

## LABOR LAWS

### THAI LABOR LAW

Labor matters are generally governed by the Labor Protection Act B.E. 2541 (A.D. 1998) and its amendment (No. 2) and (No. 3) B.E. 2551 (A.D. 2008) and the Civil and Commercial Code Sections 575 to 586 on Hire of Services. Other laws include:

- Labor Relations Act B.E. 2518 (A.D. 1975) with its amendment (No. 2) B.E. 2534 (A.D. 1991), and (No. 3) B.E. 2544 (A.D. 2001).
- The Act Establishing the Labor Court and Labor Court Procedure B.E. 2522 (A.D. 1979) with its amendment (No. 2) B.E. 2550 (A.D. 2007).
- Provident Fund Act B.E. 2530 (A.D. 1987) with its amendment (No. 2) B.E. 2542 (A.D. 1999), and (No. 3) B.E. 2550 (A.D. 2007).
- Social Security Act B.E. 2533 (A.D. 1900) with its amendment (No. 2) B.E. 2537 (A.D. 1994), and (No. 3) B.E. 2542 (A.D. 1999).
- Workmen's Compensation Act B.E. 2537 (A.D. 1994).

### Employees

According to the law, an employee is a person who agrees to work for an employer in return for a wage, regardless of title. An employer must provide minimum standard conditions of employment. Employers cannot stipulate employment conditions which do not comply with minimum standards set by the Labor Protection Act.

### Work Rules and Regulations

Any employer having ten or more employees is required to have written work rules and regulations (in Thai) prepared and submitted to the District Labor Office governing the region in which the employer's office is located within seven days from the date the work rules and regulations are effective. One copy must also be posted at the place of work. The work rules and regulations must contain at least the following information:

- Working days, regular working hours, and rest periods.
- Holidays and rules for taking holidays.
- Rules on overtime and working on holidays.
- Date and place of paying wages, overtime pay, holiday pay, and holiday overtime pay.
- Leave and rules for taking leave.
- Discipline and disciplinary actions.
- Submission of grievances.
- Termination of employment, severance pay, and special severance pay.

In addition, an employer who regularly employs ten or more employees has to maintain at the place of work:

- A register of employees (in Thai) containing, for example, name, address, date of employment, wage rate, etc.

- Documents concerning the calculation of wages (in Thai), for example, working days, working hours, and wages.

### **Working Hours**

Maximum working hours are fixed depending on the type of work. In general, the normal working hours may not exceed 8 hours per day or 48 hours per week. Work which may be detrimental to an employee's health or body, as prescribed in the Ministerial Regulation, cannot exceed 7 hours per day or 42 hours per week.

Where the working hours of any day are less than 8 hours, the employer and the employee may agree to include the remaining working hours with the working hours of any normal working day. However, the total number of working hours must not exceed 9 hours per day, and 48 hours per week. The employer shall pay remuneration at 1.5 times the hourly wage rate of a working day for the number of hours worked in excess of 8 hours to a daily employee and an hourly employee, or at 1.5 times the rate for each work unit performed on a working day to a piecework employee.

On a typical workday, employees shall be entitled to a rest period of one hour after five consecutive working hours. However, the employer and the employee may agree in advance to a rest period shorter than one hour, but the total rest periods during a working day may not be less than one hour per day.

### **Child and Female Employees**

The minimum age of employment is 15 years, and no children under the age of 18 may be employed without informing the Labor Inspector. Male and female employees shall be equally treated, unless the nature of working conditions does not allow for such equal treatment. Children employees under the age of 18 and pregnant employees are not allowed to work between the hours of 10 p.m. and 6 a.m., work overtime, work on holidays, or do other work as prescribed by law. Employers are not allowed to terminate female employees because of pregnancy.

### **Remuneration**

Remuneration is determined prior to employment. The employer can provide a remuneration package which may include a range of benefits. However, basic remuneration must meet salary scales based on a minimum wage, which is set periodically by Notification of the Ministry of Labor and Social Welfare. The minimum wage is determined by the location of the company. For example, Bangkok and its five surrounding provinces (Nakhon Pathom, Nonthaburi, Pathum Thani, Samut Prakarn, and Samut Sakhon) have the same minimum wage. Other provinces have a lower minimum wage. It is advisable to check the current Notification of the Ministry of Labor and Social Welfare Regarding Prescribing Minimum Wages. Wages must be paid in Thai currency, unless otherwise agreed by an employer and an employee.

### **Employee Welfare**

A business entity with 50 employees or more must have a popularly elected Welfare Committee, whose role is to look after and make recommendations regarding employee welfare.

## **HOLIDAYS AND LEAVE**

An employee is entitled to at least a one-day holiday per week. This is usually taken on Sunday. In addition, a minimum of 13 public holidays per year, including National Labor Day, must be granted.

After one year of service, employees are entitled to a paid annual vacation of not less than six working days. Below are the commonly adopted public holidays.

#### Commercial Holidays

New Year's Day	January 1
Chinese New Year	January-February (changes each year)
Makha Bucha Day	February-March (changes each year)
Chakri Day	April 6
Songkran Day	April 13
National Labor Day	May 1
Coronation Day	May 5
Visakha Bucha Day	May (changes each year)
Asarnha Bucha Day	July (changes each year)
H.M. the Queen's Birthday	August 12
Chulalongkorn Day	October 23
H.M. the King's Birthday	December 5
Constitution Day	December 10
New Year's Eve	December 31

#### Government Holidays

New Year's Day	January 1
Makha Bucha Day	February-March (changes each year)
Chakri Day	April 6
Songkran Day	April 13–15
Coronation Day	May 5
Royal Ploughing Day	May (changes each year)
Visakha Bucha Day	May (changes each year)
Asarnha Bucha Day	July (changes each year)
Buddhist Lent Day	July (changes each year)
H.M. the Queen's Birthday	August 12
Chulalongkorn Day	October 23
H.M. the King's Birthday	December 5
Constitution Day	December 10
New Year's Eve	December 31

#### Bank Holidays

New Year's Day	January 1
Makha Bucha Day	February-March (changes each year)
Chakri Day	April 6
Songkran Day	April 13
National Labor Day	May 1
Coronation Day	May 5
Visakha Bucha Day	May (changes each year)
Half-Year Holiday	July 1
Asarnha Bucha Day	July (changes each year)
H.M. the Queen's Birthday	August 12
Chulalongkorn Day	October 23

H.M. the King's Birthday	December 5
Constitution Day	December 10
New Year's Eve	December 31

**Sick Leave**

Employees are entitled to sick leave when they are sick, but shall be entitled to be paid for 30 working days per year.

**Maternity Leave**

A pregnant employee is entitled to 90 days maternity leave, including holidays. The employer must pay wages during the leave period, but not exceeding 45 days.

**TERMINATION AND DISMISSAL**

Termination of employment and the ensuing consequences are governed by general stipulations regarding employment in the Civil and Commercial Code and the Labor Law.

Under the Labor Protection Act B.E. 2541 (A.D. 1998), an employee may be dismissed without notice or severance payment under any of the following circumstances:

- Dishonestly performing his/her duty or intentionally committing a criminal offense against the employer.
- Intentionally causing damage to the employer.
- Negligently causing gross or serious damage to the employer.
- Violating work regulations, rules, or lawful orders of the employer after written warning has been given by the employer other than in serious cases when the employer is not required to give any warning.
- Neglecting duty for three consecutive working days without justifiable reason.
- Being imprisoned by a final judgment of imprisonment. If it is an offense committed through negligence or a petty offense, it must be a case where it has caused damage to the employer.

**Termination Without Cause**

When there is termination without cause, it is compulsory that the employer give a written notice and make severance payment to the employee according to the length of unbroken service, as shown below.

<u>Period of Service</u>	<u>Days</u>
(Inclusive of holidays, leave days, and days on which work stoppage is ordered by the employer)	
120 days but less than 1 year	30
1 year but less than 3 years	90
3 years but less than 6 years	180
6 years but less than 10 years	240
10 years or more	300

The employer can terminate the services of an employee immediately by making payment in lieu of notice.

An employee can bring an action against his/her employer in the Labor Court if the employee thinks the employment was terminated by unfair practices.

## LABOR DISPUTES

The Labor Relations Act B.E. 2518 (A.D. 1975) establishes procedures for labor negotiations, resolution of demands between employers and employees, and mediation by the Department of Labor Protection and Welfare officials or arbitration by the Labor Relations Committee.

If there is a labor dispute concerning the condition of employment, the complaining party must serve written notice on the other. The first stage of settlement is direct negotiation between employer and employee through their duly authorized representatives. If no settlement is reached, the dispute is referred to the Conciliation Officer, who will mediate the dispute. If mediation fails, both parties may refer the matter to arbitration by one or more arbitrators. The employer can choose to effect a lockout or the employees can go on strike, but this is subject to restrictions on some businesses, as provided by the Labor Relations Act.

For labor disputes occurring in certain essential services which affect the general public or the national economy such as railways, telephone or telecommunications, and waterworks, if mutual negotiations and mediation fail, the Conciliation Officer will refer the dispute to the Labor Relations Committee. The Committee's decision can be appealed to the Minister of Interior within seven days from the date of receipt of the decision. The Minister will issue a decision on such appeal and notify both parties within ten days of receipt of the appeal. A Labor Relations Committee decision is final if not appealed within seven days, as is the Minister's decision regarding appeal.

The Labor Relations Act provides that employees within the same company (except state enterprises) or doing similar work, regardless of the number of employers, may form labor unions. Employees may thus establish unions with the objective of protecting their employment benefits and/or interests and to promote good relations between the employer and employees, as well as among the employees themselves.

Labor unions must be registered with the Registrar of the Department of Labor Protection and Welfare. They can operate only upon the issuance of a license. A license is issued only after an investigation is made by the Registrar to confirm that the regulations of the union are not contrary to law and public order and that they do not constitute a threat to national security or the economy.

Persons entitled to form a labor union must be Thai nationals employed by the same employer or engaged in the same type of activity in the same province and must be 20 years of age or over. A labor union must have at least ten promoters. Supervisory employees with responsibility for recruitment, promotion, sanctions, and termination of employment cannot become members of a labor union established by other employees or in which other employees are members. Furthermore, such other employees cannot become members of a labor union established by supervisory employees or in which supervisory employees are members. Labor unions registered under the law can submit demands for better conditions of employment and carry out other activities for the benefit of their members.

## PROVIDENT FUND

A provident fund is a type of superannuation fund that employers and employees jointly establish and register according to the Provident Fund Act B.E. 2530 (A.D. 1987). It consists of money contributions made by the employees and their employer, including money and interest on money or other property donated to the fund. It is managed by independent securities firms approved by the Ministry of Finance. A provident fund provides security from the fund for an employee in case of death, retirement, or termination or resignation from employment.

The employee's contribution may not be less than 2% nor more than 15% of his/her wages. The employer's contribution must not be less than the employee's contribution. A provident fund is not mandatory. However, according to the Act, once a fund is established it must be registered.

## EMPLOYEE WELFARE FUND

Under the Labor Protection Act, the employees of a business operation having ten or more employees must be members of the Employee Welfare Fund. The Employee Welfare Fund has the same objective as the provident funds, which is to provide financial security for the employees in case they resign or retire from work and for their beneficiaries in case they die, or in other cases as prescribed by the Employee Welfare Fund Committee. This fund is mandatory. However, if the employer has a registered provident fund or provides welfare for the employees in case of their resignation or death in accordance with the rules and procedures prescribed in the Ministerial Regulations, it is not required by law to set up the Employee Welfare Fund.

The employee's and employer's contributions will be in accordance with the rates prescribed in the Ministerial Regulation, but not exceeding 5% of the employee's wage.

The Employee Welfare Fund is to be established and managed by the Employee Welfare Fund Committee upon enactment of a respective Royal Decree, which has not yet been issued. Therefore, at present the Employee Welfare Fund is not in effect.

## SOCIAL SECURITY

An employer with one or more employees must register and contribute to the Social Security Fund. Upon registration, employees will become "insured persons" entitled to benefits provided under the Social Security Act. The Social Security Act requires that the government, employers, and employees contribute to the Social Security Fund at the rates prescribed by law. At present, both employers and employees each make monthly contributions at the rate of 5% of the employees' wages, while the government contributes at a rate of 2.75%. (According to the Ministerial Regulation concerning social contribution rates dated July 9, 2009, the monthly contribution rates for employees during July-December 2009 will be reduced from 5% to 3%. From January 2010 onward, the contribution rates will revert to 5% as usual.)

The Social Security Act does not cover government officials, employees of foreign governments and international organizations, employees working in foreign countries for Thai firms, teachers at private schools, students who work for schools, universities, and hospitals, and other types of employees according to royal decree. House servants are also specifically excluded from the definition of employee under the Act.

**Compensation and Benefits**

- Injury or illness not work-related (work-related injury or illness is covered by the Workmen's Compensation Fund).
- Maternity.
- Disability not work-related (work-related disability is covered by the Workmen's Compensation Fund).
- Funeral—death not work-related (work-related death is covered by the Workmen's Compensation Fund).
- Child welfare.
- Old age.
- Unemployed.

Self-inflicted injuries and suicide are excluded from coverage under the Act.

**Workmen's Compensation**

An employee who sustains injury or sickness or who disappears or dies during performance of his/her duties (work-related) is entitled to receive workmen's compensation. Unless exempt by the Workmen's Compensation Act B.E. 2537 (A.D. 1994) and the Notification of Ministry of Labor and Social Welfare Re Types, Sizes of Businesses, and Localities where Employers are Required to Make Contribution (No. 2) B.E. 2545 (A.D. 2002), an employer who has one or more employees must register for and contribute to the compensation fund once a year. The rate of contribution is assessed at 0.2% to 1.0% exactly of employees' annual earnings, depending on the risk classification of the employer.

An employee who suffers injury or illness during performance of his duty is entitled to reimbursement for the cost of medical treatment, funeral expenses, and compensation.