexual Harassment in the Workplace

It is recommended that employers take the following steps to prevent sexual harassment in the workplace:

- a) Develop and implement a comprehensive strategy to address sexual harassment
- b) Write and implement a sexual harassment policy
- c) Provide regular training and information on sexual harassment to all staff and management
- d) Encourage appropriate conduct
- e) Create a positive workplace environment

Termination of a Contract of Service

Unlawful Reasons to Terminate Employment

- An employer must not terminate the services of an employee during the period where the:
 - a) is sick (except when the employee is unable to continue to provide his/her services at the time and in the future as a result of the sickness)
 - b) is on paternity or maternity leave

Lawful Reasons to Terminate Employment

- An employee’s contract of service may be terminated due to following reasons:
 - a) When a contract of service for specific work or a specific period of time is completed
 - b) Where an employee or an employer wishes to terminate a contract of service.
 - c) On account of misconduct or abuse. An employee may cease his/her service to an employer where they are subjected to physical, mental or verbal abuse or harassment by the employer at any time or place. An employer may terminate the services of an employee due to;
 - 1) Willful breach of conditions of employment
 - 2) Willfully disobeys lawful instruction
 - 3) Continuously under-performs
 - 4) Willfully misleads the employer in relations to his/her qualifications or work experience
 - 5) Is absent without reasonable excuse for at least 3 consecutive days.

Giving Notice

Notice of termination of contract must be given in accordance with the following schedule:

Length of Service	Notice Period for Termination
Between 3 months and 1 year	1 week
Between 1 year and 4 years	2 weeks
Between 4 years and 7 years	3 weeks
Between 7 years and 10 years	4 weeks
Between 10 years and 13 years	5 weeks
Between 13 years and 16 years	6 weeks
Between 16 years and 19 years	7 weeks
More than 19 years	8 weeks

An employer may pay an employee instead of giving a period of notice. The amount paid must equal or exceed the total amount that the employee is entitled to receive at the end of the minimum period of notice (i.e. final pay off).

Final Pay off

An employee, regardless of the reasons for termination, is entitled to receive their final payment. This final payment must at least include any unpaid wages, and provided the employee has worked for at least 3 months, they are also entitled to any untaken annual leave and/or any accrued proportionate leave. It may also include other incentives, allowances and entitlements as specified in the employee’s contract.

A notice period is not required for the following cases:

- a) a part-time employee
- b) a seasonal employee
- c) termination due to misconduct or abuse
- d) certain employees under training arrangements (excluding apprenticeships)
- e) an employee engaged for a specific period or task;
- f) a daily hire employee working in the building and construction industry or the meat industry.