



FROM HIRING TO FIRING

A BASIC GUIDE TO THE THAI EMPLOYMENT LAW LIFE CYCLE



HIRING

Recruitment

Recruiting in Thailand is often done through database recruitment, licensed headhunting firms, or by placing advertisements in newspapers and various media or on the internet. With regards to hiring of new graduates, some employers have begun to partake in campus recruitment.

Only a few measures against discrimination exist under the Constitution and the Labour Protection Act, although in practice such measures are not enforced. It is common for job advertisements to specify both the age and gender of the preferred candidate, and there are no statutory limitations as to what questions may be posed during an interview.

Employment Contract

The *Civil Commercial Code*, *Labour Protection Act* and *Labour Relationship Act* are the general legislations governing all employment contracts, rights and benefits and fairness of the employment relationship. There are two types of employment relationship: contracts of hire of services or contracts of hire of works. The former may be subject to the payment of severance pay upon termination. There is no obligation for the employment contract to be in a written form. Although there is no law that outlines the specific requirements of an employment contract, an agreement that has been established between the employer and employee should not be less than the minimum requirements or standards devised

by the law. Where an employment contract is in written form, basic conditions required to be stated include wages and wage period, annual leave, confidentiality and notice period.

Immigration/Employing a Foreigner

The employment of foreigners is subject to additional regulation that is designed to be protectionist of the local labour market. Preference is therefore usually given to employ a qualified Thai national who can equally perform the required duty or service. As a result, foreigners are prohibited from carrying out certain job activities. In the case that a foreigner is employed, there must be four local national employees for every one foreigner and the employer must have paid up registered capital of at least Baht 2 million per foreigner (except where the employer obtains promotional privileges from the Board of Investment or other applicable regulations). This 4:1 ratio is a general statutory requirement. All non-local employees require a non-immigrant Type B visa for entering into Thailand and have to obtain a work permit before commencing the work in Thailand. In addition, a local sponsor (usually the employing company) is required.

Working Rules and Regulations

Written work rules must be established if an employer has 10 or more employees. These rules must be in Thai and displayed publicly in the work place. It is required that the employer submit a copy of the work rules to the Director-General of the Department of Labour Protection and Welfare.

The working rules stipulate such things as:

- working days, regular working hours and breaks
- holidays and rules for taking holidays
- rules concerning overtime work and work on holidays
- date and place of payment of wages, overtime pay, holiday pay and holiday overtime pay
- leave and rules for taking leave
- discipline and disciplinary actions
- submission of grievances
- termination of employment, severance pay and special severance pay
- other general matters that apply to the work place

An employer with 10 or more employees must also maintain an employment register containing items such as names and surnames of employees, gender, nationality, and other matters relating to the employees.

MANAGING

Working Hours

Working hours should not exceed eight hours per day and 48 hours per week. In the case of work that may be harmful to the health and safety of the employees, working hours should not exceed seven hours per day and 42 hours per week. Unless otherwise agreed, a rest period of one hour is required after five consecutive hours of work.

Wages

Minimum wage is decided by the Minister under the *Labour Protection Act* and is reviewed annually. Currently, the minimum wage is Baht 300 throughout Thailand. Wages must be paid in Thai currency in the form of cash or direct deposit (unless the employee consents to be paid in cheque or foreign currency). In general, the rate for overtime wages starts from one and one half times the hourly work wages entitled.

Benefits and Entitlements

Holidays – An employee is entitled to 13 traditional public holidays per year. In addition, an employer must provide an employee with at least one rest day each week. These weekly rest days must be no more than six days apart from each other. Weekly rest days, public holidays and annual leave are considered paid holidays.

In addition to public holidays, an employee who has worked consecutively for 1 full year is entitled to an annual holiday with pay of not less than six working days during the following year, which shall be fixed in advance by the employer or fixed as agreed by the employer and employee. Where an employee has worked for less than 1 year, he/she is entitled to a pro-rata amount.

Provident Fund – An employer may alternatively and voluntarily establish a Provident Fund which is used to provide security to an employee in the case of retirement, resignation, death or termination. An employer which has set up a Provident

Fund is exempt from setting up an employee welfare fund. The employee must contribute a minimum of 2% to a maximum of 15% of his or her wages, and the employer must contribute no less than the employee's contribution.

Workmen's Compensation – Thailand has a worker's compensation scheme which requires employers to pay medical expenses due to injury or disability. Maximum compensation for total disability is 60% of salary but not exceeding THB 12,000 per month payable monthly for fifteen years. Compensation for death is limited to 60% of salary but not exceeding THB 12,000 per month payable monthly for eight years.

Social Security – Every employer is required to register with the Social Security Fund. The government, employer and employee

jointly contribute to the fund every time wages are paid. The rate of contribution is 5% of an employee's income with a maximum of Baht 750 per month. As a member of the Social Security Fund, an employee is entitled to receive compensation benefits in non work-related cases.

Maternity Leave – A pregnant employee is entitled to maternity leave for a period of 90 days and is entitled to ordinary wages for 45 days during the leave.

Sick Leave – An employer must pay the fixed wage to the sick employee for the first 30 days of sickness in any one year. A medical certificate, or explanation by the employee in the absence of a medical certificate, may be required for sick leave of three or more days.



Severance Pay – On termination, except for termination for cause, an employee is entitled to a severance payment. An employee who has worked between 120 days to a year is entitled to 30 days severance pay. An employee who has worked between one to three years receives a minimum of 90 days severance pay. An employee with three to six years' employment receives 180 days severance pay. An employee with six to 10 years will receive 240 days severance pay, and an employee with more than 10 years of service is entitled to 300 days severance pay.

Taxation

All employees who earn income from a Thai employer are liable to pay income tax. Employers are allowed to make deductions from wages for the payment of income tax.

Work Safety and Health

Regulations regarding an employers' responsibility for the health and safety of the workplace are outlined in the *Labour Protection Act*. In addition, employers must comply with the safety, occupational sanitation and working environment Ministerial Regulations. If they fail to do so, a labour inspector has the power to issue a written order requiring the employer improve the workplace conditions or to temporarily cease all operations.

Businesses with 50 or more employees are required to set up a welfare committee. The welfare committee has the responsibility to discuss, recommend and supervise the welfare arrangements provided for the

employees. The Labour Protection Act also contains numerous health and safety requirements that apply for female and juvenile employees.

Data Privacy

There are currently no provisions dictating data privacy or internet use in Thai law, although the Constitution offers general data privacy protections. If an employer wishes to have such protections, they should be recorded in the employment contract.

FIRING

Notice Requirements

For fixed term contracts, no notice of termination is required as the contract terminates upon its expiry. Should an employee continue to perform his or her duties without objection from the employer at the expiration of the fixed term contract, it is presumed that a periodical employment contract has been agreed upon.

If the employment contract is a periodical contract, then notice of termination can be given either by the employer or employee at or before the time of payment of one pay period before termination. However, the notice of termination does not have to be given more than three months in advance.

An employer is entitled to dismiss an employee for cause without notice in certain limited circumstances, including if the employee disobeys or neglects his employer's lawful orders, or commits serious misconduct.

Redundancy

Redundancy occurs where the employer has ceased, or intends to cease, to carry out the business for the purpose of which the employee was employed or in the place where the employee was so employed, where the requirements of that business for employees to carry out a particular kind of work or to carry out such work in the place where the employee was so employed have ceased or diminished, or are expected to cease or diminish. The *Labour Protection Act* outlines certain situations in relation to redundancy which may result in a claim by the employee for special severance pay. These situations include: where the employer relocates an establishment to another location and the relocation significantly affects the ordinary way of living of an employee or his/her family; and where the employer has to terminate the employment on account of the reorganization due to the use of machinery or

changing of machinery. Special severance pay in the former situation would be either i) not less than the rate of severance pay for which the employee is entitled under the LPA if advance notice of not less than 30 days is served; or ii) payment in lieu of advance notice in an amount equivalent to 30-days pay at the latest wage rate if advance notice is not served. With respect to the later situation, special severance pay would be equal to 60-days pay at the latest wage rate if notice is not served in advance. In addition to the special severance pay, if the employee has continuously worked for six years or more, the employee will be entitled to an amount not less than the wages for last 15 days for each complete year of work.

Termination Payments

An employee may be entitled to the following payments upon termination: accrued wages and accrued annual leave, and a payment in lieu



of notice. An employee, except if terminated for cause, is also entitled to severance pay. The amount of severance pay is dependant upon the period of employment (see above). In addition, employees who are dismissed by reason of redundancy may be entitled to a special severance pay. Employees who are dismissed due to cause are not entitled to any compensation.

Protected Employment

Employers are prohibited from terminating employees in certain circumstances including termination of employees who have served notice of pregnancy. In addition, employers are prohibited to dismiss, reduce the wages of, punish and/or withhold the performance of duty of any employee who is a member of the employees' committee unless permission to do so has been given to the employer by the Labour Court.

Dispute Resolution

The Central Labour Court as well as the regional and provincial Labour Courts have jurisdiction over:

- disputes involving the employment contract and any additional labour-related legislation;
- disputes between employers and employees in relation to the employment contract; and
- appeals against the decisions of a labour ministry office.

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