



THAILAND

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1. GENERAL PRINCIPLES

Forums For Adjudicating Employment Disputes

Employees may bring employment disputes before Labor Officials at the Ministry of Labor. In addition, Thai Labor Courts have exclusive jurisdiction for labor claims brought within their territorial jurisdictions. The Central Labor Court has jurisdiction with respect to labor claims brought within Bangkok and the surrounding provinces. Appeals from Labor Courts go directly to the Supreme Court, bypassing the appellate level. If the place of work is not located within the territorial jurisdiction of a Labor Court, the claim may be brought in a Court of First Instance.

The Main Sources of Employment Law

Labor matters are generally governed by the Labor Protection Act B.E. 2541 (A.D. 1998) and the Civil and Commercial Code. Other Laws include the Labor Relations Act, the Act Establishing the Labor Court and Labor Court Procedure, the Provident Fund Act, the Social Security Act, the Employment and Job Seeker Protection Act, the Skill Development Promotion Act, the State Enterprise Labor Relations Act, the Workmen's Compensation Act, and the Foreign Employment Act. The Thai Labor force is largely non-unionized, so collective agreements do not play a large role in regulating working conditions. The Ministry of Labor and Social Welfare is the authority responsible for setting and enforcing minimum employment standards.

National Law and Employees Working For Foreign Companies

Thai Labor Law provides a minimum level of protection for all employees working in Thailand regardless of nationality, origin, or the law governing their employment contracts.

National Law and Employees Of National Companies Working In Another Jurisdiction

Thai Law does not apply to employees of Thai companies working in another jurisdiction.

2. HIRING THE EMPLOYEE

Legal Requirements As To The Form Of Agreement

The law views employment agreements as contracts for the hire of services. There is no requirement in Thailand for a contract of employment to be in writing. Where the contract of employment is in writing, the employer should provide a copy to the employee immediately after it has been signed. Thai law does, however, require companies with ten or more employees to file their work rules with the Labor Official.

Mandatory Requirements

- Trial Period

Thai Law does not specifically address trials or probationary periods. However, under Thai Law, only employees who have worked for 120 days or more are entitled to severance pay if they are terminated without cause. An employee who has worked for less than 120 days can be terminated without receiving severance pay.

- Hours Of Work

The law provides maximum working hours based on the type of work. In general, normal working hours cannot exceed eight hours per day and 48 hours per week – or such lower numbers agreed by an employer and an employee. In cases of work detrimental to employees' health or safety, normal working hours may not exceed seven hours per day with a maximum of 42 hours per week.

- Earnings

Employees may not be paid less than the minimum wage. This is agreed periodically and varies

across Thailand. The minimum wage is set by the Ministry of Labor. Wages must be paid in Thai currency, unless otherwise agreed by the employer and the employee.

- Holidays/Rest Periods

Employees are entitled to at least one rest day per week, and one rest hour per day. In addition, they are entitled to a minimum of 13 public holidays per year, one of which must be the National Labor Day. After one year of service, employees are entitled to a minimum of 6 working days paid annual leave.

- Minimum/Maximum Age

Employees must be 15 years or older. For those over 15 but under 18, additional restrictions apply, such as a requirement to inform the applicable Labor inspector. There is no maximum age of employment in the private sector. Note, however, government employees may be subject to maximum age restrictions depending on their positions.

- Illness/Disability

An employee is entitled to sick leave for such days as the employee is actually ill, but is only entitled to receive pay for 30 days of sick leave per year. When an employee cannot work because of injury or illness arising out of working, this cannot be regarded as sick leave.

When an employee takes sick leave for three or more days consecutively, the employer can request the employee to produce a medical certificate issued by a first class physician or a government clinic. If the employee cannot produce such a medical certificate, the employee must give an explanation to the employer.

- Location of Work/Mobility

Under the Labor Protection Act, if an employer plans to relocate its place of business which materially affects the employee's or his/her family's life, the employer shall notify the employees at least 30 days before the date of the relocation. Should shorter or no notice be given, employers are obligated to make special severance payments in lieu, equal to 30 days wages. Following such notice, should an employee wish to terminate the employment, normal severance obligations apply.

- Pension Plans

A compulsory old age pension scheme for private sector employees is administered by the Social Security Office. In addition, the law has described a scheme called the "Employee Welfare Fund" (EWF) which is to be established and managed by the Employee Welfare Fund Committee upon enactment of a Royal Decree. The Royal Decree has not yet been issued and the EWF is therefore not effective. Under the Labor Protection Act, employers with ten or more employees would have to be members of the EWF. The fund will have the same objective as a provident fund, which is to provide financial security for employees, in case they resign or retire from work and for their beneficiaries in case they die, or in other cases as prescribed by the Employee Welfare Fund Committee.

A provident fund may be jointly set up by the employer and the employees. Establishing such a fund is an additional benefit for employees and is not mandatory under Thai law. Contributions by the employer and the employees are based on a specified percentage of the employee's wages in accordance with the fund's regulations. Provident funds must be managed by a professional manager licensed for this purpose. Upon termination of employment or membership of the fund, employees shall receive their contributions and a percentage of the employer's contribution according to such terms and conditions as stated in the relevant fund's regulations. The law provides that if an employer has already registered a provident fund and provides welfare for the employees in case of their resignation or death in accordance with the rules and procedures prescribed in the Ministerial Regulations, the employer is not required by law to register its employees with the Employee Welfare Fund.

- Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

A pregnant employee is entitled to a maximum maternity leave of 90 days per pregnancy, including holidays, and is entitled to receive pay for up to 45 of those days. Employers are not

allowed to terminate a female employee because of pregnancy. Under the Labor Protection Act, there are no other parental rights.

- Compulsory Terms

The law requires employers to provide working conditions which are not less than the minimum standards set by law and to pay wages in an amount no less than the minimum wage.

Employers having ten or more employees must submit their written work rules to the Department of Labor Protection and Welfare and must post a copy at the place of work, in a prominent location. Work rules must cover such matters as working days, regular hours and rest periods; holidays and rules for taking holiday, rules on overtime and holiday work; date and place of wage payment, overtime pay and holiday pay, leave and rules for taking leave; disciplinary measures and punishment; procedures for submission of grievances; and procedures for termination of employment including severance pay and special severance pay.

Employees' records must contain the name and surname; sex; nationality; date of birth or age; present address; date of commencement of employment; position or duties; rate of wages and other benefits as agreed between employee and employer; and date of termination of employment.

Documents relating to the payment of wages, overtime pay, holiday pay and holiday overtime pay must contain at least the particulars of working days and working time; work done by employees who receive wages on a piece rate basis; and rate and amount of wages, overtime pay, holiday pay and holiday overtime pay. The particulars in the documents may be contained in one volume or several volumes. The evidence of such payment by direct transfer to a commercial bank account or other financial institutions is deemed as the evidence.

An employer must keep the employees' records and documents relating to payment of wages, overtime pay, holiday pay, and holiday overtime pay for a minimum of 2 years from the date of termination of employment of each employee or from the date of such payment.

- Non-Compulsory Terms

The employer and the employee are free to agree any other terms in addition to the compulsory provisions, provided that the agreed terms are no less favourable than certain statutory rights. Agreed terms will only be enforced to the extent that they do not run contrary to public order or good morals.

Types Of Agreement

All employment relationships are contractual in nature, whether or not the terms are reduced to writing. Contracts of employment (whether express or implied) may provide for different terms of employment: fixed term, full-time or part-time. The compulsory terms, as provided in law, apply regardless of the type of contract contemplated.

Secrecy/Confidentiality

Under Thai Law there are regulations, such as the Trade Secret Act, which set out secrecy and confidentiality obligations that apply to employees in an employment relationship. Employers often include express terms, within employment agreements, specifying the type of information that is a trade secret, and is therefore protected, to prevent future disclosure. They may also include restrictive covenants as a means of protecting future confidentiality. In addition, if an employee causes damage to the employer, for example by releasing confidential information such that the employer suffers damages, the employer may claim for damages.

Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions which will apply to determine the ownership of IP rights. Moreover, the law provides that employers must provide additional remuneration to employees who develop inventions that benefit their employers.

Hiring Non-Nationals

Employers are obliged to ensure that their employees are entitled to work in Thailand. Different

requirements apply depending on the nationality/status of the individual concerned. Specific rules and exceptions for non-nationals are provided by the Foreign Employment Act and related regulations and decrees. In most cases, foreign workers must have valid work permits and visas in order to work legally.

Hiring Specified Categories of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities, as well as restrictions on the types of work that vulnerable groups (e.g. children, pregnant women) can be required to undertake. In addition, special requirements apply to the employment of persons under age 18, as mentioned above.

Outsourcing And/Or Sub-Contracting

Employees in subcontracting arrangements can look to any entity along the subcontracting chain for payment of sums to which the employee is entitled under the Labor Protection Act. Moreover, an employer who engages a person or an outsourcing company to arrange for outsourced workers to work for the employer, is obligated to ensure that such workers who work in the same manner as its direct employees receive fair rights, benefits, and welfare, without discrimination,

3. MAINTAINING THE EMPLOYMENT RELATIONSHIP

Changes To The Contract

An employer may only change terms of an employment agreement with the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for a reasonable period of time after being made aware of the change).

Any change of terms to which the employee does not consent would amount to a breach of contract.

Change In Ownership Of The Business

When there is a change in ownership of a business by share purchase, the original employer remains intact and each employee continues with the same employer, on the same terms and conditions. However, in the case of a purchase of assets, a transfer of employees from the original employer to the new employer would be contemplated. In such a situation, each employee's consent would be required. An employee could refuse to transfer to the new employer. Following such a refusal, the employee would be terminated without cause and would thus be entitled to severance pay. New employers are obligated to accept all rights, duties, and obligations in connection with employees who are transferred to their employment.

Social Security Contributions

Pursuant to Social Security Act, B.E. 2533 (A.D. 1990), employers with one or more employees are required to register for and contribute to the Social Security Fund. Such employees and the government are also required to make contributions to the Social Security Fund. Generally, employers and employees each make monthly contributions at a rate of 5% of an employee's wage (up to a maximum of Baht 750 per month). If an employer fails to pay the contributions to the Social Security Fund within the specified time, the employer is required to pay an additional 2% of the outstanding contribution which has not been made, per month of the deficiency.

The Social Security Fund provides seven types of benefits to employees: sickness or injury not suffered in course of employment, maternity, disability not acquired in course of employment, death not occurring in course of employment, child welfare, unemployment and old age pension.

The Social Security Act does not cover certain employees, such as government officials, employees of foreign governments and international organizations, employees working in foreign countries for Thai firms, teachers at private schools, students who work for schools, universities, and hospitals, and other types of employees according to Royal Decree. The contributions paid to the Social Security Fund by employers and employees are tax deductible and the benefits payable are tax exempt.

Accidents At Work

An employee who suffers injury or illness in the course of employment is entitled to be reimbursed for

medical treatment, funeral expenses (if applicable), and compensation.

Under the Workmen's Compensation Fund Act, employers are required to register all employees with the Workmen's Compensation Fund. In addition, employers are required to contribute to the fund annually (by January 31 of each year) at the rate the Labor Minister specifies for the business. Applicable rates depend on the type of business and nature of the work. Contribution rates range between 0.2% and 1% of the total payroll, up to a prescribed maximum. If an employer fails to do so, the employer is required to pay an additional 3% of the outstanding contribution, per month that the deficiency remains. The fund shall compensate employees in the event of injury, illness, disappearance, or death, related to work. The fund shall be used for compensation, as well as for medical, work rehabilitation, and funeral costs of employees.

The employer is not obliged to pay compensation to employees who intentionally inflict injury upon themselves or others, or who allowed another person to inflict injury upon them, or if such employee was injured as a result of his own intoxication beyond limits of self-control.

Discipline And Grievance

Procedures with respect to discipline and grievances are to be described in the work rules, which are to be submitted to the District Labor Office. After submission of such a grievance, if an employee disagrees with his/her employer's decision, the employee may take the matter to the Labor Official or a court.

Harassment/Discrimination/Equal pay

Section 30 of the Constitution forbids unjust discrimination against a person on the basis of origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutional political view. The Constitution affords citizens complaining of discrimination direct access to the courts.

The Labor Protection Act requires equal pay for men and women who perform equal work. It also provides that employers must treat male and female employees equally in their employment, unless the nature or conditions of the work does not allow the employer to do so. The law also forbids termination on the grounds of pregnancy. It forbids sexual harassment by management and inspectors.

Compulsory Training Obligations

A business operator with 100 or more employees is required to arrange yearly labor skill training for at least 50% of its employees. If the employer fails to arrange such training, the employer is required to make a contribution to the Labor Skill Development Fund before February of the following year. Currently, the amount of the contribution is 1% of Baht 3,990 (the base salary presently used for calculation) x 12 months x the number of employees who have not been trained. If the employer fails to make such a contribution to the Labor Skill Development Fund in full before February as required by law, the employer is required to pay an additional payment of 1.5% of the outstanding contribution per month, until the contribution is made in full.

Some professions may also be subject to certain educational and training requirements.

Offsetting Earnings

It is possible for employers to offset earnings only in certain situations. The employer may only make deductions from employees' wages for: income tax; contributions to a labor union, payment of debts to a savings co-operative or debts which have been made for the purpose of the employee's welfare for the sole benefit of employees (but only with the consent of the employee); security deposits or compensation for damages incurred by the employer due to the wilful act or gross negligence of the employees; and for contributions to provident or similar funds. Some of these deductions are limited to 10 per cent and may not, in aggregate, exceed one-fifth of the employee's wages, unless the employer has the employee's consent. In documenting consent, employers should prepare a written document and have the employee sign it.

Payments for Maternity And Disability Leave

A pregnant employee is entitled to a maximum of 90 days' maternity leave per pregnancy, including holidays, and is entitled to receive pay for up to 45 of those days.

Generally, employers would handle disability leave in a manner similar to sick leave or as an injury at work, both discussed above. Depending on the specifics of the disability and how it was incurred, payments may be made by the Social Security Fund and/or the Workman's Compensation Fund.

Compulsory Insurance

Please refer to "Social Security Contributions" and "Accidents at work".

Absence For Military Or Public Service Duties

Employees are entitled to take leave for military duties. Employees are not entitled to take public leave for public service duties.

Works Councils or Trade Unions

Employees working for the same employer or doing the same type of work may establish a trade union for the purpose of protecting the employees' conditions of employment, and promoting better relationships between employers and employees and among employees themselves. Trade unions must be registered with the registrar of the Ministry of Labor and may only operate once a license has been issued. Licenses are issued after the trade union has been investigated by the registrar to confirm that the regulations of the union are not contrary to law and public order, and do not constitute a threat to national security or the economy.

A trade union must have at least ten initial members. Supervisory employees with responsibility for recruitment, promotion, sanctions, and termination of employment cannot become members of a trade union established by other employees or in which other employees are members. Supervisory employees can establish their own trade unions, however only supervisory employees can be members. Trade unions registered under the law can submit demands for better conditions of employment and carry out other activities for the benefit of their members.

Employees' Right To Strike

Employees who intend to strike must submit a demand to strike, and only after negotiation or reconciliation has failed. Under no circumstances may the employees strike without providing a written notice to the labor dispute conciliator and the other party. Such notice must be given at least 24 hours in advance. Even then, the right to strike may still be limited by the Ministry of Labor if the strike is deemed to pose a threat to the nation or the public.

Employees On Strike

Employers may not dismiss employees on strike simply due to their union activities. However, termination could take place for other reasons, such as dishonest performance of duties.

Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except where employees were acting wholly outside the scope of their employment.

4. FIRING THE EMPLOYEE

Procedures For Terminating the Agreement

In all cases, the termination of an employment agreement must comply with the terms of the agreement, applicable work rules, and applicable law.

Under the Labor Protection Act, fixed term employment agreements will automatically terminate at the end of the fixed period, without the need to give prior notice.

If the employee is employed under an indefinite employment agreement, the employer can terminate the agreement by giving the employee advance notice of termination at or before the payment of wages. Employees are entitled to notice of at least one full payment cycle in advance of the effective date of termination, or payment of wages in lieu thereof. However, not more than three months' notice need be given.

For employees who receive their wages on a daily basis, the termination notice must be sent in advance of or on the payday, such that the effective date of termination is the following payday. An employer can immediately terminate the services of an employee by making a payment of wages in lieu of notice, equal to the number of days by which the notice is deficient.

Following termination, employees may bring claims for unfair termination. Such an action is separate and apart from the requirements discussed above. In such cases, if the labor court is of the opinion that termination is unfair to an employee, the court may order the employer to reinstate the employee at the employee's wage rate at the time of termination. If the labor court finds that the employer and the employee cannot work together any more, the labor court may fix the amount of damages to be paid by the employer, by taking into account the employee's age and tenure, employee hardship, the cause of termination, and the compensation to which the employee might be entitled. Compensation for unfair termination is not fixed by statute, but courts are fairly consistent in their calculation of damages. In successful claims, courts typically award damages equal to two months of compensation for the first year of service and one month of compensation for each subsequent year of employee service.

Instant Dismissal

An employer may instantly terminate an employee, without notice or severance pay, if the employee: dishonestly performs his/her duty or intentionally commits a criminal act against the employer; intentionally causes the employer to suffer losses; performs an act of gross negligence which causes the employer to suffer severe losses; violates the lawful and just work rules or regulations or orders of an employer (after having received written warning within one year or, in serious situations in which a warning is not required); is absent from work without a justifiable reason for 3 consecutive working days, regardless of whether there is holiday in between; or is imprisoned by a final judgment (if it is an offense committed through negligence or a petty offense, it must be a case that causes the employer to suffer damages).

In other cases, if the employer requires the employee to leave his/her job immediately, the employer will be required to pay wages in lieu of the advance notice required.

Employee's Resignation

As a general matter, an employee may resign at any time.

Termination On Notice

If the employee is employed under an indefinite employment agreement, the employer can terminate the agreement by giving the employee advance notice of termination at or before the payment of wages. Employees are entitled to at least one full payment cycle in advance of the effective date of termination. However, not more than three months' notice needs to be given.

Termination By Reason Of The Employee's Age

As mentioned above, Thai Law does provide a maximum age of employment in the private sector. Retirement age depends on the employer's policy. Even if the retirement age is fairly established by the employer's policy, a termination by reason of the employee's age would be considered termination without cause, which would entitle the employee to the usual severance payments, notice requirements, etc.

Automatic Termination In Cases Of Force Majeure

If situations arise making it impossible for an employment contract to be performed, the contract may be terminated. These situations include, but are not limited to, the death of the employee or the total destruction of the employing entity by an event which can be qualified as force majeure.

Termination By Parties' Agreement

The parties are free to agree to terminate the employment agreement. However, the parties cannot contract out of the minimum requirements of Thai law, such as severance, notice of termination etc.

Directors Or Other Senior Officers

If the director is an employee, the normal requirements of the Labor Protection Act would apply, such as severance and notice of termination. This is also the case for Senior Officers. In addition, there are

specific requirements applicable to removing and appointing directors, which are contained the Civil and Commercial Code, other related laws, and the company's Articles of Association.

Special Rules For Categories Of Employee

There are special requirements applicable to the employment of women, pregnant women, and children, some examples of which are described elsewhere in this document.

Specific Rules For Companies in Financial Difficulties

The Labor Protection Act provides no specific rules for companies facing financial difficulties.

Restricting Future Activities

A non-competition provision is acceptable and enforceable under Thai Law, so long as it is not contrary to public order and good morals and is not unfair, as per the Unfair Contract Terms Act and the Labor Protection Act. To be fair the restriction must take into account the following: the period and area of restriction; the remaining opportunity and ability of the employee to profess his/her occupation; and the lawful interests of the parties.

Severance Payments

Statutory severance pay varies from 30 days (1 month) to 300 days (10 months), depending on the length of the employee's service with the employer as follows:

Length of service	Severance payment
120 days but less than 1 year	30 days at the last wage rate or the last 30 days' wages for the work unit performed
1 year but less than 3 years	90 days at the last wage rate or the last 90 days' wages for the work unit performed
3 years but less than 6 years	180 days at the last wage rate or the last 180 days' wages for the work unit performed
6 years but less than 10 years	240 days at the last wage rate or the last 240 days' wages for the work unit performed
10 or more years	300 days at the last wage rate or the last 300 days' wages for the work unit performed

An employer need not pay severance if an employee has been terminated for cause, as described above. In such cases, the employer should indicate this in the termination notice.

If an employee's employment agreement or applicable work rules and regulations provide better severance than that provided in law, the law will give effect to the better terms.

Special Tax Provisions And Severance Payments

Subject to certain conditions, a severance payment to a terminated employee is exempt from tax up to Baht 300,000.

Allowances Payable To Employees After Termination

The Labor Protection Act does not require employers to pay any allowances to employees after termination, unless otherwise provided in the employment agreement or applicable work rules.

Time Limits For Claims Following Termination

Employees' claims for wages or other remuneration, including disbursements, or claims of the employer

of advances must be issued within two years following termination, though the statute of limitations on claims for severance is ten years.

5. GENERAL

Specific Matters Which Are Important Or Unique To This Jurisdiction

The Unfair Contract Terms Act allows parties to refer to the courts for rulings on whether particular terms contained in contracts are “unfair” as per the Unfair Contract Terms Act. We have mentioned the application of this law to specific aspects of employment agreements, elsewhere in this chapter. However, we should point out the general applicability of this law, given that employment agreements are typically form contracts. This means that an employee, as the weaker party, can challenge virtually any terms of the agreement, alleging that they are unfair, and also that the terms of such agreements will always be interpreted in favor of the employee and against the employer. It is important to note that the Labor Protection Act takes a similar approach, by empowering courts to order that employment agreements, work rules, regulations, and/or orders shall be applicable only to the extent that they are fair and appropriate in the circumstances, when they find that they give employers improper advantage over employees.

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