

Employment law in Thailand – an overview



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Introduction

Despite several years of relative political uncertainty, the business climate in Thailand continues to be positive and welcoming to foreign investment. The country's participation in the recently established Association of Southeast Nations (ASEAN) Economic Community can only be expected to continue this trend.

This inbrief provides a snapshot of the key aspects of employment law in Thailand.

Our Hong Kong office coordinates employment and immigration/global mobility support across the Asia Pacific region (including Thailand).

This publication provides general guidance only: expert advice should be sought in relation to particular circumstances. Our Hong Kong office can source advice through its links with Thai firms.

The employment law landscape

Thailand has a civil law system.

The rights and duties of an employer and an employee are generally governed by the Labour Protection Act 1998 ("LPA"), the Labour Relations Act 1975 and the Civil and Commercial Code, the LPA being the principal statute governing employment. Thailand's employment law is generally considered to be "pro-employee". For example, what is considered "fair and reasonable" is intended to ensure that employees are often not disadvantaged by the stronger position of employers.

Thai employment law applies to all employees working in Thailand, regardless of nationality. It is impossible to avoid the applicability of Thai law through the use of the choice of law provisions and parties cannot contract out of minimum statutory rights under Thai law.

Commencing employment

Structuring the employment relationship

There is no requirement for a foreign employer to set up a local entity to employ local workers. Local employees may be hired directly by a foreign entity or through agencies.

Types of employment

Employment contracts are either fixed-term or open-ended. The law does not distinguish between different types of workers, and therefore blue collar and white collar employees are afforded the same protection under the labour protection laws.

Agency and part-time workers are similarly entitled to certain protections under the LPA.

The employment contract

Employment contracts do not need to be in writing but written contracts are strongly advised. Parties are generally free to negotiate the terms and conditions of the contract, provided that they comply with the minimum statutory standards and are no less favourable than prescribed by the law.

Contracts do not need to be written in the Thai language but this or a dual language contract is recommended if an employee is a Thai national and is unable to fully understand the contract in English. Where there is a dual language contract, the Thai language document would prevail in any Thai court proceedings.

Probationary periods are permitted and there is no maximum period stipulated by law. However, the employee's right to receive statutory compensation upon termination would be triggered once the period of employment exceeds 119 days, provided termination was without cause and employers are generally mindful of this right when setting probationary periods.

Key minimum employment rights

Leave

Employees are entitled to at least six working days of paid annual leave each year once they have completed one year of service. There are also 13 official public holidays each year.

Employees are entitled to paid sick leave of up to 30 working days each year.

The amended LPA grants female employees 98 days of maternity leave, which includes leave taken for pre-natal examination before the delivery date, and holidays during that period. An employee is entitled to full pay of up to 45 days of wages during the maternity leave. There are no paternity rights under the LPA for male employees. Male employees are only entitled to paid statutory paternity leave if they work in the government sectors (with the exception of certain fixed term and part-time employees).

Working time

The maximum working hours are generally eight hours per day or 48 hours per week. A working day can be extended by mutual agreement but working time cannot exceed 48 hours a week. There are also special cases where the working hours must not exceed seven hours per day and 42 hours a week where the health or safety of the employee is at risk (e.g., underground or underwater work). There are also further



conditions that employees are entitled to a rest of not less than one hour a day after working five hours. For work performed in excess of the maximum number of hours fixed by regulation, employees would generally be entitled to overtime compensation. Strictly speaking, by law, the employer would be required to obtain the prior consent of the employees before requiring them to work overtime.

Pay and social security

Thailand's national daily minimum wage is currently set at THB313-336 (depending on the province where the work is carried out). Employees and employers must contribute equally to the Social Security Fund which covers sickness, maternity, disability, death, child allowance, old age and unemployment funds. The contribution rate is 5% of an employee's monthly salary from each of the employer and employee, subject to a maximum contribution of THB750 from each of the employer and the employee.

Terminating employment

Terminating employment can be relatively challenging and may lead to claims of civil liability for unfair termination. There is also a risk of criminal liability on the employer (and persons who have the authority to act on behalf of the employer), but such liability would only arise from failure to make timely statutory payments upon termination, and in practice, rarely happens. Termination must be in compliance with the employment contract and statutory requirements.

Termination can either be for cause or without cause.

Termination for cause is without notice and statutory severance pay. There are strict and limited grounds on which employers can terminate for cause, and examples are: when the employee has performed his or her duties dishonestly or negligently or intentionally commits a criminal offence against the employer, and causes the employer to suffer loss. Generally, the employer has the burden to prove that the employee is guilty of a serious offence or misconduct.

Statutory minimum notice of between one actual prospective pay period and three months applies where employment is terminated without cause. In such a situation, statutory severance is payable to employees with 120 days or more service, ranging from 30 days' salary to 400 days' salary depending on length of service.

Employers are generally prohibited from terminating employees who are union members or female employees on the grounds of their pregnancy.

On termination of employment, the employer must notify the Social Security Office. The employer must also return the employee's work permit to the Labour Department upon termination of employment, in the case of foreign employees.

An employee may be entitled to file a claim in the labour court against an employer for unfair or wrongful dismissal even where the employer has made the requisite statutory and contractual payments upon termination of employment. Where the employer is liable for unfair termination, the employee will be entitled to claim relief in the form of additional discretionary financial compensation or reinstatement. The court rarely grants reinstatement, taking the view that the parties are unlikely to be able to work together. Therefore, the court has a discretion to grant additional monetary damages, and in doing so, would take into account several factors, including the age of the employee, the period of employment and hardship as a result of the termination.

Discrimination

Discrimination on the grounds of gender, race, ethnicity, age, disability is prohibited. However, claims on the grounds of discrimination are rarely, if ever, brought against employers.

Protecting the business

Employers may restrict employees' activities during and after termination of employment but restrictive covenants must be fair in order to be enforced and cannot entirely interfere

with the employee's rights to make a living. Non-competition periods vary in length, with periods of up to 24 months being fairly typical. In determining fairness, the main consideration for the court would be whether or not the covenant prevents the employee from earning a living. Additionally, the court has the discretion to reduce the period of the restrictive covenant.

Resolving disputes

Employment disputes can be filed directly with the labour court or initially raised with the Labour Inspection Officer, who has the authority to observe the working conditions of the employee and the terms of employment before issuing an order if the employee should be entitled to receive any compensation. Parties however, are entitled to disagree with any decision by the Labour Inspection Officer and escalate the matter to the labour court, which has jurisdiction over any employment dispute under Thai law.

Thailand's labour court system features a conciliation stage at a first stage, under which a Conciliation Officer (or the judge assigned to the case) mediates the dispute. The litigation process will only commence if mediation and negotiation fail to settle the dispute.

Labour court proceedings are not subject to court costs and fees and are generally accessible for employees to initiate legal proceedings against employers.

Parties are not required to be represented by a lawyer in court and the judicial process is carried out in Thai and under Thai law.

Employee representation

Employees are free to join labour unions. The Labour Relations Act provides for the registration of labour unions but generally speaking, labour unions tend to be active and have higher membership numbers in certain industries in Thailand (such as manufacturing businesses or where there are a higher number of blue collar workers). Additionally, the law also permits the setting up of an employees'

committees in an organisation with 50 or more employees, which oversees the protection of the rights of employees in that organisation.

Business transfers

On a business transfer, in a situation where an employee is to be transferred from their existing employer to the new employer, the new employer will have to accept the rights and duties of the existing employer. However, this is not automatic and will require the consent of the employee.

Data protection

There is no personal data protection law enacted in Thailand. Employees therefore do not have specific rights on data protection except where data is specifically protected by other laws (e.g. the Thai Constitution, and the Thai Criminal Code).

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This publication provides general guidance only: expert advice should be sought in relation to particular circumstances. Please let us know by email (info@lewissilkin.com) if you would prefer not to receive this type of information or wish to alter the contact details we hold for you.

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