

CHAPTER 9 LABOUR

Thailand has no consolidated code of labour law. The most important single Act in this area is the Labour Protection Act (1998). However, other provisions regarding labour law are to be found in the Civil and Commercial Code, the Labour Courts Act, the Labour Relations Act, the Factory Act, the Social Security Acts, the Workmen's Compensation Act, and the Provident Fund Acts, and regulations issued pursuant to those Acts.

The Labour Protection Act The Labour Protection Act came into force on August 19, 1998. Two amendments, the Labour Protection Act (No. 2) and the Labour Protection Act (No. 3) were passed on February 15, 2008 and are now in force.

Who is an 'employer'? An *employer* means a person who agrees to employ employee(s) to work by paying wages and includes: (1) A person who is appointed to work on behalf of the employer and (2) where the employer is a juristic person, a person who is authorised to act on behalf of the juristic person and a person appointed by such person to act on his/her behalf.

Employment sub-contracting In the case of a business operator who has allowed a person other than an employment agency, to provide employees to work, and the work is part of the manufacturing process or business of that operation, and regardless of whether that person is in control of the work process or responsible for paying wages for those employees or not, it shall be deemed that the business operator is the employer of those employees.

A business operator must apply the same treatment to an employee who was hired to work on a daily basis, and an employee who has an employment contract so that they receive the same right and benefits.

Who is an 'employee'? An *employee* means a person who agrees to do work for an employer in return for wages, regardless of the description of his status.

Note that employees in certain specified occupations, including those in agriculture, fisheries, the transporting or loading of goods for seagoing vessels, and other categories as prescribed by regulations, are subject to other forms of employment protection outside the Act. The Act also does not apply to central or local government entities or state enterprises – such persons have employment rights similar to the LPA under separate legislation.

The Act applies to all other employees, as defined above.

What is an employment agreement? An employment agreement means a written or oral agreement which is clearly stated or implicitly understood, where a

person referred to as the employee agrees to do work for another person referred to as the employer, and the employer agrees to pay wages throughout the period of work.

Unreasonable terms in employment agreements Where the employment contract, work regulations, rules, or employer's orders benefit the employer excessively, the court has power to issue an order that the employment contract, working regulations, rules, or orders are to be enforced only in a reasonable and fair manner.

Hours of work An employer must notify the working hours to the employee. It must state the beginning and end of working hours in each day not exceeding the hours for each type of work as prescribed in regulations, but not exceeding eight hours a day. Where the work does not cover eight hours in a day, the parties may agree to add the hours to another day, but not exceeding nine hours a day and when aggregated for the whole week, not to exceed eight hours. This is except for certain work that may cause damage to the health and safety of the employee, where in accordance with regulations an employee must not work more than seven hours a day and not exceeding 42 hours in total per week.

Where the parties agree to increase the working hours on another day as above, and it exceeds eight hours in a day, the employer must pay wages not less than 1.5 times the normal hourly rate for the excess hours to an employee who works on a daily basis, and for employees who are paid by piecework, not less than 1.5 times the normal piecework rate for the additional hours.

Where the employer cannot state the beginning and end of the working hours of each day, due to its nature or the working conditions for certain types of work, the parties may agree to work not exceeding 8 hours in a day and not exceeding 48 hours in a week.

Minimum wages The Minister of Labor has power to issue regulations imposing minimum daily wage rates for employees. These are fixed on a province by province basis (Thailand has 76 provinces or *changwat*) and are reviewed at least annually. The rates apply to all categories of employees, except for those in certain excluded industries namely: agriculture including cultivation, fisheries, forestry, livestock farming, and other industries as prescribed in regulations. The rates are based on a day's work, assessed as follows:

1. a seven hour day, for work that is likely to be dangerous to health or physically dangerous, as defined in regulations.
2. an eight hour day for industrial work or work in transport.
3. a nine hour day for work in commerce, or other work not included in (1) or (2) above.

Where the normal working hours of an employee exceed those referred to above, then the minimum wage applicable must be increased proportionately, unless the employee receives overtime pay, in accordance with regulations. An employer is obligated to pay the minimum wage applicable, and violation is an offence punishable by imprisonment or a fine.

The employer must display the notification in a conspicuous place at the workplace for the information of employees, during such time as the notification remains in effect.

Overtime An employer may not compel an employee to work overtime, and an employee's consent to work overtime is required. Overtime hours must not exceed those stipulated by the Ministry of Labour. An employee who was employed to work in the following work, is not entitled to claim overtime payments or holiday overtime payments, but an employee who is employed to work in (3) (4) (5) (6) (7) (8) or (9) is entitled to payment, according to the hourly rate in the working day and number of working hours:

- (1) An employee who acts on behalf on his/her employer in dealing with employment, payment of pensions, and termination of employment.
- (2) Work involving in sales, or persuading people to purchase where the employer pays commission to the employee.
- (3) Work involving organizing train services, including working inside and outside trains in running the train services.
- (4) Work involving opening and closing of dams, locks or sluice gates.
- (5) Work involving in reading water level or measuring water volumes.
- (6) Work involving in firefighting or protecting the public.
- (7) Work involving in working outdoors or work which by its nature or condition is non-specific in hours.
- (8) Shift work, guarding premises or property which is not the normal duty of an employee.
- (9) Any other work, as prescribed in regulations.

An employer may however agree to pay overtime or holiday overtime pay to an employee.

Work during holidays An employer cannot compel an employee to work on a holiday; except where: the nature or description of the work requires that it is continuous and a stoppage would damage the work, or the work is of an emergency nature. In such cases, the employer may instruct the employees to work during a holiday to the extent that it is necessary.

Rest periods Employees are entitled to one hour's rest after five hours of work.

Weekly holiday Employees are entitled to one day's holiday per week, and the interval between holidays must not exceed six days.

Traditional holidays An employee is entitled to paid holidays for the 13 traditional holidays that occur every year, including National Labour Day.

Annual leave An employee who works continuously for one year is entitled to six days' paid annual leave. Annual leave can be postponed or accumulated.

Sick leave An employee may take sick leave for so long as the illness lasts. A medical certificate can be required by the employer after three days absence. The employer is obliged to pay wages during sick leave for up to 30 days per year. Where absence is due to work related sickness or injury, or maternity leave, this does not count as absence through illness.

Home workers Under a regulation passed in 2004, where work is performed by an employee at home, this is subject to more detailed regulation, including an obligation for the contract of employment to be in writing and to be registered at the Ministry of Labour.

Work stoppages Where the employer has to stop the whole or part of its operations temporarily, and this is not due to force majeure and this affects the employees, the employer must pay not less than 75% of an employee's wages before the operations stop, for the whole period of the interruption. An employer must give not less than three working days advance written notice to the employees and the labor inspector regarding the stoppage of operations.

Where employer requests security An employer may not ask for or accept security for work or damages, whether money or assets or a personal guarantee from an employee, except for work where the employee handles or is responsible for financial matters or assets that belong to the employer, which may cause any loss to the employer. The categories of work where the employer may require or accept security from the employee, the type of security, value of security or maintenance of security must comply with regulation.

Where the employer asks or accepts security or signs a guarantee with an employee to pay for loss or damage caused by the employee, when the employer has terminated the employment or the employee has resigned, or the

guarantee has expired, the employer must return the security with interest to the employee within seven days from the date when the employment ends.

Deductions from wages An employer is not entitled to make any deductions from wages, overtime pay, holiday pay or overtime holiday pay, except on the following grounds:

- (1) For income tax and other deductions required by law.
- (2) Trade union dues.
- (3) Payments of debts due to a savings cooperative or debts in the nature of welfare benefits beneficial to the employee, and with his consent.
- (4) As security for his work, or as security against loss whilst working, or monies required to make good any losses to the employer caused by the employee's intentional acts or gross negligence, with the employee's consent.
- (5) Agreed contributions to provident or pension funds.

The deductions made under each of (2) (3) (4) and (5) must not exceed 10%, and in aggregate must not exceed 20%, of the wages due for that period, without the employee's consent.

Sex discrimination, harassment, maternity rights, child labor The Act imposes various special duties in relation to sexual harassment, the employment of women and pregnant women, and child labour:

Sexual harassment Neither the employer, nor a superior, controller, or inspector may sexually menace or sexually harass employees.

Occupations prohibited to women An employer may not employ women to work in the following occupations;

1. Mining or construction work carried out under ground, under water, in caves or tunnels, or tunnels under mountains, except for work that does not cause injury to an employee's health or body.
2. Work that has to be performed on scaffolding more than 10 meters above the ground.
3. Manufacturing or transporting explosives or inflammable things, except where the working conditions do not cause damage to the employee's health or body.
4. Any other work, as prescribed in regulations.

Occupations prohibited to pregnant women An employer may not employ pregnant women to work in any of the following occupations:

1. Work involving machinery or motors which vibrate.
2. Work involving being in a moving machine or moving with vehicles.
3. Work involving lifting, carrying, pulling, or pushing objects exceeding a weight of 50 kilograms.
4. Working in ships or boats.
5. Any other work as prescribed in regulations.

An employer may not employ pregnant woman to work between the hours of 10.00 pm till 6.00 am, or permit working overtime or working on holidays.

As to an employee who is pregnant and has an executive, academic, administrative, financial or accounting position, she may work overtime in a normal working day, providing that there is no effect to the employee's health and the employee consents on each occasion.

Restrictions on child employment An employer may not employ a child aged under 18 years to work in the following workplaces:

1. Slaughterhouse
2. Casino
3. Entertainment places, as defined in relevant law.
4. Any other places as prescribed in regulations.

Accepting security and payment of wages to child employees An employer may not request or accept security from a child employee.

An employer may not give the wages of a child employee to any other person.

Where an employer gives payment or any other benefit to the child employee's parents, guardian or any person in advance before employment, during employment, or before any occasion when wage payment is due, it shall not be deemed that the payments are wages or that the employee receives wages, and

it is not permitted for an employer who gave advance money or benefits to the child employee to deduct it from his/her wages paid for any period of time.

Reasons for dismissal Where an employer dismisses an employee for a permitted statutory reason, that is a reason that exempts the employer from paying a severance payment, then the reasons for such dismissal must be stated

in the dismissal notice. If the reasons are not so stated, then the employer will be estopped from raising them as a defence in any proceedings subsequently brought by the employee.

Dismissal for pregnancy or trade union membership or activities Note also that an employer may not dismiss an employee for the reason of pregnancy, and may not dismiss an employee for trade union membership or trade union activities.

Notice period When an employment contract for a fixed period has expired, the employment will end without giving notice.

Where the employment contract does not specify the period of employment, either party may terminate it by giving to the other written notice, within, or before the wages are due, with the effect that employment is terminated when the next payment is due, but not more than three months notice need be given. A probationary period is deemed to be a non-specified employment contract.

In the case of termination, the employer must pay wages due to the date employment is ended, as notified, and the employee may leave.

Payment may be given in lieu of notice.

No notice is required where employment is terminated for permitted cause under either the LPA, or the Civil and Commercial Code.

Dismissal for cause The Act sets out the grounds on which an employer may dismiss an employee without notice and without having to make a severance payment:

1. Dishonesty in performing duties or intentionally committing criminal offences against the employer.
2. Intentionally causing loss to the employer.
3. Acting recklessly or negligently, causing serious loss to the employer.
4. Violation of the employer's rules, regulations or orders, which are both lawful and fair, provided the employer has given prior warning, except in a serious case where the employer is not required to give a warning. A written warning is effective for one year from the date of the violation.
5. Absence from duties for three consecutive working days without reasonable cause, whether or not a holiday intervenes.

6. Imprisonment under a final court judgment. If the offence is one of negligence or a petty offence, it must cause loss or damage to the employer.

Liability for severance pay Where an employee is dismissed without permitted statutory cause as above, then the employee is entitled to severance pay at specified rates, as follows:

Period of Employment	Severance Pay Due
Exceeding 120 days but less than 1 year	30 days' pay
Exceeding 1 year but less than 3 years	90 days' pay
Exceeding 3 years but less than 6 years	180 days' pay
Exceeding 6 years but less than 10 years	240 days' pay
10 years employment or more	300 days' pay

No liability for severance pay No severance pay is due:

1. where the employment is for a fixed duration and employment expires at the end of the contract period, provided the employment is for a particular project that is not in the normal course of business of the employer; or
2. where the work is periodic in nature and with a fixed term or ending on its completion, or seasonal work and the employment is performed during that season

and in each case, the employment was for a fixed period of not more than two years, and agreed to in writing by both parties when the contract was made.

Obligation to pay holiday pay Where the employer terminates employment other than where it may dismiss the employee summarily, it must pay accumulated annual holidays pro-rated to the proportion that the employee is entitled to receive.

Where either party terminates the employment contract, regardless of whether the contract is for a fixed term or not, the employer must pay accumulated holiday leave to which the employee is entitled.

Unfair dismissal Under the Labour Courts Act, if in the opinion of the Labour Court has power to order the reinstatement of the employee at the same wage rate that previously applied. If the court decides that the parties cannot work together, then the court will assess the employee's losses taking into account his

age, length of service, hardship at the time of dismissal, the reasons for the dismissal and the compensation that the employee is entitled to receive

In trying a case of dismissal or other labour case, the Labour Court must take into account the conditions of work, the cost of living, the hardship of the employee, wages rates or the rights or benefits of employees working in the same type of business, the status of the business and general economic and social conditions, in order to be fair to both parties.

Appeals from the judgments of the Labour Court are made direct to the Supreme Court.

Payment of annual holiday and accumulated holiday pay on dismissal Where the employer terminates employment not for permitted cause, it must pay accumulated annual holidays to employees, duly pro-rated. Where either employee or employer terminates the employment contract, regardless of whether termination was for permitted cause, the employer must pay accumulated holiday leave which the employee is entitled to receive.

Dismissal due to restructuring or modernization If dismissal occurs due to restructuring of the business or change in the machinery or technology, then 60 days advance notice of dismissal must be given to the employees and to the Labour Inspection Office. If not, then 60 days special compensation is payable to an employee. In addition, dismissed employees with over six years service are entitled to special compensation of 15 days pay for each year of service, subject to a maximum payment of 360 days pay.

Dismissal due to re-location of the business When an employer relocates its place of operations or business and the relocation affects the ordinary living conditions of the employee or his family, the employer must notify the employee of the relocation, not less than 30 days prior to the date of relocation. Where the employee does not wish to work for the employer at the new location, he has a right to terminate his employment contract within 30 days from the notified date of relocation. The employee is then entitled to special severance pay of not less than the severance pay which an employee is entitled to if dismissed without permitted cause.

Where the employer does not notify the employees in advance, it must pay special severance pay, at the most recent rate for a 30 day period, or the most recent 30 days wages to an employee who is paid by piecework.

Payment must be made by the employer within seven days from the date that the employment is terminated. The employee is not required to give notice of such claims to the employer.

If the employer fails to make payment, the employee may complain to the Labor Welfare Committee.

Date for payment Any wages, overtime pay, holiday pay and overtime holiday pay due must be paid to the employee within three days of dismissal.

Employer to pay interest in case of default Where an employer does not return security money, or does not pay wages, overtime pay, holiday pay, and holiday overtime pay within the specified date, or severance pay, special severance pay without notice or special severance pay, the employer must pay the employee interest of 15% per year for the period of default.

Transfer of employment Where employees are transferred, whether on the sale or transfer of a business or otherwise, the new employer is obliged to accept all the rights and obligations of the former employer, in relation to the transferred employees. The employees' existing rights against the former employer will survive.

Welfare provisions The Act also contains a number of provisions relating to the welfare of employees:

Labor Welfare committee All employers with a workforce exceeding 50 employees must establish a Labor Welfare Committee. It must be composed of at least five elected members, and the employer must meet the Committee at least once every three months, or whenever at least 50% of the Committee or a trade union requests a meeting. The duties of the Committee will be to discuss the provisions or management of the employees' welfare with the employer, and to make proposals on welfare to the Committee on Labour Welfare (a government organization).

Work rules All employers with 10 or more employees must draft, display at the workplace, and file at the Ministry of Labour, its Work Rules. The Work Rules must set out the terms and conditions of employment, including any complaints procedure, and other matters.

Employees' register All employers with more than ten employees must maintain an Employees' Register, containing prescribed information including the employees' names, position held, wages paid, and other information, and such Register must be retained for two years after the termination of employment of any employee.

Filing of employment and working conditions form An employer with 10 or more employees must submit an employment and working conditions form to the Director General within January of each year. The labor inspector must send the forms to the employer for completion within December of each year.

Where the facts of employment and working conditions have changed, the employer must give written notice to the Director General within one month of the changes.

Provident fund Any business which employs at least ten employees and which does not yet have a registered provident fund or pension or retirement fund, must now join the compulsory provident fund which will be set up by the Ministry of Labour. This fund will provide benefits to employees on their retirement at the end of employment, upon death during employment, or in other cases to be set out in regulations. Employers and employees will be obliged to make equal contributions to the Fund, in accordance with a scale of contributions to be fixed by the Ministry (not exceeding 5% of wages). An employee (or his estate upon death) will be entitled to receive the total of the employer's contributions, the employee's contributions, and the benefits accrued from those contributions.

Priority of debts in insolvency or otherwise Under the general law, a preferential creditor has rights against the property of his debtor in priority to ordinary or deferred creditors. With regard to any monies that an employer is liable to pay under the LPA or contributions that the employer has to pay into the Employee Welfare Fund, the employee or Department of Welfare and Labor Protection has a preferential right over the property of the employer, with equal ranking to taxes that the employer is obligated to pay.

Power of the court to review employment agreements Where the employment contract, work regulations, rules, or employer's orders benefit the employer excessively, the court has power to issue an order regarding those employment contracts, working regulations, rules, orders to be enforced only in a reasonable and fair manner.

Enforcement To enforce obligations under the LPA, an employee may bring a complaint to the Labour Inspection Office, alleging that an employer has not complied with any provision of the Act. A Labour Department Inspector will investigate the complaint, and issue a ruling within 60 days of the complaint being made. Either the employee or the employer may appeal to the Labour Court, if he is dissatisfied with the decision of the Inspector.

Alternatively, an employee may issue proceedings in the Labour Court, claiming a severance payment, damages for unfair dismissal, unpaid wages, unpaid holiday pay, etc. There is also a scale of fines or imprisonment for violations of certain sections of the Act. Non-compliance with an order made by an Inspector is also an offence.

Fines and imprisonment The LPA has a detailed list of fines and imprisonment that apply to breaches of duties imposed under the Act.

Workmen's compensation. Under the Workmen's Compensation Act, employees who are injured or become ill or die during the normal course of their employment, are entitled to medical, disability and/or death benefits in accordance with a compensation schedule. The amount of compensation is usually small, when compared to that paid industrialized nations. Employers with twenty or more employees in most parts of the country must pay a percentage of their workers salaries into a compensation fund, which in turn pays benefits in appropriate cases.

Health and safety The Labour Protection Act contains a provision whereby the Ministry of Labour is granted delegated powers to formulate and issue regulations for the health and safety of employees. Many such regulations have been issued, usually applicable to only one particular industry or type of employment.

Social security All employers are liable to participate in the social security scheme, regardless of the number of employees. Employers, employees and the government itself contribute to a social welfare fund. This fund will pay benefits to workers and their families in cases of death, injury, disability or maternity leave.

Labour relations The Labour Relations Act (1975) sets out a comprehensive framework of rules for employees and employers to negotiate labour disputes. The Act also provides for the registration of trade unions, trade union federations, employers' associations and employers' federations. Employees who engage in trade union activities may not be disciplined or dismissed for such activities. Generally speaking, trade unions are not very active in Thailand.

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