

Thailand

Introduction

Constitutional Rights

The Thai Constitution recognises the freedom of association. Individuals are free to form associations, such as societies, unions, confederations, cooperatives, agricultural groups, non-governmental organisations, or any other kind of organisation. Restrictions on such freedom are permissible only to protect the public interest, to maintain public order and good morals, or to prevent economic monopoly.

The Labour Relations Act

The Labour Relations Act, B.E. 2518 (LRA), specifically regulates associations in the form of trade unions, employers' associations, and combinations of the trade unions or those of the employer's associations, as the case may be. It expressly excludes employees of state enterprises from being members of a trade union.

The LRA also covers employee representation in general and governs, for example, the concept of Works Councils and providing for employee committees as an alternative to trade unions.

Employee Representation And Participation

Trade unions and Works Councils represent employees in bargaining with their employers and, to a certain extent, in the decision-making process of the employer. Employees are vested with the right to establish either a trade union or a Works Council, or both, and the employer may not interfere with their operation.

Trade Unions

A trade union, often called a "labour union" in Thailand, may be constituted only by virtue of the LRA. A trade union is defined as an organisation of employees established under the LRA. Only two types of trade unions are feasible: a house union and an industrial union. Occupational or general unions are neither recognised nor permissible. In other words, a trade union must be formed by 10 promoters or more who are employees of the same employer or who are employees working in

the same kind of business, regardless of the number of employers. An individual eligible for being a member of a trade union must have similar qualifications. Furthermore, the LRA differentiates trade unions on the basis of classes of employees. Supervisory or superior employees may not become members of a trade union of other classes of employees and vice versa.

A trade union established and registered under the LRA is a legal entity. It must have union rules and carry out activities in accordance with its registered objects.

The General Role Of The Trade Union

A trade union is required to protect employment benefits and to promote good labour relations between the employer and the employees and among the employees.

In reality, collective bargaining initiated by a trade union accounts for joint regulation; the terms and conditions of employment are not, therefore, created unilaterally by the employer. The joint regulation extends from the terms and conditions of individual employment contracts to job regulation and the working environment (e.g., disciplinary and grievance procedures), which provides a means whereby employees participate to some extent in the operation of a company.

Constitution Of The Trade Union

Ten or more employees of the same employer or of the same industry can act as promoters of a trade union by filing an application with the Unions Registrar at the Ministry of Labour and Social Welfare, enclosing a draft of the union rules. The draft union rules must include the:

1. Name of the trade union;
2. Objectives;
3. Office address;
4. Rules on membership;
5. Rates of application fees and dues and manner of their payment;
6. Regulations concerning the rights and duties of members;
7. Rules on management, expenses, maintenance of funds and other property, accounts, and audits;

8. Rules on decisions to strike and on decisions to enter into a collective agreement;
9. Rules on the general meeting of members; and,
10. Rules on the composition of the union committee, its election, term, cessation, and meetings.

In registering a trade union, the Unions Registrar must ensure that the union promoters are qualified, that the union rules contain the requisite particulars, and that the objectives are as stipulated by the law and are not contrary to public order. If all these criteria are fulfilled, the Unions Registrar must register the trade union and issue a certificate of registration.

The union promoters must convene the first general meeting of union members within 120 days from the date of registration. During the meeting, the union promoters must consider and resolve to elect a union committee, deliver work to the committee, and approve the draft union rules.

The authorised committee member(s) must apply to the Unions Registrar for registration of the union committee and the union rules within 14 days from the date of the first general meeting.

The Scope Of Trade Union Rights In Businesses

Employees, the trade union, union members, and union officers are immune from prosecution or being sued in a civil lawsuit when the trade union carries out, in the union members' interest, its rights to:

1. Bargain with the employer to obtain justified rights and benefits for the union members;
2. Cause a strike or assist, persuade or encourage its members to strike;
3. Publicise facts about a labour dispute; or
4. Arrange for a rally or peaceful gathering for a strike.

This immunity does not, however, exempt the offender from criminal penalties in the case of harm to the public, life or body, freedom or reputation, and offences against property and related civil liability therefor.

A union member can vote in a general meeting for or against the following:

1. Amendment to the union rules;
2. Any action by the trade union affecting the common interests of the members;
3. Election of the union committee members and the auditor and to certify the balance sheet and budget;
4. Allocation of fund or properties for the welfare of its member or for public benefits;
5. Allocation of the union monies or property;
6. Dissolution of the trade union;
7. Federation or amalgamation of trade unions; and,
8. A strike when a labour dispute cannot be settled and the resolution to go out on strike is approved by more than one-half of the total membership.

An employer is prohibited from, and liable to a criminal penalty for, interfering with the operation of the trade union.

The Function Of Trade Union Representatives

Employees who are officials of a trade union can take time off during working hours for the purpose of carrying out any duties concerned with negotiation, reconciliation, or determination of labour disputes, or attendance of meetings held by the authorities.

A trade union representative's primary role is the improvement of the union members' terms and conditions of employment through the mechanism of collective bargaining. Union committee members also have the power to represent the trade union to:

1. Demand, negotiate, or enter into a collective agreement with the employer in the interest of union members;
2. Ensure that the union members receive benefits as specified in the objectives of the union;
3. Provide union members with information about employment;

4. Provide a service of consultation to solve problems of work and management of work;
5. Allocate monies or property for the welfare of the union members or for the general public as approved at the general meeting; and
6. Collect membership fees and subscriptions at the rates prescribed in the regulations of the union.

Works Councils

General Requirements And Principles

Works Councils are referred to as employee committees in Thailand and are voluntary. Nonetheless, an employee committee may be established only in a company with 50 or more employees. Employee committees are created to contribute to joint consultation for various matters in the company, such as joint problem solving and joint regulation. An employer is legally obliged to discuss particular matters with the employee committee if one has been formed. Nevertheless, the employee committee may not make decisions on those matters.

Election Of An Employee Committee

Employees of the company can set up an employee committee. Its members are either elected by employees in the company or are appointed by the trade union. In cases where more than one-fifth of the total number of employees in the company are members of a trade union, the majority of the employee committee members must also be members of the trade union. If more than one-half of the total number of employees of the company are members of the trade union, the trade union may appoint all the members of the employee committee.

If an employee committee is to be established, the employer is required to arrange for and accommodate the election of the employee committee. The employee committee may start performing its functions as of the date of election.

The term of the employee committee is three years, although a member can be re-elected or re-appointed. An election or appointment of the entire committee before expiration of the term is required when:

1. The number of employees in that enterprise increases or reduces to a level exceeding half the total number of employees;

2. Half or more of the committee members cease to hold the post;
3. More than half of the employees resolve to remove all the committee members; or,
4. The Labour Court orders a removal of all the committee members.

To ensure independence of the employee committee, employers are prohibited from giving the committee members any extra payment or benefits except their normal wages, overtime pay, holiday work pay, bonus, share in profits, or other benefits. However, the employer can request the Labour Court to order that a committee member or all members be removed from the post if that committee member or the employee committee does not carry out the duties in good faith, commits any act inappropriate and harmful to public order, or discloses confidential information of the employer.

Functions And Rights Of The Employee Committee

The employer is required to consult with the employee committee at least once every three months – or as reasonably requested by half or more of the committee members or by the trade union – on matters relating to the welfare of the employees, terms and conditions in work rules, grievances of the employees, or reconciliation and resolution of a labour disagreement in the enterprise. If the employee committee finds that any actions that fall under this procedure are unjustified or give rise to unreasonable harm to employees, it can request the Labour Court to provide for remedy.

Trade Union And Employee Committee Protection Rights

Trade Unions

An employer cannot dismiss or put pressure on a union member or a union committee member, so that he or she can no longer continue to work because of his or her union membership or because he or she made a demand, bargained, went on strike, sued, or was a witness in legal proceedings or in a regulatory action or prepared for such proceedings.

Furthermore, during the term of a collective agreement, an employer may not dismiss a union member or a union committee member in connection with enforcing a collective agreement, unless he or she was guilty of gross misconduct as specified by law.

An employer is prohibited from, and liable to a criminal penalty for, interfering with the commencement or termination of an employee's membership in a trade union.

The Employee Committee

Unless prior approval from the Labour Court is obtained, the employer cannot dismiss, discipline, obstruct the performance of the duties of a committee member, or cause the member to be unable to continue to work.

It is also prohibited for an employer to dismiss or put pressure on a committee member so that he or she can no longer continue to work because he or she made a demand, bargained, went on strike, sued, or was a witness in a legal proceeding or in a regulatory action or preparing thereof.

Furthermore, during the term of a collective agreement, an employer may not dismiss a committee member in connection with enforcing a collective agreement, unless he or she was guilty of gross misconduct as specified by law.

Other Types Of Employee Representation

Apart from the trade union and the Works Council (i.e., employee committee), Thai legislation is silent on other types of employee representation. Therefore, any other forms of employee representation may be applied insofar as they do not duplicate the nature and essence of the trade union and the employee committee, which are specifically regulated.

Joint consultative committees exist in a number of enterprises, which are formed at the initiative of either the management or the employees. The precise structure and design of a joint consultative committee depends primarily on the shape and character of the organisation in which it is operating.

Worker directors, or employee representation on employers' boards of directors, are not at all common in Thailand.