

Thailand

Introduction

The major laws that determine the relationship between employers and employees in Thailand are the Civil and Commercial Code, the Labor Relations Law, the Labor Protection Act, the Labor Court and Labor Procedure Law, the Workmen's Compensation Law and the Social Security Law. The Thai labor force is largely non-unionized, so collective agreements do not play a large part in regulating working conditions. The Ministry of Labor and Social Welfare is the authority responsible for setting and enforcing minimum employment standards.

The Labor Protection Act governs termination, discrimination and sexual harassment. Among other things, the Labor Protection Act prescribes minimum working standards for the purpose of protecting employees against exploitation by employers. The Labor Protection Act includes provisions for general labor protection, protection for children and women, minimum remuneration, wage bonds, severance pay, welfare and safety at work, employee welfare funds and labor inspectors. The Constitution of Thailand also provides equality for men and women and bars discrimination based on certain criteria.

Terminations

Restrictions On Employers

Under Thai law, an employer has no legal restrictions on its ability to dismiss an employee, unless the employee is a member of an employee committee, which is required for a workplace with 50 or more employees. To terminate a member of an employee committee, an employer must first receive prior permission from a Thai court. In addition, the Labor Relations Law imposes criminal liabilities upon the employer, among others, for termination of employees who exercise their rights thereunder, including submission of a labor demand, termination on the grounds of labor union membership or for termination of employees involved in a labor demand while a collective bargaining agreement remains in force. An employee whose employment is terminated may, depending on the cause of termination, have certain entitlements, each of which are independent from the other and may not be waived by payment of the others.

Notice Provisions/Consequences Of A Failure To Provide The Required Notice

When an employee is hired for an indefinite period of employment (rather than a fixed period), the employer is required to give advance written notice of termination to the employee of at least a normal wages period, on or before any pay day, so that termination of the employment contract will take effect on the next pay day. In any case, the notice of termination need not be longer than three months. For example, in cases where the employment is for an indefinite term and the employee is paid on the 30th day of the month, the employee may be dismissed by advance written notice, under which the termination will be effective on the next payment date following the notice (“effective date”). Therefore, if the notice was issued on June 7th, the employee must be paid up until July 30th. The employee would be paid his or her usual monthly salary on June 30th as well as the salary for July. Any other entitlement payments (e.g., severance pay) also would be paid out on July 30th.

Alternatively, the employer may choose to terminate the employee by written notice with immediate effect by making an immediate payment in lieu of the notice period. The payment must be equivalent to the salary due if the employee was terminated with ordinary notice. For example, if the employer terminates the employee on June 7th with immediate effect, then the salary up to June 7th, the payment in lieu of notice for the period of June 8th to July 30th, and any other entitlement payments (e.g., severance pay) must be paid on June 7th.

Advance notice of termination or payment in lieu of notice is not required in cases where an employee is terminated for willfully disobeying or habitually neglecting the lawful orders of the employer, deserting his or her work, misconduct, or acting in a manner incompatible with the expected and faithful discharge of his or her duty.

In cases where a company dismisses employees due to improvement of the organizational structure, manufacturing process, sales or service, due to the adoption of machinery, or a change of machinery or technology, the employer is required to give at least 60 days advance notice and the reason for termination to the employees as well as to the relevant labor official.

If a company relocates and that relocation affects the normal living of an employee or his or her family, the employer must inform employees of the move at least 30 days in advance or pay them special compensation in lieu of the advance notice

equaling 30 days' wages. An employee who does not wish to go to the new workplace can terminate the employment contract and claim a special compensation at the rate of the statutory severance pay, prescribed below.

Termination Indemnities

An employer is required to provide severance pay to a dismissed employee, subject to certain exceptions, provided that the employee has worked for at least 120 days. The amount of severance pay varies according to the period of service with the employer as follows:

Period Of Service	Rate Of Severance Pay
120 days but less than 1 year	Not less than last wages for 30 days' wages
1 year but less than 3 years	Not less than last wages for 90 days' wages
3 years but less than 6 years	Not less than last wages for 180 days' wages
6 years but less than 8 years	Not less than last wages for 240 days' wages
10 years or more	Not less than last wages for 300 days' wages

In cases of a reduction in the number employees due to structural changes due to the adoption of machinery as described above, employees who have worked consecutively for six years or more are entitled to an additional special compensation (in addition to the severance pay) at a rate of not less than the last wage for 15 days, for each full year of service, but not exceeding 360 days. For the purposes of calculation of this additional special compensation, where a period of employment is less than one year, a fraction of the period of employment of more than 180 days shall be counted as one year of employment.

Additionally, the law entitles employees who have worked for one year or more at a company to at least six working days a year as annual holiday. In the event that the employee has any unused annual leave, he or she is entitled to payment of wages for the relevant portion upon termination.

Certain exceptions exist to the requirement of severance pay for employees with a fixed term contract of no longer than two years when the termination of employment is in line with his or her employment period. This includes employees who perform:

- (i) Work on a particular project that is not the normal business or trading of the employer upon which there must be the definite commencement and termination date of work;
- (ii) Work that is temporary and has a stipulation of termination or completion of work; or
- (iii) Seasonal work.

Severance pay is also not required in cases where the termination of employment occurs if the employee:

- (i) Is dishonest in the exercise of duty or intentionally commits a criminal offence against the employer;
- (ii) Intentionally causes damage to the employer;
- (iii) Violates any work regulations, or lawful and fair orders of the employer, for which a warning in writing has previously been given by the employer and the employee repeats the violation within one year, except in a serious case where the employer is not required to give such a warning;
- (iv) Neglects duties for three consecutive regular working days without a reasonable excuse;
- (v) Is negligent whereby serious damage is caused to the employer; or
- (vi) Has been sentenced to imprisonment by final court judgment. If the offence committed is through negligence or is a minor offence, it must be a case where it has caused damages to the employer.

In cases where the employee has been brought from elsewhere at the expense of the employer to perform a specific job, the employer is bound, unless otherwise provided in the employment contract, to pay the cost of the return journey when the employment agreement ends. This is required if:

- (i) The contract had not been terminated or extinguished by reason of the act or fault of the employee; and
- (ii) The employee returns within a reasonable time to the place from which he or she was brought.

Laws On Separation Agreements, Waivers, And Releases

To avoid exposure to a claim of damages for unfair termination by an employee, particularly in the case where there is no statutory or justifiable reason for termination, it is not uncommon for an employer to offer the employee a lump-sum payment that may represent the severance pay, payment in lieu of notice of termination and payment in lieu of unused annual vacation. In return for such payment, the employee is required to sign a letter of resignation and a release whereby the employee waives his or her rights to claim any further damages as a result of his or her resignation. Under Thai labor law, an employee's resignation does not entitle the employee to any severance pay or other mandatory termination payments, except the payment of wages for any accrued but unused annual leave of the previous working years (but not the unused annual leaves of the year that the employee tenders his or her resignation).

Litigation Considerations

An employee may contest the termination of employment before a Labor Court. If the Labor Court deems the termination to be unfair or unjustified, it may order the employer to reinstate the employee at the wages prevailing at the time of termination. In the event that the employee cannot work with the employer (e.g., the relations between the employer and employee have deteriorated to such an extent that the resumption of the employment would not be feasible), the Labor Court may alternatively order the employer to pay damages for unfair termination, taking into consideration the age of the employee, length of service, hardship suffered by the employee as a result of the termination, the cause of the termination and the amount of severance pay the employee is entitled to receive.

Employment Discrimination

Laws On Employment Discrimination

The Constitution of Thailand prohibits discrimination based upon place of birth, nationality, language, gender, age, physical or health condition, economic or social status, religious belief, education or training, or political ideology. In addition, the Labor Protection Act prohibits discrimination based upon gender in the matter of employment, unless equal treatment is not possible due to the nature of the particular work.

The Labor Protection Act imposes restrictions on the types of work that an employer can allow women and children employees to handle. It is reasoned that these restrictions exist to protect the individual rather than to exclude the individual from certain forms of labor.

For example, an employer is prohibited from allowing a female employee to engage in various types of unsafe underground or submerged construction, scaffolding work above a certain height, production and transportation of explosives, or other forms of labor as prescribed in Ministerial Regulations. Nor can an employer, among other things, instruct a pregnant female employee to work between 10 p.m. and 6 a.m., overtime, on a holiday, or to work with machinery or engines that vibrate, involve driving or conveyance, carry objects weighing more than 15 kilograms, or to do vessel work or other work as stipulated by the Labor Ministry.

An employer is also restricted from terminating a female employee on account of her pregnancy. Pregnant employees are entitled to take maternity leave of not more than 90 days per pregnancy, inclusive of holidays. Remuneration is given for up to 45 days of the maternal term. A pregnant employee may request the employer to change her current job responsibilities on a temporary basis either before or after the pregnancy.

Ministerial Regulations No.7 provides certain relaxations for the restricted work of a female employee. The employer may instruct a female employee to work in a professional or academic capacity concerning exploration, drilling, refining and manufacturing products from petroleum or petrochemicals if the work is not a danger to the health or the body of such employee. In addition, the Labor Protection Act No.2 allows the employer to instruct a pregnant female employee who works in an executive position, academic capacity, administrative capacity or a capacity concerning finance or accounting to work overtime on a working day insofar as it does not affect the health of the employee, provided that prior consent of the employee has been obtained each time.

The Labor Protection Act prohibits children under 15 years from undertaking employment. It also imposes procedures and restrictions when employing children under 18 years of age in order to protect their well-being, such as prohibiting a minor from working with smelting, hazardous material, micro-organisms, bacteria, radiation, explosives, forklifts, cranes, electric or motorized saws, cleaning of machinery, or engines in operation. Children are also afforded various rights under

the law in the interest of developing and promoting their quality of life and work performance. Such rights include remunerable participation in seminars and meetings, receiving training or taking leave for participation in activities organized by governmental, educational or private organizations.

Potential Employee Remedies/Employer Liability For Employment Discrimination

The Constitution does not expressly provide remedies or penalties for violation of the anti-discrimination provisions. However, since such a violation constitutes a wrongful act under the Civil and Commercial Code (CCC), the injured party may claim damages from the employer. The CCC provides that a person who commits a wrongful act is bound to make compensation for willfully or negligently injuring the life, body, health, liberty, property or any right of another person.

Violation of the anti-discrimination provision under the Labor Protection Act subjects the employer to a fine not exceeding Baht 20,000. Moreover the injured employee may claim damages from the employer on the ground of a wrongful act.

Sexual Harassment

Laws On Sexual Harassment

The Labor Protection Act No.2 prohibits an employer, work chief, supervisor or inspector from sexually harassing all employees (not only a woman or child employee as previously regulated).

However, such prohibition does not extend to cover harassment among employees of the same ranking. Also, the law is silent as to what activity would constitute sexual harassment or whether the employer, particularly in the case where it is a company or other forms of corporate entities, will be also liable for the sexual harassment committed by its directors, officers or the relevant employees. No court decisions have addressed such issues.

Violation of the harassment provision may result in a fine not exceeding Baht 20,000 (approximately US\$500). The harassed employee also would have a claim for damages on the grounds of the wrongful act under the CCC.