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Thailand

Employment and Labour Law

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Thailand.

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Thailand: Employment and Labour Law

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

An employer may terminate an employment relationship for various reasons as outlined in the Civil and Commercial Code and the Labour Protection Act B.E. 2541 (1998) (as amended) (the "Labour Protection Act"). The employer is required to provide statutory severance pay at a rate based on the terminated employee's years of service, regardless of the reason for termination. However, if the termination occurs without justifiable grounds, it may be considered unfair dismissal. In such cases, the employer would need to provide additional compensation (for unfair dismissal).

'Reasonable and justifiable grounds' for termination include the employee's incompetence, poor work quality, retirement, chronic illness, the employer's financial difficulties (deficit situation), or reduction of business units, provided there is no discrimination or intended persecution against any particular employee.

However, there are certain 'serious grounds' under the Labour Protection Act that allow an employer to terminate an employee without providing severance pay. These include:

i. The employee's dishonesty towards their duties or intentional criminal activity against the employer;
ii. The employee's intentional action causing the employer to suffer losses;
iii. The employee's negligence causing the employer to suffer severe losses;
iv. The employee's violation of work rules or regulations or orders that are legal and fair (given a written warning has already been provided), except in serious situations where the employer is not required to give a warning;
v. The employee's neglect of their duties for three consecutive workdays without a reasonable cause; and
vi. The employee's imprisonment due to a final judgment for an offence other than those arising out of negligent acts or petty offences, or for any offence arising out of negligent acts or any petty offence that has caused damage to the employer.

Termination under these serious grounds is unlikely to be considered unfair treatment, thus not requiring any additional compensation. Furthermore, if termination is based on reasonable and justifiable grounds, Supreme Court precedents indicate that an employer is not liable to pay any additional compensation beyond the statutory severance pay.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

When large-scale dismissals or redundancies are planned due to improvements in organizational structure, production processes, distribution, or service, resulting from the adoption of new technology or machinery, the Labour Protection Act requires employers to give employees at least 60 days' notice prior to the intended termination date. Outside these specific circumstances, the general rule requires employers to give only one full pay period's notice before termination. It is important to note that while there is no specific provision dealing with large-scale redundancies, adherence to the general termination and severance pay laws is mandatory. Moreover, there are no additional statutory considerations specifically for redundancy cases. However, in market practice, employers often offer additional *ex-gratia* payments to induce an amicable mutual separation or termination of employment, although this is not a legal requirement.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

In the context of a business sale involving the intended transfer of employees from the seller's to the buyer's entity, the Labour Protection Act requires that employees' consent must be obtained, and the terms and conditions of employment must remain unchanged post-transfer. Should the employees decline the transfer, the seller retains legal responsibility as the employer. General termination laws, including the obligation to provide statutory severance pay and ensure fair termination practices without discrimination or persecution, continue

to apply. There are no additional statutory considerations specifically prescribed for terminations in the context of a business sale.

4. Do employees need to have a minimum period of service in order to benefit from termination rights? If so, what is the length of the service requirement?

Yes, employees need to have a minimum period of service to benefit from certain termination rights under the Labour Protection Law. The key points are as follows:

Severance Payments: Employers are obligated to make severance payments if the termination is made effective after the employee has completed 120 days of service. The rates of severance pay are detailed in Question 17.

Unfair Termination Compensation: In addition to severance pay, employers may need to pay additional compensation if the termination is made without justifiable grounds and is considered unfair dismissal (as discussed in Question 13). It should be noted that termination during a mutually agreed probationary period is not regarded as unjust or unfair treatment. Therefore, if termination is made effective during the probationary period before the employee completes 120 days of service, neither severance pay nor additional compensation is due. However, if termination occurs during the probationary period after the employee has completed 120 days of service, only the statutory severance must be paid.

Regardless of the probationary period, employers are required to observe the required notice period or make payment in lieu thereof when terminating an employee (as discussed in Question 5).

5. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

The Labour Protection Act requires that a statutory notice period of at least one full pay period must be given for an intended employment termination, i.e., before or on the wage payment date to take effect on the subsequent wage payment date. However, if an employer and an employee agree to a period longer than the statutory notice period (i.e., 2-, 3- or 6-months' notice in advance), usually specified in an employment agreement, such contractual notice period will prevail. For terminations due to improvements in the working unit, production process, distribution, or service resulting from the use of machinery or a change in machinery or technology, please refer to answer to Question 2, which stipulates that the employer must notify the employee at least 60 days prior to the intended termination date.

6. Is it possible to make a payment to a worker to end the employment relationship instead of giving notice?

According to the Labour Protection Act, an employer can terminate the employment with immediate effect by paying wages in lieu of advance notice. This amount will be equal to the employee's wages for the statutory or contractual notice period, whichever is longer.

7. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during their notice period but require them to stay at home and not participate in any work?

An employer can place a worker on 'garden leave' during the applicable notice period. This means the employer continues to pay the worker's wages and other benefits, but the worker is required to stay at home and refrain from performing any duties.

8. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

A proper termination procedure is prescribed by the Labour Protection Act. The employer must (i) observe either statutory or contractual notice periods, whichever is longer, or make a payment in lieu thereof for immediate termination; (ii) pay final wages, any unused annual leave and any other contractual benefits (e.g., a guaranteed bonus); (iii) make statutory severance payment; and (iv) provide the employee with a certificate of employment. Employers are advised to thoroughly document the termination details, with a key focus on the reasons for the termination. This is a requirement of procedural law, as sufficient documentation strengthens the employer's position if the terminated employee files a claim. Although not specified by law, it may also be helpful to record any monetary entitlements paid to the employee for complete record-keeping and tax purposes.

9. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?

Failing to adhere to either statutory or contractual notice periods, not making severance payments or delaying the payment of wages beyond three days from the employment termination date, is punishable with imprisonment for up to six months and a fine of up to THB 100,000, or both. The employer may also be held liable for default interest at the rate of 15% per annum on any payments where it is proven that the employer intends to withhold and avoid any statutory payment.

10. How, if at all, are collective agreements relevant to the termination of employment?

Collective agreements may impose additional requirements for termination, such as conducting pre-termination investigations, appointing investigation committee members from a Labour Union, or offering additional compensation packages. Employers must comply with these stipulations if they exist.

11. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

If an employer intends to terminate an employee who is a member of an employees' committee, permission from a labour court is required. Non-compliance with this requirement may lead to imprisonment for up to a month or a fine of up to THB 1,000 or both. Furthermore, if terminations result from improvements in the working unit, production process, distribution, or service, or are due to the use of machinery or technological advancements that reduce the need for labour, employers must notify a labour official 60 days in advance of the intended termination date, the reason for termination, and a list of affected employees.

12. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

As mentioned in the response to Question 1, the Labour Protection Act prohibits discrimination and harassment in all employment contexts, including termination. This protection implies that termination must not be made on the basis of race, colour, sex, religion, political opinion, nationality, social origin, or any other status.

13. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

An employee who has suffered discrimination or harassment in the context of termination has the right to file a lawsuit against the employer with the labour court. The labour court may deem such termination unfair and consequently order the employer to reinstate the employee or award compensation for unfair termination if it is determined that both parties cannot continue to work together.

14. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

Additional protections are provided for certain categories of workers. For instance, the law protects pregnant female workers from termination due to their condition. Additionally, employees involved in labour union activities or associated with a collective bargaining agreement are protected unless exceptions such as dishonest behaviour or intentional harm to the employer apply.

15. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Specific protection from termination for whistle-blowers is not mandated under labour law unless stated in the company's work rules. However, protections may exist under legislation separate from labour law, which can protect whistle-blowers from termination or other forms of retaliation if they assist or provide information to authorities investigating alleged violations by their employer.

16. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement

on new less favourable terms?

While an employer can legally terminate an employee's contract due to financial difficulties, and offer re-engagement on less favourable terms, this 'fire-and-rehire' approach may not be practical due to statutory severance pay obligations and the risk of unfair termination claims. Instead, employers are advised to negotiate changes in employment terms with the employee's consent during the course of employment.

17. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

The use of AI in recruitment or termination decisions may risk unintentional discrimination or bias, violating the principles of Thai labour law. If AI is trained on biased data, it could perpetuate these biases, potentially favouring certain genders or ethnicities over others. Furthermore, an AI approach might depersonalize the process, treating candidates as numbers rather than individuals. Over-reliance on AI might also make it difficult for employers to justify their decisions in legal contexts.

18. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

Financial compensation legally required includes:

(i) Statutory severance pay (as mentioned in item 1. above) is stipulated at the following rates:

Length of Service	Rate of Severance Pay (equivalent to the last wage rate per day)
At least 120 days but less than 1 year	30 days
At least 1 year but less than 3 years	90 days
At least 3 years but less than 6 years	180 days
At least 6 years but less than 10 years	240 days
At least 10 years but less than 20 years	300 days
20 years or more	400 days

Note that this amount is calculated based on the latest wage rates together with the length of service. With regard to the calculation of wages, fixed allowances payable to an employee, which lack a clear written purpose of payment as welfare, are regarded as wages, for instance, living allowances, position allowances, fuel allowances, etc. Without being specifically stipulated as welfare, these allowances should be included in wages for the computation of severance pay.

Severance pay is not required if employment is terminated due to any of the serious grounds (as described in Question 1 above).

(ii) Payment in lieu of unused annual leave entitlement and accumulated unused annual leave (if any).

If the termination of employment is not based on any of the serious grounds (as described in Question 1 above), an employer must pay an employee's wages for unused annual leave entitlement for the year in which the employment is terminated, in proportion to the number of days of the employee's annual leave entitlement. If the employee is entitled to accumulate days of annual leave to the following year, the accumulated unused annual leave must also be paid to the employee (if any).

However, if the employment is terminated for a cause based on any of the serious grounds, the employer is not required to make a payment in lieu of any unused annual leave entitlement for the year in which the employment is terminated. In such case, the employee will be entitled to a payment in lieu of accumulated unused annual leave days only (if any).

(iii) Payment in lieu of advance notice

Instead of observing the statutory or contractual notice periods (as described in Question 5 above), an employer may choose to make payment in lieu thereof.

In the case of any of the serious grounds (as described in Question 1 above), termination may be made with immediate effect without any advance notice or payment in lieu thereof.

(iv) Other contractual benefits (if there are any agreements made during the employment period).

(v) Cost of the return journey.

If an employee has been brought from elsewhere at the employer's expense, the employer is obliged to pay the cost of the return journey when an employment contract comes to an end, unless otherwise stipulated in the contract, provided that the employment has not been terminated due to the fault of the employee and the cost is for the employee's return to the original location.

19. Can an employer reach agreement with a worker on the termination of employment in

which the employee validly waives his rights in return for a payment? If yes, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

An employer and an employee can reach an agreement in which the employee validly waives their rights in return for a payment. For example, a mutual separation agreement may be concluded for a mutual and amicable termination of employment, where an employer agrees to provide *ex-gratia* payment. This type of agreement is enforceable, allowing the parties to include clauses on mutual release of claims and non-disclosure or confidentiality. According to Supreme Court rulings, a mutual separation agreement is not regarded as a unilateral termination of employment. The compensation package typically includes a monetary component for termination of employment and an ex-gratia payment, which is negotiable. However, during negotiations, there must be no actions that could be interpreted as coercing the employee to sign or conclude the agreement. If coercion is perceived, such agreement would be deemed a unilateral termination of employment, potentially leading to an unfair termination claim.

20. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

An employer does not have supervising authority over a worker after the termination of employment. Thus, there are typically no restrictions preventing the worker from working for the employer's competitor after employment termination, unless the employee has agreed to such restrictions with the employer.

Note that it is possible to restrict a worker from working for the employer's business competitors after employment termination through a contract duly signed by the employee to that effect while the employment relationship is valid.

The Supreme Court has ruled that a non-competition clause aimed at protecting an employer's legitimate rights to operate its business is enforceable and not regarded as contrary to public order and good morals. This is provided that such clause does not absolutely prohibit an employee from working in other fields and does not impose unreasonable obligations on the employee.

21. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Confidentiality requirements should be made in the form of a contractual obligation, binding an employee to keep information related to the employer, acquired during employment, confidential. This confidentiality clause will protect the legitimate interests of the employer's business.

In addition to these post-contractual obligations, unauthorized disclosure of trade secrets may result in violations of the Trade Secret Act B.E. 2545 (2002) and the Penal Code.

22. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

An employer is obliged to provide a certificate of employment upon the end of employment, regardless of the reason for termination, according to the Civil and Commercial Code. The certificate of employment must stipulate the length of service and description of the work performed by the worker. A Supreme Court judgment has set a precedent, establishing that an employer is not entitled to include any statement unfavourable to the employee, e.g., the termination of employment for cause, in the certificate of employment.

23. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

Many employers might believe that they are free of legal risks if all statutory payments (as listed Question 18 above) are made upon termination. However, any employer who fails to establish 'reasonable grounds' (see Question 1 above) could find themselves embroiled in a lawsuit initiated by the employee for an unfair or wrongful termination claim against the employer and its directors. Therefore, employers must assess whether the reason for termination of employment is just and proportionate to the employee's misconduct or violation of any discipline. Also, seeking advice on preparing for termination and associated legal risks is advisable.

In cases of termination, whether on reasonable grounds or for any other reasons (where severance pay must be

made), considering an agreement for mutual separation of employment could be an option that helps mitigate the risk of a lawsuit for unfair termination. Mutual separation is not considered a unilateral termination by the employer that would trigger liability for compensation. It is strongly advisable that an agreement for mutual separation includes mutual releases or discharges of obligations between the parties. In practice, successfully concluding a mutual separation agreement requires careful preparation of relevant documentation and thoughtful dialogue for conducting a separation meeting.

24. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

Two bills are currently in the process of public hearing from 20 Jan 2025 to 19 Feb 2025, proposing amendments to the Labour Protection Law. These amendments include:

1. Normal working time shall not exceed 40 hours per week for general work and 35 hours for work which may be harmful to the health and safety of employees (currently 48 hours per week for general work and 42 hours for work which may be harmful to health and safety).
2. An employee who has worked for an uninterrupted period of 120 days is entitled to annual vacations (annual leave) of not less than ten working days per service year (currently one year of service for annual leave of six working days).
3. A female employee can leave with pay during menstruation for at least three days per month. This type of leave shall not be regarded as sick leave.
4. An employee shall be entitled to take leave with pay for a period not exceeding 15 days per year to take care of family members or other persons with a close relationship with the employee, who are hospitalized or in need of physical or mental care. An application for this type of leave for five days or more shall require medical certificates.
5. A lactating employee shall be allowed to take two 30-minute intervals off while at work for lactating.

Impact on Employment Termination: With reference to (2), the increase in annual leave entitlement to not less than ten working days per service year could significantly affect the payment in lieu of unused annual leave entitlements upon termination (as mentioned in Question 17). Employers should prepare for this by ensuring that annual leave days are scheduled in advance for employees to take each year, minimizing the accumulation of unused entitlements.

Preparation for Employers: Employers should review and update their leave policies to align with the proposed amendments, particularly regarding the increased annual leave entitlement. It is advisable to implement a system for scheduling and tracking annual leave to ensure that employees utilize their leave entitlements within the service year, reducing the financial impact of paying for unused leave upon termination. Employers should stay informed about the progress of these bills and any further legislative changes to ensure compliance with Thai labour laws.

It is important to note that these bills are subject to review by parliament and may or may not become law. Employers should monitor the legislative process to stay updated on any changes.

At this time, the other proposed amendments, as discussed in (1), (3), (4), and (5) above, do not appear to have a direct impact on the termination of employment. However, employers should remain vigilant and consider any indirect effects these changes may have on overall employment practices and employee relations.

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