

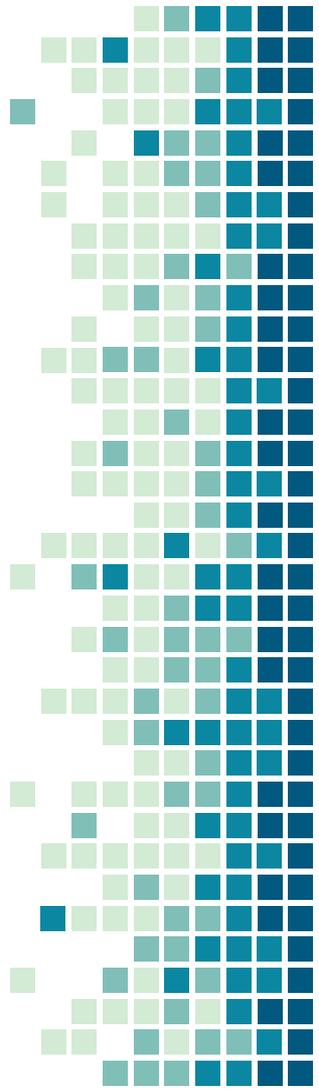
# EMPLOYMENT CONTRACTS

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Bangkok Global Law Offices Limited  
At the conference of 2<sup>nd</sup> HR LAW SUMMIT 2017-2018 on 22 September 2017

# Employment Contract

Amendment to Labour Protection Act in August 2017

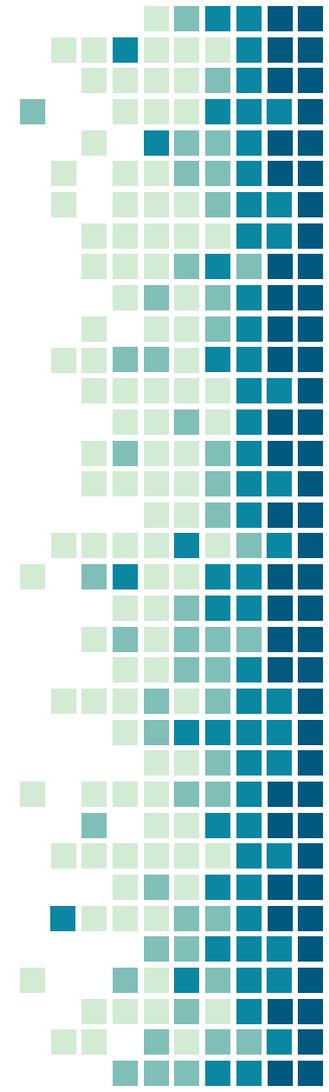
1. Determining minimum wage rates for specific types of workers
2. Eliminating an obligation of an employer to submit a copy of the work rules to a government authority
3. Determining retirement age and severance pay to retired employee
4. Adding penalty against employer who fails to pay severance payment to retired employee



# Employment Contract

Proposed amendments to Labour Protection Act were approved by the cabinet of Thailand in August 2017 and will be proposed to the National Legislative Assembly for approval.

1. Severance pay was increased to 400 days if an employee has worked for more than 20 years.
2. Mother can take 90 days maternity leave.
3. Mother can have 45 days maternity leave with pay
4. Personal leave for 3 days with pay



# Civil and Commercial Code

Payment in lieu of advance notice of  
termination



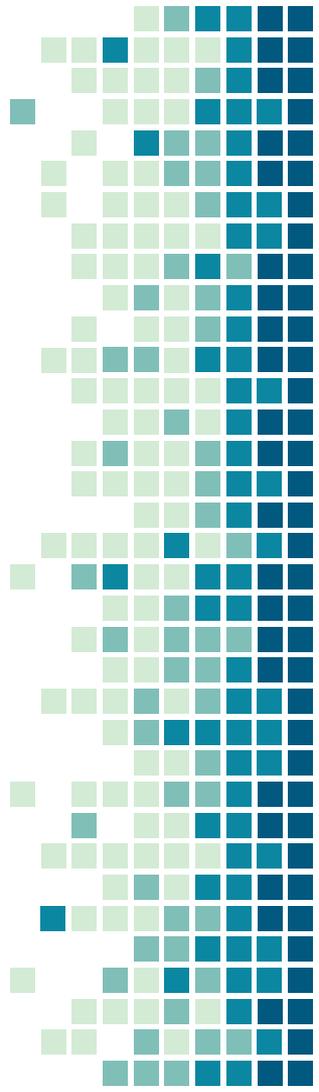
# Labour Protection Act

## Employer

Employer includes an operator outsourcing any person to recruit workers in a unnormal recruitment business to work in any of a manufacturing process or a business operation of an operator.

Outsourced employees with the same duties of normal employees shall be entitled to the same benefits and welfare provided to normal employees from the operator.

In case of any sub-contractor, the sub-contractor , superior sub-contractors up to a primary contractor shall be jointly liable to employees for payment of basic wage, overtime pay, holiday working pay, holiday overtime pay, severance pay, special several pay , contributions and surcharge.



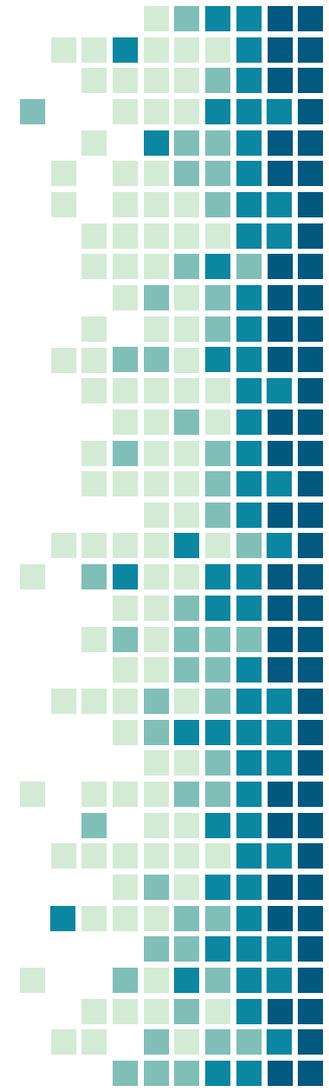
# Labour Protection Act

## **Change of an employer**

In the case of a change of an employer, a new employer shall assume all rights and duties in connection with employers from a previous employer.

## **Fair employment**

In case any employment, any work rules or any order of any employer is excessively unfair to employees, the court shall have the power to order the employment contract, the work rules or the order of any employer enforceable to the fair and reasonable extent.



# Labour Protection Act

## **Wage**

Money payable for working and include money payable for holidays or on leave entitled by an employee. Wage excludes a bonus.

## **Normal working day and week**

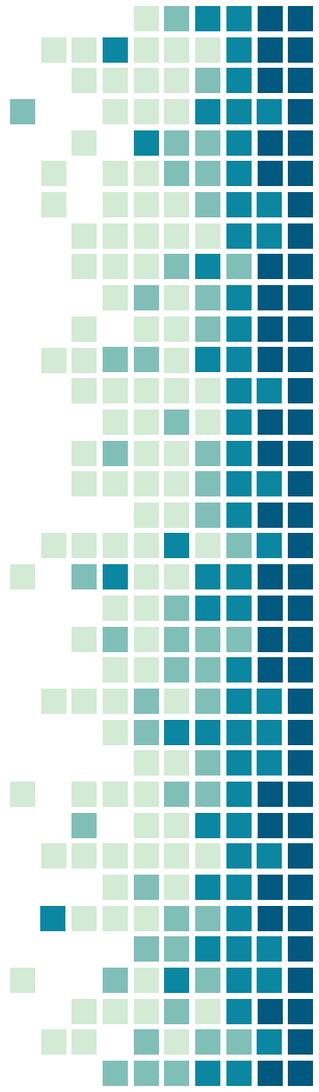
A normal working does not exceed 8 hours a day and 48 hours a week.

## **Public holidays**

At least 13 public holidays must be provided.

## **Annual leave**

Annual leaves of not less than 6 working days must be provided.



# Labour Protection Act

## **Overtime on a working day**

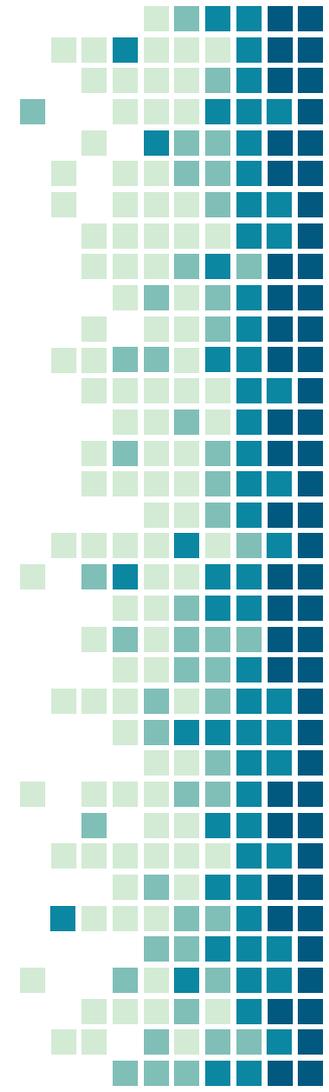
A rate for working overtime on a working day is one and a half times of a rate of an hourly wage.

## **Working on a holiday**

A rate of working on a holiday is two times of a rate of an hourly wage on a normal working day.

## **Overtime on a holiday**

A rate for working overtime on a holiday is three times of a rate of an hourly wage.



# Labour Protection Act

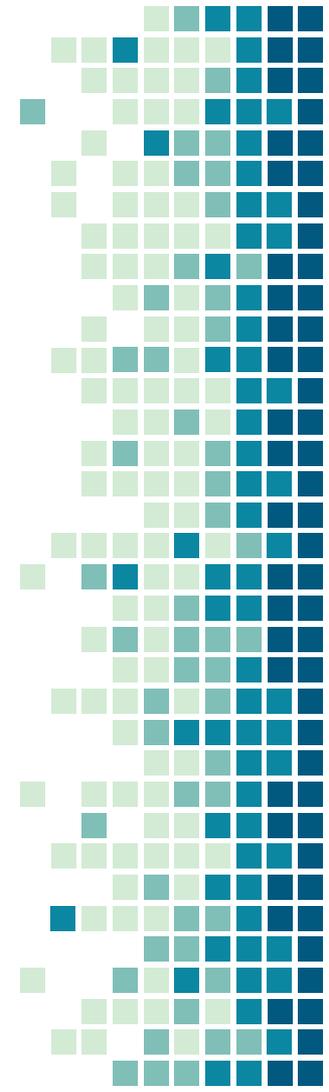
## Default interest rate

In case that an employer fails to make any payment under law, the employer shall make a default interest at a rate of 15% per annum on any unpaid amount such as basic wage, overtime pay, holiday working pay, holiday overtime pay, severance pay and special several pay to an employee.

## Work rules

An employee shall notify the work rules within 15 days from the date on which the employer has at least 10 employees.

The work rules are no longer required to be register with a government authority.



# Labour Protection Act

## **Entitlement to severance pay**

In the case of termination of employment, an employer shall make a severance pay to an employee under law.

## **Rate of severance pay**

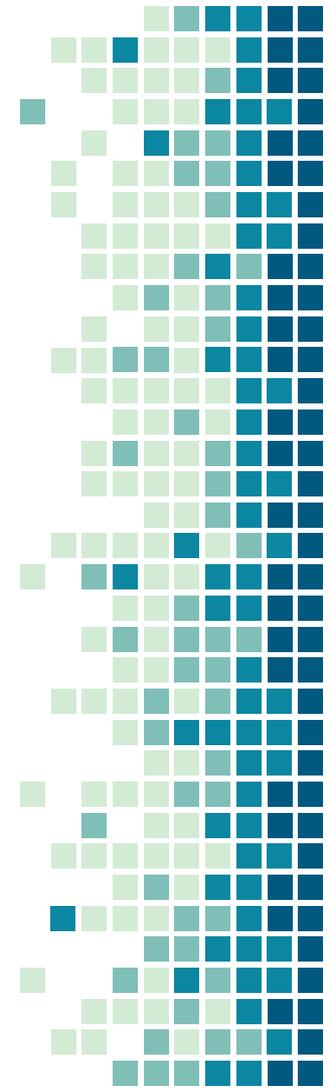
Four months but less than one year  
– 30 days

One year but less than three years –  
90 days

Three years but less than six years –  
180 days

Six years but less than ten years –  
240 days

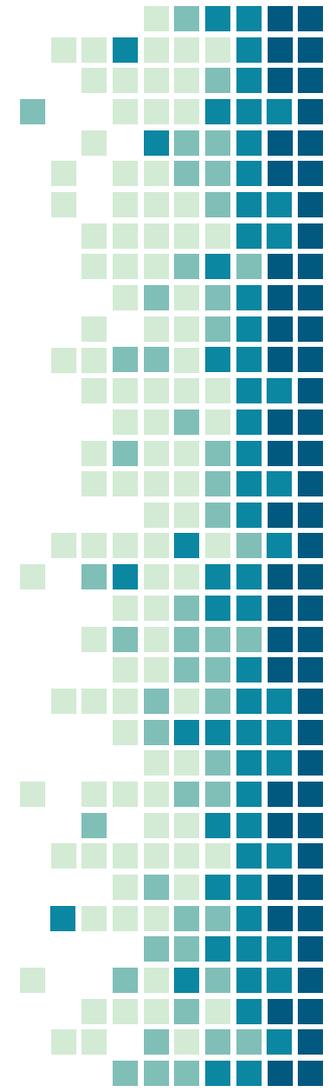
Ten years upwards – 300 days



## Exception for severance pay

An employer is not required to make a severance pay to an employee dismissed in any of following acts of the employee;

- (1) performing his/her duty dishonestly or intentionally committing a criminal offence against the employer;
- (2) intentionally causing damage to the employer;
- (3) causing serious damage to the employer as a result of negligence;
- (4) violating the lawful and just work rules or regulations or orders of the employer, and after receiving written warning of the employer. In this regard, such written warning shall be valid for not more than 1 year from the date of violation. Except in a serious case, the employer is not required to give warning;
- (5) leaving his/her duty without justifiable reason for 3 consecutive working days regardless of any holiday in between or not; or
- (6) being imprisoned by a final judgment. If the offense was committed with negligence or was a petty offense, it must have caused damage to the employer.



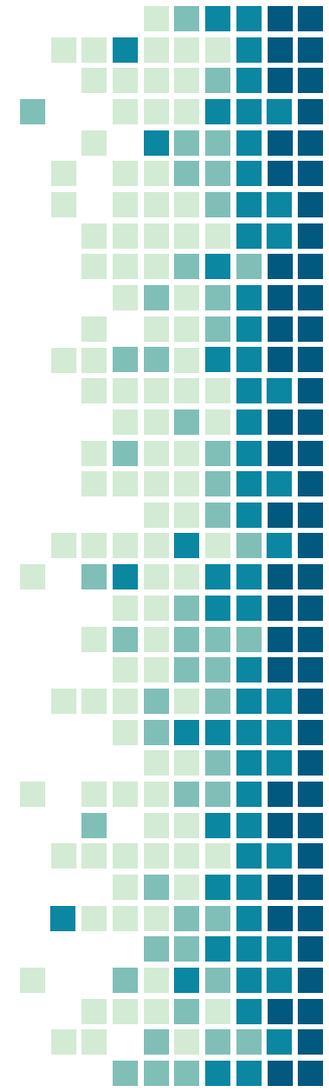
# Labour Protection Act

Essential contents to be inserted in a written warning letter and the consequence of failure to insert the contents therein.

A written warning letter shall contain the following contents:

1. facts indicating any fault of the employee; and
2. A statement indicating the prohibition of repeated violation of the work rules or a lawful order of the employer.

If the contents given in items 1 and 2 are not provided in the document submitted by the employer to the court, such document shall not be regarded as a written warning letter.



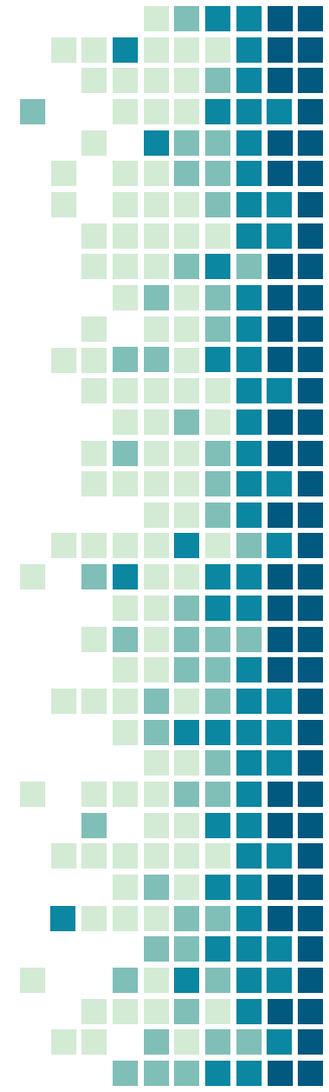
# Labour Protection Act

## **Sending an employee to a third country with a new contract**

The employer transfers the employee to an overseas company as a new company, which is a distinct legal entity from the company at which the employee works. The employee has been ordered to enter into a new employment contract with the new company while his/her current employment shall be terminated.

The employer terminates the employee because the employee refuses to sign the contract with the new company and replaces the employee with a new employee, such an act is deemed termination of an employment. The employer shall pay a severance pay to the employee.

In addition, since the employer does not clarify faults of the employee while giving the employee the order to transfer, the termination of the employee is unfair.



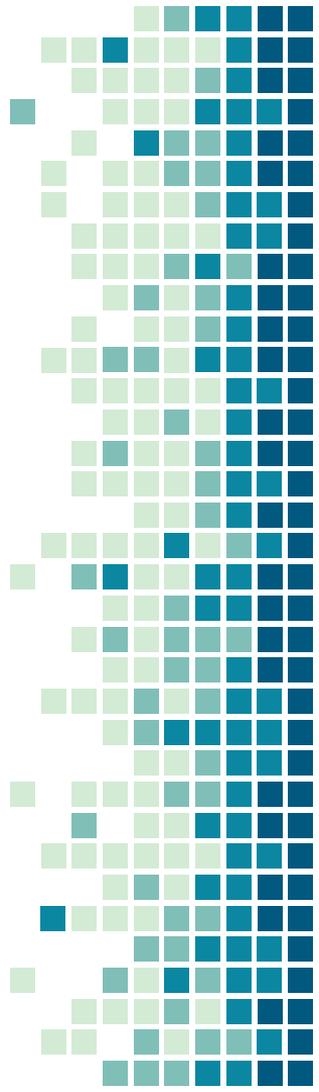
# Labour Protection Act

## **Acknowledged the wrongdoing of the employee 3 years ago**

The employer acknowledged the wrongdoing of the employee 3 years ago prior to filing a complaint with the labour court. It shall be considered that the employer no longer wants to have the employee punished for such wrongdoing. Therefore, the employer cannot base a claim to dismiss the employee without making a severance payment on the misconduct recognized 3 years ago.

Late coming, sick leave and personal leave for too many times

An employee always came to work late as well as taking sick leaves and personal leaves for too many times in a year. The employer can dismiss this employee.

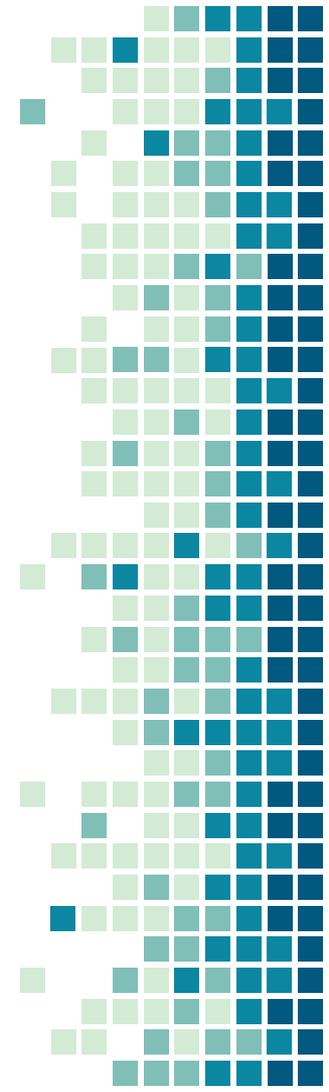


# Labour Protection Act

## Severance pay in case of improvement of production process

- In the case of termination of employment for improvement of a working unit, production, distribution or service process due to utilization of machinery or change of machinery or technology, if an employer fails to notify termination of employment to an employee, the employer shall pay a normal severance pay plus a special severance pay of 60 days.
- If an employee has worked for more than 6 years consecutively, the employer shall make a special severance pay in addition to the normal severance pay to the employee at the wage received at the most recent rate for 15 days for each complete year of work. Nonetheless, the total special severance pay shall not exceed an amount of the wage received at the most recent rate for 360 days.

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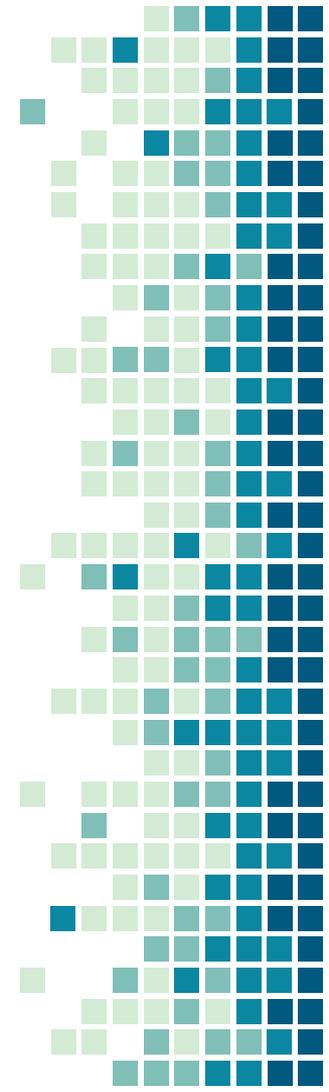
# Labour Protection Act

## **Severance pay in case of relocation of place of business**

In the case of relocation of place of business of an employer, an employee who does not wish to work at the new place is entitled to a special severance pay of not less than the rate of a normal severance pay.

## **Retirement age**

Law of Thailand is silent on retirement age for employees of an employer. The employer and employees can agree on the retirement age. In the case that the retirement age is more than the age of 60, an employee can make an intention to retire after the employee reaches the age of 60.



# Act on Establishment of Labour Court and Labour Procedures Act

Labour court



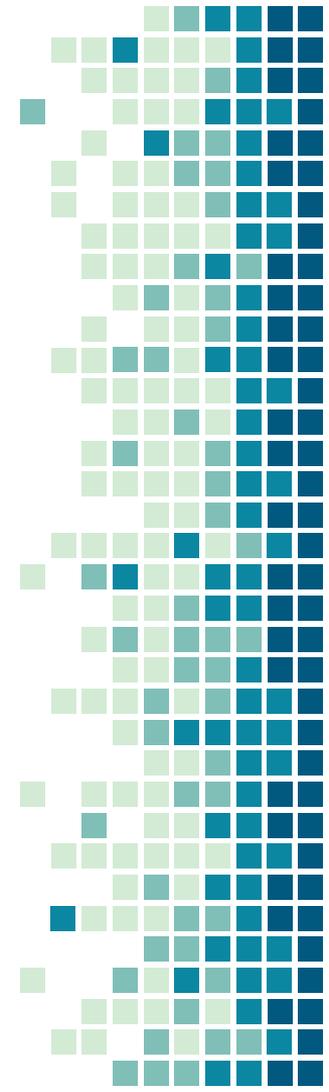
## Power of labour court

- Cases on rights and duties under an employment contract or a working condition agreement
- Cases on rights and duties under labour protection act, labour relation act and other labour laws

Labour court is a special courts of the court of justice system.

## In the case of an unfair dismissal, the labour court has the power

- To order an employer to resume employment of an employee, or
- To order an employer to pay an amount of damages to an employee.

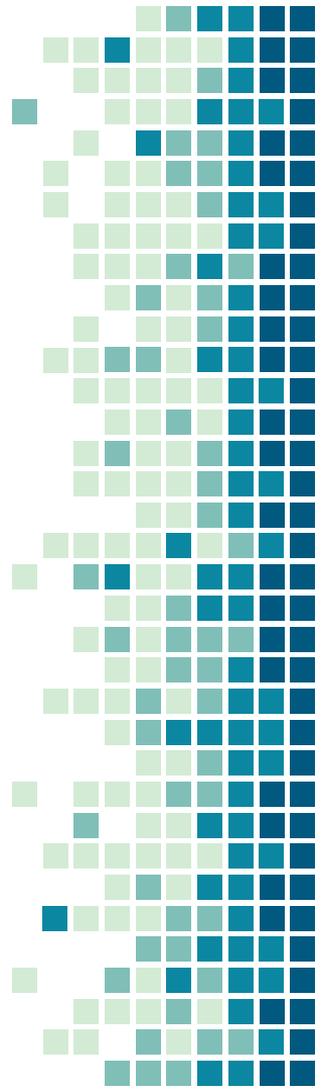




# Fair dismissal

An employer can immediately dismiss an employee who regularly spends time chatting on social media platform.

An employer can dismiss an employee drinking alcohol at an automotive plant.

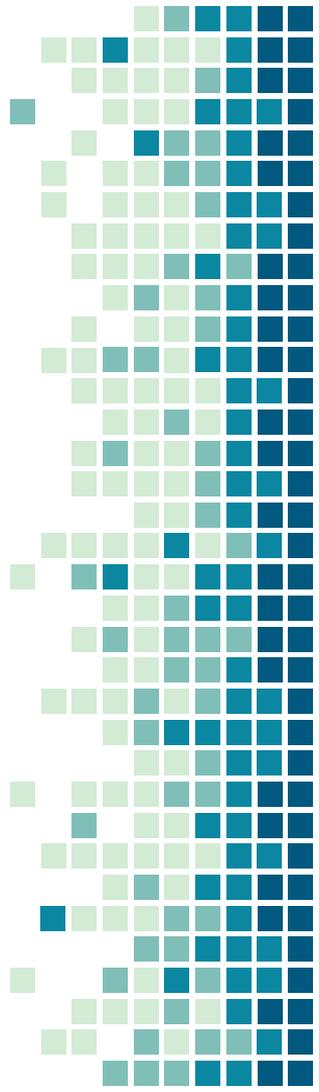


# Unfair dismissal

An employer terminates an employee for ripping a written warning.

An employer terminates an employee for not accepting the transfer of employment and refusing to enter into a new contract with the new company

An employer had already issued an order to employees in the entire workplace that lending money to other employees is forbidden, still, the employee violated such order and lent money to other employees with the interest rate charged at 10% per month. Such an act of the employee was committing of a criminal offense during working hours, taking advantage of colleagues as well as causing damage to the business of the employer. The violation of the employer's order is deemed serious and the court decided that the termination of the employee is a fair termination.



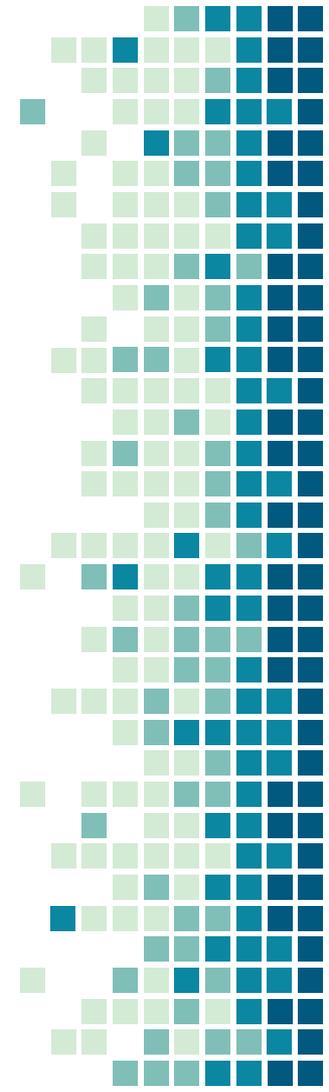
# Unfair dismissal

Termination due to an employee negligently performing his/her duty.

Termination due to an employee failing to cooperate effectively with subordinates.

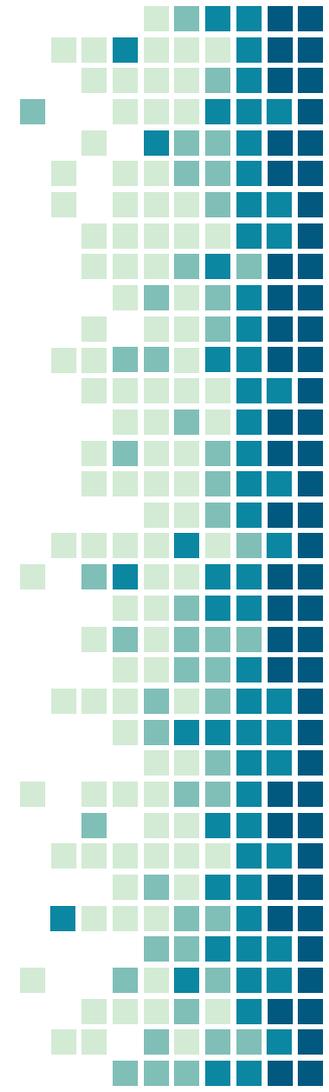
Termination due to an employee performing the duty below an adequate standard and neglecting to follow up the work.

The employer dissolves the position of an employee and orders the employee to take up the new position where less remuneration is given. If the employee does not accept the relocation and the employer subsequently terminates the employee, the termination is unfair.

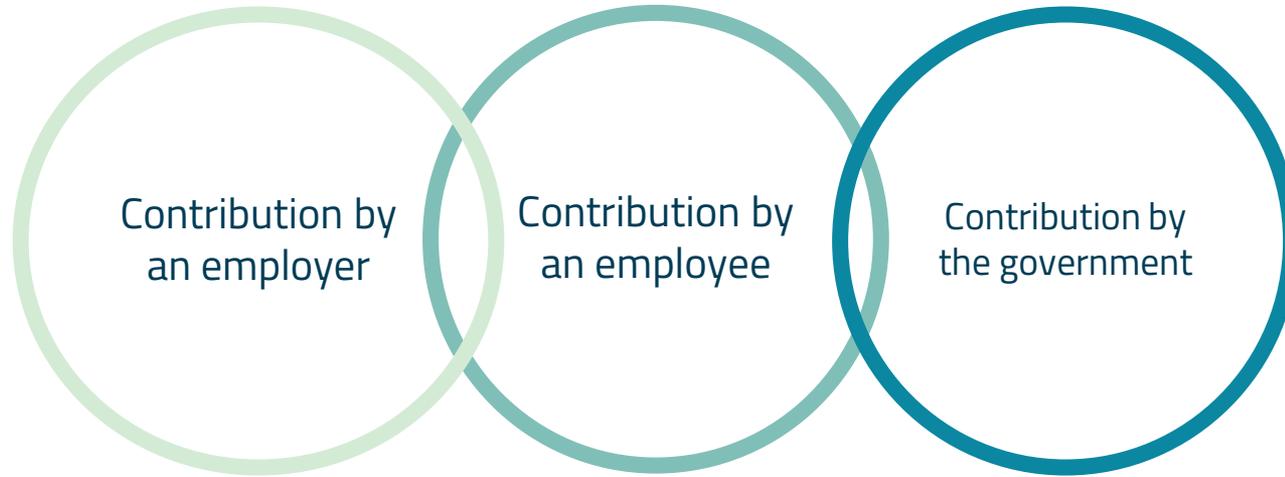


# Unfair dismissal

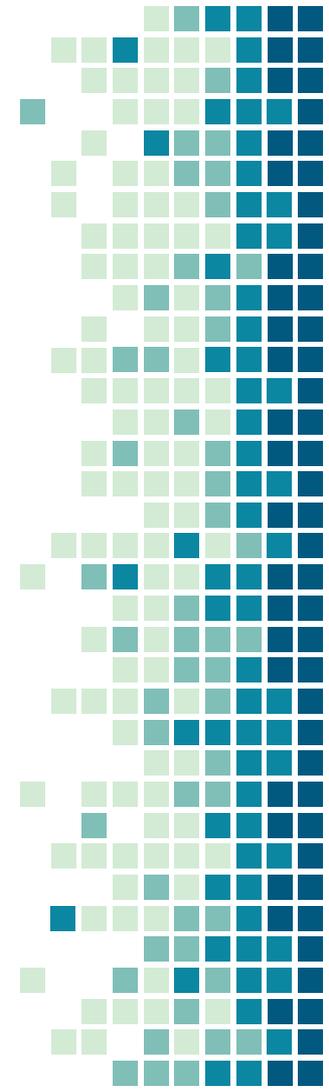
It is not obvious that the employer has been suffering a severe loss that the employer needs to reduce the operational cost or terminate some employees to continue business undertaking. Although the employer's business has achieved less accrued profit, the termination of an employee based on the reason that the employer has to terminate certain staffs to reduce wage costs is deemed unfair.



# Social Security Act



Contribution by the employer and the employee can be made by electronic means.



# NUMBER OF EMPLOYEES AND LEGAL REQUIREMENTS



social security  
contribution



work rules



welfare  
committee



engagement of  
1 disabled  
employee or  
contribution

## Employee Stock Ownership Plan (ESOP)

- Shares
- Warrants
- issue price
- exercise price

## Tax

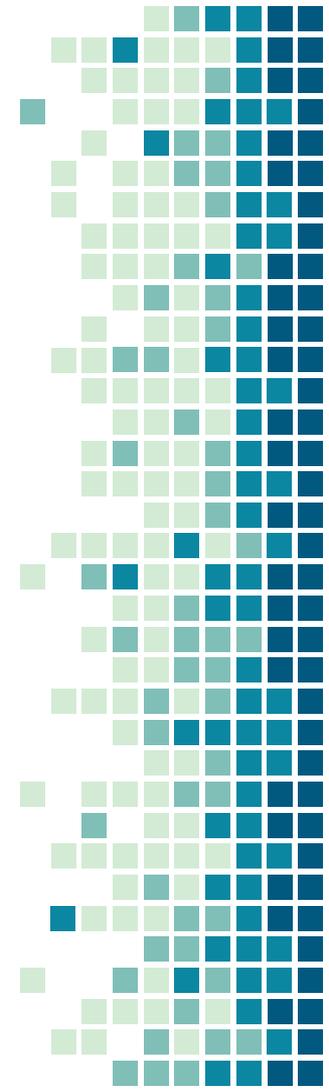
- Value of shares is at the time of acquisition of shares.
- Value of warrant is at the time of exercise of warrant into shares.

## Fringe benefits

- Tax payment

## Secondment

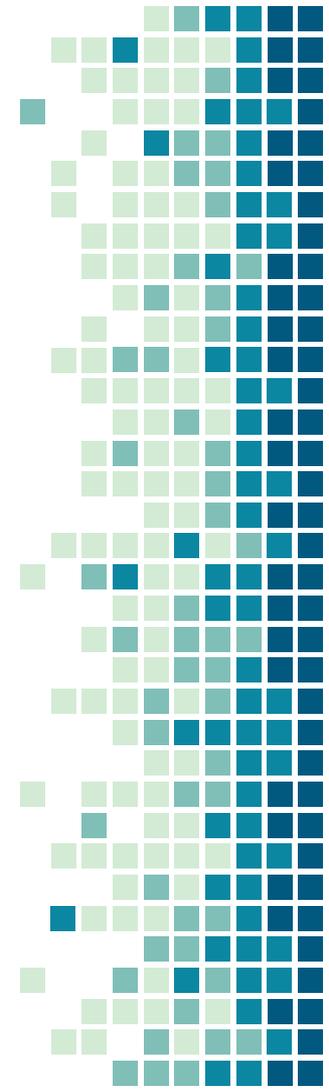
- Local employee and international employee
- Division of payments
- Resident in two states



# Patent act

## Patent and special remuneration

- Patent for an invention or a design patent which has been developed by an employee of an employer falls with the employer.
- The employee has the right to receive a special remuneration for the work.
- Any agreement preventing the special remuneration to the employee is not enforceable.



# THANK YOU

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