

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 Factories Act, the Social Security Act, the Workmen's Compensation Act, the Provident Fund Act, and the Safety, Health and Workplace Act, and regulations issued pursuant to those Acts.

The Labour Protection Act The Labour Protection Act came into force on August 19, 1998.

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

Note that a business is also deemed to be an *'employer'* if a contractual employer has sub-contracted the provision of work and payment of wages to it. Such an employer must also provide the employees (of the contractual employer) with the same employment protection measures as the employees' contractual employer.

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.

A regulation has been issued exempting employers who are non-profitmaking organizations from the LPA obligations for payment of severance pay, and the obligation to contribute to the government provident fund (see below).

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.

Principle of equal pay for men and women For work of the same description, quality and quantity, or work of equal value, an employer shall fix wages, overtime pay, payment for work on a holiday, and overtime pay for work on a holiday, at equal rates, regardless of whether the employee is male or female.

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, and not exceeding eight hours a day. Where the work does not last eight hours in a day, the parties may agree to add the hours to another day, provided it does not exceed nine hours in a day and when aggregated for the whole week, does not exceed 48 hours. This is except for certain types of work that may damage the health and safety of the employee, then in accordance with regulations an employee must not work more than seven hours in 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 this exceeds eight hours in a day, the employer must pay wages of not less than 1.5 times the normal hourly rate for the excess hours, to an employee who works on a daily basis or who work on an hourly rate, or not less than 1.5 times the normal wages paid to those who work on a piece work basis.

Where the employer is unable to 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 more than eight hours in a day and not more than 48 hours in a week.

Minimum wages Historically, Thailand had a policy of minimum wages and annual increases on a province-by-province basis. This has now been replaced by a national minimum wage policy. With effect from 1 January 2013, the minimum wage is 300 Baht daily throughout the country

The minimum wage applies 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.

Note also that the National Wages Committee has power to prescribe minimum wages for certain categories of employee in specific industries based on skills. Entitlement may depend on the employee passing specified tests and working in a particular position.

For example, in August 2016, minimum wages were fixed for certain categories of employee in the following industries:

1. electrical industry and electronics;
2. motor vehicle industry;
3. logistics industry;
4. parts and spare parts of motor vehicles industry; and
5. jewelry industry.

The rules applicable to any particular industry, or category of employee, must be consulted to ascertain the current entitlements.

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 the number stipulated by the Ministry of Labour. An employee 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 for a working day and the 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 An employer must allow an employee to have a weekly holiday of not less than one day per week, such that the interval between weekly holidays must be not be less than six days. The parties may agree in advance to fix any day as the weekly holiday.

When an employee performs hotel work, transportation work, work in forestry, in the countryside or other work as prescribed in regulations, within any period of four consecutive weeks, the parties may agree in advance to accumulate weekly holidays, provided such holidays must be taken within those four consecutive weeks.

Traditional holidays An employer shall announce and fix the traditional holidays for the information of the employees in advance. The number of traditional holidays in one year shall not be less than 13 days, inclusive of National Labour Day as prescribed in regulations.

An employer shall consider fixing the traditional holidays separate from government holidays for the year, religious holidays or customary and traditional holidays of the locality.

When a traditional holiday falls on an employee's weekly holiday, the employee shall be given a leave day in compensation for the traditional holiday on the following working day.

When an employer is unable to allow an employee take a traditional holiday as the characteristics or nature of the work performed by the employee are as prescribed in regulations, the parties shall agree another holiday in compensation, or the employer may pay the employee holiday pay in lieu.

Annual leave An employee who has been working consecutively for a full year is entitled to take annual leave of not less than six working days; the employer shall be the person to determine in advance when the said leave shall be taken, or shall determine this by agreement with the employee.

During succeeding years, the employer may decide upon annual leave for the employee of more than six working days.

The parties may agree in advance to accumulate and postpone annual leave which has not been taken in that year, to be combined with the annual leave of the following year.

With regard to an employee who has worked for less than one year, the employer may determine the annual leave for the employee on a pro-rata basis.

Employer's rights An employer shall not be allowed to order an employee to perform overtime work or holiday work which might be hazardous to the health and safety of the employee.

Medical leave An employee shall be entitled to take medical leave in accordance with the actual extent of illness. For medical leave of three working days or more, the employer may require the employee to produce a medical certificate from a doctor of first class medicine or from a government medical facility. When the employee is unable to produce a medical certificate as referred to, the employee shall give an explanation to the employer.

When the employer provides a doctor, that doctor shall be the person to issue the certificate, unless the employee is unable to allow that doctor examine him or her.

Days on which an employee is unable to work due to an injury or illness arising from work, and maternity leave days, shall not be considered to be medical leave.

Sterilisation leave An employee shall be entitled to take leave in order to be sterilized for the period prescribed by a doctor and for which the doctor issues a certificate.

Business leave An employee shall have the right to take necessary business leave for not less than three working days per year.

Pay for business leave shall be equivalent to the wages paid on a working day throughout the period of leave but not more than three working days in a year.

Leave for military service An employee shall be entitled to take leave for military service for mobilization for inspection, for military training or for mass testing in accordance with the law on military service.

Leave for training or knowledge development An employee shall be entitled to take leave for training or development of knowledge and competence in accordance with the criteria prescribed in regulations.

Maternity leave and maternity pay A woman employee who is pregnant shall have the right to take maternity leave for not more than 98 days on each occasion of pregnancy.

The number of days of maternity leave shall include days taken as leave for pregnancy examination before child delivery as well.

The number of days taken as leave shall include holidays in between as well.

Pay for maternity leave shall be equivalent to the wages paid on a working day throughout the period of leave, but not exceeding 45 days.

Calculation of wages, overtime pay, holiday pay, overtime holiday pay, etc. An employer shall pay wages, overtime pay, pay for work on a holiday, overtime pay for work on a holiday, and money an employer is obligated to pay under this Act according to the following periods of time:

- (1) In the case of calculating wages on a monthly, daily, hourly, or other period of time which does not exceed one month, or according to piecework, payment shall be made not less than once a month, except where there is an agreement otherwise which is beneficial to the employee.

- (2) In the case of calculating wages other than in (1), payment shall be made according to the period of time agreed by the parties.
- (3) Overtime pay, pay for work on a holiday, overtime pay for work on a holiday, and money the employer is obliged to pay by law, shall be made at least once a month.

Where an employer terminates the employment of an employee, the employer shall pay to the said employee wages, overtime pay, pay for work on a holiday, overtime pay for work on a holiday, and money the employer is obliged to pay by law, according to the entitlement of the employee, within three days from the date of termination of employment.

Suspension of business Where an employer finds it necessary for an important reason which affects his business operations to the extent that he is unable to operate his business normally, and which is not due to force majeure, and must suspend his business either in whole or in part for a temporary period, the employer shall pay wages at not less than 75% of the wages on a working day that the employees received prior to the suspension of business operations, throughout the period during which the employer discontinues the services of the employees, at the place of payment, and within the due period for payment.

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 sex discrimination, harassment, maternity and child labour:

Neither an employer, nor a superior, controller, or inspector may sexually menace or sexually harass employees.

An employer may not employ female employees to work in the following occupations;

1. Mining or construction work which has to be carried out underground, underwater, in caves, 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.

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, which exceeds 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 during the hours of 10.00 pm - 6.00 am, or work overtime or work on holidays.

Where a pregnant employee has an executive, academic, administrative, financial or accounting position, the employer may allow the employee to work overtime in a normal working day, provided there is no effect on the employee's health, and with the employee's consent for each occasion of work.

An employer may not employ a child aged under 18 years to work in the following workplaces;

1. A slaughterhouse
2. A casino

3. Entertainment places, according to the law on entertainment places.
4. Any other places, as prescribed in Ministerial Regulations.

An employer may not request or accept security from a child employee.

An employer may not give 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 must 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 severance pay, 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.

Where dismissal is not permitted Note also that an employer may not dismiss an employee for the reason of pregnancy, or 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 any notice being necessary.

Where the employment contract that 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.

Termination without notice Where an employer terminates a contract of employment without giving notice in advance to an employee, the employer shall pay an amount equivalent to the wages the employee should receive from the date of termination to the effective date of termination, such that payment shall be made on the date of termination of employment.

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, or the business is closed, 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 - 20 years employment	300 days' pay

Exceeding 20 years	400 days pay
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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.

Unfair dismissal Under the Labour Courts Act, if in the opinion of the Labour Court the employee has been unfairly dismissed, the 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.

Transfer of business provisions Where an employer wishes to transfer any of his places of business to a new location, or to another place of business of the employer, the employer shall display a notice notifying the employees of this in advance, at a conspicuous place where the place of business is located, so that the employees can see it clearly for a continuous period of not less than 30 days prior to the date of transfer of the place of business, and the said notice must contain clear statements sufficient for good understanding where any employees are to be transferred to any place, and when.

Where the employer fails to display a notice as above, the employer shall pay special compensation in lieu of advance notice to employees who do not wish to work at the new place of business equivalent to the rate of wages for the last 30 days, or equivalent to the wages for work done during the last 30 days for an employee receiving wages according to piecework.

If an employee considers that the said transfer of the place of business has a significant effect on the maintenance of the normal life of the employee or his/her family, and does not wish to work at the new place of business, he/she must notify the employer of this in writing within 30 days from the date of display of the notice, or from the date of transfer of the place of business, where the employer did not post the notice, and it shall be deemed that the contract of employment is terminated on the date the employer transfers his place of business, and the employee shall be entitled to special compensation at not less than the rate of compensation to which he/she is entitled under the Act.

An employer shall pay special compensation in lieu of advance notice, or special compensation, within seven days from the date of termination of the contract of employment.

Where the employer disagrees with the reasons of the employee, it may file a petition to the Labour Welfare Committee within 30 days from the date of being notified of such in writing.

Appeal provisions Upon the Labour Welfare Committee having received an appeal, and deems that the employee is entitled to special compensation in lieu of notice in advance or special compensation, the Labour Welfare Committee shall order the employer to pay special compensation in lieu of notice in advance or special compensation, to the employee within 30 days from the date the employer learns of the order.

Where the Labour Welfare Committee considers that an employee is not entitled to special compensation in lieu of notice in advance or special compensation, the Labour Welfare Committee shall notify the parties of its decision.

Regarding consideration and the issue of an order of the Labour Welfare Committee, this shall take place within 60 days from the date of receipt of the petition, and it shall notify the order to the parties within 15 days from the date of issue of the order.

An order of the Labour Welfare Committee shall be final, except where the employer or the employee lodges an appeal against the order to the Court within 30 days from the date of learning of the order. Where the employer applies to the Court, the employer shall deposit security with the Court to the extent of the amount payable under the order.

Where the employer has lodged an appeal against an order of the Labour Welfare Committee within the period of time allowed, and has complied with the judgment or order of the Court, any criminal proceedings against the employer shall be dismissed.

Change, transfer or merger of business – rights of employee Where an individual employer, or juristic person employer and there has been a change, transfer, or merger with any juristic person, if this causes an employee to be an employee of a new employer, such employer must receive consent from the said employee, and the rights that the employee had with the former employer shall remain with the employer, and the new employer shall accept the rights and duties relating to the said employee in all respects.

Appeals 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 Wages, overtime pay, holiday pay or 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 refuses to return security money, refuses to pay money in a case of termination without notice in advance, refuses to pay wages, overtime pay, pay for work on a holiday, overtime pay for work on a holiday, and money which an employer is obliged to pay, within the period of time prescribed, or refuses to pay where the employer suspends his business, or compensation for dismissal without statutory cause, special compensation in lieu of notice in advance or special compensation where required, the employer shall pay interest to the employee during the time of default at 15% percent per annum.

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 consist 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 ten 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 employee's name, position held, wages paid, and other information, and such Register must be retained for two years after the termination of employment of any employee.

Employer's reporting obligations Under the LPA Amendment Act passed in 2008, all employers with more than 10 employees, must file a annual statement with the Ministry of Labour, containing general information, including: its full

name and address, the number, gender and age of employees, and information about working days, breaks, holidays, wages, etc. The form is issued to employers every December and must be completed and returned within January. In addition, any change to working status and work environment must be notified within one month, and there is a fine for breach of this obligation.

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.

Special protection for homeworkers In May 2011, a Homeworkers Protection Act came into force, to regulate homeworking activities.

The Act contains the following key definitions:

"Homework" means work that an employer in an industrial business has assigned to a person taking work for production or assembly outside the business establishment of the employer, or other work as set out in regulations.

"Homeworker" means a person or a group of persons who agrees with an employer to undertake homework.

"Employer" means a business operator who agrees to employ a homeworker, regardless of whether the assignment of the job will be made through him, his representative or by a sub-contract.

Interpretation Any claim or acquisition of a right under the Act does not deprive a person of any right as a homeworker under other law.

Court with jurisdiction All cases arising from disputes between employers and homeworkers or their heirs relating to rights under the Act are under the jurisdiction of the Labour Court.

Power to vary contract terms Where the employment agreement or terms in a document relating to the taking of homework has resulted in the employer having an unreasonable advantage over the homeworker, the Labour Court has power to order only part of the employment agreement or terms that are fair and reasonable to be enforceable.

Duty to prepare documents An employer must prepare documents relating to the taking of homework in Thai language; one copy for the homeworker and the

other for retention by the employer when the work assignment is made provided it must be available for inspection by a Labour Inspector during working hours.

Contents of documents Documents relating to homework must contain the following information:

- (1) Name, address, sex and age of the homemaker or person in a working in group of homeworkers.
- (2) Name and address of the employer or agent or sub-contractor.
- (3) The wage rate and amount of wages receivable, the method of computation, rights to make deduction from wages and the amount of any security deposit received from the homemaker.
- (4) Category, quantity and value of work taken for homework.
- (5) Job commencement and date of expiry of each period.
- (6) Due date for delivery of work to the employer and the date for wage payment.
- (7) Signatures of the employer and the homemaker.

An employer must keep documents relating to the taking of homework for not less than two years from the date of payment of wages.

Circumstances in which employer may terminate employment Where work taken as homework has not been completed and it is still within the period agreed upon, the employer may not terminate employment unless it is the fault of the homemaker, or the employer has a compelling unavoidable need to the extent that the termination of employment is necessary and the employer has paid compensation to the homemaker.

Where work cannot be completed within the agreed period Where there are reasonable grounds to expect that work taken as homework cannot be completed within the prescribed time, the homemaker must notify the employer as soon as possible so that an agreement to extend the time for delivery of the work can be made.

Where the employer does not agree to extend the time for delivery, and is likely to sustain loss from a delay in such delivery through no fault of the employer, the employer has the right to terminate employment and assign the work to another person.

Right to claim damages Termination of employment as above does not deprive a party from claiming damages against the party liable for such fault.

Other rights to terminate employment Where the materiality of the employment lies in the knowledge and know-how of the homemaker, and the homemaker is deceased or cannot continue to work on such assignment without fault, the employment shall end. But if part of the job has already been completed and considered to be beneficial to the employer, the employer must accept the work and pay wages in accordance with the proportion of the work completed.

Performance guarantees and security deposit An employer may not demand or accept a performance guarantee or security deposit against loss resulting from work by a homemaker unless without this; the category, quantity or value of the assignment worked on may cause loss to the employer, in which case the category, quantity or value of the work in relation to which a performance guarantee may be demanded must be in accordance with regulations.

An employer must return the performance guarantee or security deposit within seven days from the date on which the employer has received the completed work.

Supply of raw materials, equipment or other things Where the employer supplies raw materials, equipment or other things for use in the work, the homemaker must use these carefully and economically and unless agreed otherwise, must return these after completing the assigned work.

Wages In determining wages for homework, if a job is of the same nature and quality and in equal quantity, the employer must determine wages at not less than the wage rate provided for under the Labour Protection Act, as prescribed by the Commission, and there must be no discriminatory practices. The employer must pay wages in Thai currency unless otherwise agreed.

Time for payment of wages The employer must pay wages when the work assigned, or in accordance with the agreed delivery schedule, provided that payment must not be made not more than seven days from the date when the homemaker has delivered the work.

Place for payment of wages Wages must be paid at the homemaker's address or other place with his consent.

Deductions from wages An employer may not make any deductions from wages except for:

- (1) payment of income tax legally required from the homemaker;
- (2) other payments as provided by law;

- (3) compensation for loss to the employer as a result of an intentional or grossly negligent act of the homeworker, but this must be consented to by the homeworker,
- (4) payment of damages or a fine where the homeworker has failed to deliver the job assigned to work within the delivery date and such compensation for loss has been consented to by the homeworker.

Deductions under (3) or (4) may not exceed 10% of wages entitled, and deductions for income tax must be in accordance with the Revenue Code.

Safety at work No one may assign a pregnant woman or child under 15 years old to carry out work of a nature that may be hazardous to health and safety, as defined in regulations.

Work prohibited to homeworkers An employer may not employ a homeworker to do the following work:

- (1) Work relating to dangerous substances, as defined in law.
- (2) Work involving the operation of tools and machinery from which the operator may experience harmful vibrations.
- (3) Work in connection with extreme heat or cold that may be dangerous.
- (4) Other work that may affect health, safety or environment quality.

The nature or categories of work under (2), (3) or (4) is as defined in regulations.

Dangerous raw materials, equipment or other things An employer may not supply or deliver raw materials, equipment or other things for use in carrying out assigned work, that may be dangerous to the homeworker, persons in the home, and persons coming into contact with it, including neighbours.

Employer's duty to warn of danger The employer must notify the homeworker of information relating to danger which may occur as a result of the use of raw materials, equipment or other things for use in carrying out the assigned work, and procedures to protect himself from such danger and to provide adequate safety protection equipment suitable to the nature of the work.

A homeworker must use safety protection equipment provided by the employer and upon completing the assigned job, the remaining equipment must be returned to the employer.

Employer's obligations regarding medical treatment, etc. The employer is liable for medical treatment costs, cost of capacity rehabilitation and funeral allowances, where the homeworker has suffered an accident, illness, disability or death resulting from the use of raw materials, equipment or other things supplied or delivered by the employer for use in carrying out the assigned work, or as a result of the failure of the employer to provide safety protection equipment, or in the case of a job-related accident at the workplace, provided that payment of medical treatment costs, costs of capacity rehabilitation and funeral allowances must be in accordance with rules specified in regulations.

These provisions do not apply where the accident, illness, disability or death results from the intentional act or gross negligence of the homeworker.

Regulatory authority A regulatory authority will be set up, called the Committee for Protection of Homework Employment. Amongst other things, the regulator can determine minimum wage rates which are not to be lower than the wage rates fixed under the Labour Protection Act.

Complaint to a Labour Inspector Where an employer has failed to pay money to a homeworker in breach of the Act, the homeworker may complain to a Labour Inspector. If the homeworker deceases before the complaint is submitted or during the course of its consideration, his heir may continue with it. Complaints are generally to be determined within 30 days of submission. Where the Inspector makes an order for the employer to pay money, it must be paid within 30 days. Either party has a right of appeal to the Labour Court exercisable within 30 days. Where the employer appeals, it must deposit money in the same amount as that due for payment before the appeal is accepted.

Powers of Labour Inspectors The Act sets out the inspector's powers of entry into buildings, to seize documents, take samples, to require any person to make a statement or supply documents, or order an employer to comply with the Act.

Fines and punishment the Act imposes fines and imprisonment for breaches of duties imposed under the Act, including failure to comply with the order of a Labour Inspector. Where the offender is a juristic person, the managing director, manager or any person responsible for its operations is equally liable unless he can prove that he played no part in the offence.

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 Social Security 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 of LPA obligations 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.

Safety, Health and Workplace Act (2011) In July 2011, the parts of the Labour Protection Act that enabled the Ministry of Labour to issue regulations for the health and safety of employees were repealed. These were replaced by a new Safety, Health and Workplace Act (2011). The purpose of this Act is to impose duties upon employers for safety and health in places of work.

Included employers The Act applies to all employers, but not to central, regional or local authorities, or other employer exempted under regulations.

Relevant definitions

"Safety, occupational health and workplace environment" means acts or working conditions that do not cause injury to life, body, mind or hygiene and health as a result of or in connection with work.

"Employer" means an employer as defined in the LPA, including a business person who allows an individual to work or generate benefits for or inside a workplace, regardless of whether that work or earning of benefits is part of, or the whole of, a production process or a business under the responsibility of that business person.

"Employee" mean an employee as defined in the LPA, including an individual permitted to work or generate benefits for or inside the workplace of an employer, regardless of how he or she is described.

"Executive" means an employee in a managerial position of that work department or higher.

"Supervisor" means an employee who controls, supervises, gives order or instructs employees to perform their duties in the work department.

"Work safety officer" means an employee appointed by the employer to carry out safety, occupational health and workplace environment duties under this Act.

"Workplace" means each work department of the employer where employees work.

Duties of employees Employees have a duty to cooperate with the employer in matters relating to the promotion of safety, occupational health and workplace environment, in order to ensure the safety of employees and the workplace.

Duties of employers Employers have a duty to arrange and ensure that the workplace and the employees have safe and hygienic work conditions and workplace environment; and provide support to the performance of employees to prevent them from suffering injury to life, body, mind, health and health.

Where the Act requires an employer to engage in a certain act where expense is incurred, the employer is liable for such expense.

An employer must administer, manage and engage in safety, occupational health and workplace environment related actions in accordance with standards specified in ministerial regulations. For the determination of such standards, any document or report prepared by the employer must be verified or certified by individuals or juristic persons, as specified in ministerial regulations.

Employees have a duty to comply with safety, occupational health and workplace environment criteria in accordance with the standards specified in the paragraph above.

Registration procedure for experts providing services Any person wishing to provide measurement, inspection, testing, certification and risk evaluation services, as well as to conduct training or provide consultation on safety, occupational health and workplace environment in accordance with the standards specified in regulations issued, must register with the Office of Labour Safety, Labour Welfare and Protection Department. The qualifications of registrants, registration, revocation of registration, determination of service fees and service procedures must be in accordance with ministerial regulations.

A juristic person wishing to provide measurement, inspection, testing, certification and risk evaluation services, as well as to conduct training or provide

consultation on safety, occupational health and workplace environment in accordance with the standards specified in regulations, will be issued with a permit by the Director General. The qualifications of applicants, applications, permission, renewal of permit, suspension and revocation of permit, determination of fees and provision of services must be in accordance with ministerial regulations.

Employers to appoint a work safety officer An employer must arrange for a work safety officer, personnel, work department or a party of individuals to engage in the safety of the workplace in accordance with ministerial regulations. Work safety officers and personnel must register with the Labour Welfare and Protection Department.

General duties of employers with regard to health and safety The Act imposes general duties regarding health and safety upon employers:

- *Duty to notify and distribute information:* Where the employer requires employees to work in conditions or an environment where the employees may sustain injury to life, body, mind, or health, the employer must notify the employees of possible dangers from work, and, hand out operational manuals to all employees before they begin their service, change jobs, or workplace.
- *Duty to display warnings or orders, etc:* Where the employer receives warnings, orders or decisions from the Director General, a safety inspector or the Committee to comply with this Act, the employer must announce or post such warnings, orders or decisions at a visible location within the workplace for a minimum of 15 days from the date they have received them.
- *Duty to arrange training:* The employer must arrange for all executives, supervisors and employees to undergo safety, occupational health and workplace environment training in order to be able to safely administer, manage and engage in safety, occupational health and workplace environment related actions.
- *Further obligation to provide training:* Where the employer accept employees for employment, or there is a change of job or workplace, or a change of machinery or equipment which may cause injury to the life, body, mind, or health of the employees, the employer must conduct training for all employees before they begin their service. Training must be in accordance with regulations announced by the Director General.
- *Duty to display signs, etc at the workplace:* An employer must affix warning signs or symbols relating to safety, occupational health and workplace environment, as well as a statement of the rights and duties of

the employer and employees, as announced by the Director General, at clearly visible locations within the workplace.

- *Duties in the case of multiple workplaces:* Where a location has multiple workplaces, all employers of the workplaces within that location must jointly engage in safety, occupational health and workplace environment related actions in accordance with the Act. Employees working at a workplace and employees working at other workplaces not belonging to the employer, must comply with safety, occupational health and workplace environment criteria in use at that workplace as well.
- *Duties in the case of leased workplaces or equipment:* Where the employer leases a building, location, tools, machinery, equipment or any other item used in the workplace, the employer must engage in safety, occupational health and workplace environment related actions relating to such building, location, tools, machinery, equipment or any other item used in the workplace, in accordance with standards specified in regulations. Any act carried out pursuant to this must not result in a right to demand any compensation, or to terminate the lease agreement with the owner of the building, the location, tools, machinery, equipment or item leased or for the lessor.
- *Duties regarding protective equipment:* An employer must arrange for and ensure that their employees wear personal protective equipment of the standards set in regulations. Employees have a duty to wear personal protective equipment and care for such equipment in order for it to remain in working condition, in accordance with the nature of the work, throughout the work period. Where an employee fails to wear such equipment, the employer must instruct such employee to stop work until he/she wears such equipment.

Duties of employers or supervisors Executives or supervisors must support and collaborate with employers and other personnel in relation to general duties imposed and duties regarding training, multiple workplaces and personal protective equipment.

Duties of work safety officers, supervisors and executives Employees with a duty of supervising workplace environment in accordance with standards specified under regulations must consider the nature of the work and the area of their responsibility.

Where an employee learns of a defect or damage and is unable to remedy this on their own, he/she must notify the work safety officer, supervisor or an executive and the work safety officer, and the supervisor or the executive must notify the employer in writing without delay.

Where a supervisor learns of a defect or damage which may result in injury to life, body, mind or health and health, he or she must immediately engage in preventive measures within the scope of their responsibility or assignment. Where this is not possible, the supervisor must notify an executive or the employer to remedy this without delay.

Duties of primary contractors and sub-contractors (as defined in the Labour Protection Act) Primary contractors and subcontractors must engage in safety, occupational health and workplace environment related actions where employees are concerned, in the same manner as an employer. Where the employer is a sub-contractor and there are sub-contractors of higher levels, all superior sub-contractors throughout the chain to the primary subcontractor whose employees work at the same workplace, have a duty to jointly arrange the workplace to ensure safe working conditions and a healthy workplace environment for the safety of all employees.

Regulatory Committee A regulatory committee called the Safety, Occupational Health and Workplace Environment Committee is set up to advise the Minister concerning policies and drafting of regulations regarding health and safety and workplaces.

Additional duties of employers An employer must:

- (1) Conduct safety evaluations.
- (2) Study the impact that the workplace environment has on employees.
- (3) Develop safety, occupational health and workplace environment action plans and develop employee and workplace control and oversight plans.
- (4) Submit findings from safety evaluations, impact studies, operational plans and control plans under (1), (2) and (3) to the Director General.

The criteria, procedures and conditions for action under paragraph one, the type of business and size of business where this is required, and the timeframe, are in accordance with regulations. Employers must comply with recommendations made by safety, occupational health and workplace environment experts.

Duties in the case of a serious accident Where a serious accident occurs at a workplace or an employee is injured by work, the employer must act as follows:

- (1) Where the employee dies, the employer must notify the safety inspector immediately upon learning of the incident by phone, fax or any other method where reasonable details can be provided. The details and cause of the incident must be indicated in writing within seven days from the date of death.

(2) where the workplace is damaged or has to cease production or where an individual in the workplace is injured or damaged as a result of fire, explosion, chemical leakage or other serious accident, the employer must notify the safety inspector immediately upon learning of the incident by phone, fax or any other method where reasonable details can be provided. The cause of the accident, the damage, remedy and preventive measures must be indicated in writing within seven days from the date of the incident.

(3) Where an employee is injured or made ill, once the employer has notified the Social Security Office of the injury or the illness, the employer must also submit a copy of that notification to the safety inspector within seven days.

Any written notification as above must be in the form specified. Once the safety inspector has received the notification, he or she must conduct an inspection and identify preventive measures without delay.

Powers of safety inspectors A safety inspector has authority as follows:

(1) to enter a workplace or an office of the employer during working hours or when an accident has occurred.

(2) to inspect or record images or noises in the workplace that concern safety, occupational health and the workplace.

(3) to use tools to measure or inspect machinery or equipment within a workplace.

(4) to collect samples of any material or product for safety analysis.

(5) to inquire or investigate any matter within his authority and summon relevant individuals to give statements, and to inspect or submit documentary evidence and proposed preventive measures to the Director General without delay.

Powers of Safety Inspectors to make orders Where a safety inspector has found that the employer, employee or a relevant individual has violated or failed to comply with the Act or regulations, or where the workplace environment, building, location, machinery or equipment used by the employees may cause injury, he/she may order an individual to cease violating the Act and to make amends or comply with requirements within 30 days extendable if necessary to 60 days.

Where necessary, a safety inspector has authority to order the cease of use of machinery, equipment, a building or location, or to restrain and mark such items that may cause serious injury to employees temporarily, while the orders of the safety inspector are being carried out. Once the employer has made amends in compliance with the orders of a safety inspector, the order may be revoked.

Obligation to continue to pay wages When the work or production process is stopped, the employer must pay affected employees regular wages or other benefits to which they are entitled, except where particular employees deliberately engage in an act that caused the stoppage of work or the production process.

Non-compliance by employer: Where the employer does not comply with the order of a safety inspector, where there is a possible cause of a serious accident where the Labour Welfare and Protection Department should intervene, the Director General may order the safety inspector or an individual to rectify matters to comply with such order. In such case, the employer is liable for the costs incurred. Prior to such action, a written warning must be delivered to the employer to require compliance with the order of the safety inspector within a specified timeframe. Such warning can be issued with the order of the safety inspector.

Seizure of the employer's assets where the employer fails to pay for costs incurred The Director General may order seizure, impounding and disposal of assets of employers who fail to pay expenses incurred under the previous paragraph as necessary to cover the actual expenses incurred. An order to seize or impound assets is permissible only after a written notice is issued to the employer requesting payment for expenses within a time limit of not less than 30 days from the date on which the employer receive the notice and the employer fails to settle the amount within the time specified.

Protection of employees and whistleblowers An employer may not dismiss an employee or change their work, if the employee files a lawsuit or serves as a witness or provides evidence or notification of safety, occupational health and the workplace environment to a Safety Inspector or the Committee or to a court.

Punishment The Act imposes fines and in some cases, daily fines and imprisonment for breaches of duty under the Act. Where the offender is a juristic person, if the offence is the result of an order or an act of any person, or a result of the failure to order, or act on the duty of a managing director or any individual responsible for the operation of such juristic person, that person is liable to punishment in the same way.

Social security Under the Social Security Act, all employers are liable to register with the social security fund, regardless of the number of employees. Employers, employees and the government itself contribute to the social security fund. Each of the employer and the employee pays contributions of 5% of salary (up to a fixed maximum) into the Social Security Fund every month. The fund pays benefits to those registered or their families in cases of illness, injury, disability or death suffered not in the course of employment, child welfare, unemployment, or retirement pension (the latter is only payable upon permanent retirement).

Workmen's compensation Under the Workmen's Compensation Act, all employers are liable to register with the workmen's compensation fund, regardless of the number of employees. The employer pays a percentage of an employee's salary into the fund annually. The contributions are based on the hazards involved in the business and are different. Under the Act, an employee who is injured or becomes ill or dies during the course of employment, is entitled to medical, disability and/or death benefit in accordance with fixed rates. The fund will pay benefits subject to receiving evidence that establishes the right to make a claim. The amount of compensation is relatively small when compared to that paid in industrialized nations.

Trade unions and employers associations 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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