



COVID-19 Employment Law

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APAC Employment Law –
Updates and Key Considerations

Strengthening HR's Legal Competencies
and Compliance in Managing Workforce

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Topics Overview

General Key Points of the Laws

- **Labour Protections Act B.E. 2541 (A.D. 1988) (Updated B.E. 2562)**
- **Labour Relations Act B.E. 2518 (A.D. 1975)**
- **The Disabled Persons Promotion and Development Act B.E. 2550 (A.D.2007)**
- **The Establishment of and Procedure for Labor Court Act B.E. 2522 (A.D. 1979)**
- **Social Security Act B.E. 2533 (A.D. 2480)**
- **Provident Fund Act B.E. 2530 (A.D. 1987)**
- **Workmen's Compensation Act B.E. 2537 (A.D. 1994)**

Measures during COVID – 19

- **No Work No Pay Principle**
- **New measures from Social Security Act**
- **Relief Measures under Provident Fund Act**
- **Quarantined – get infected**
- **Wages Decreasing**
- **Work From Home Policy**
- **Special permission to foreign employees**



General Key Points of the Laws

Labour Protections Act B.E. 2541 (A.D. 1988) (Updated B.E. 2562) (1/5)

❑ Wages and Overtime Pay

- ❖ Wage on working days = 1 time
- ❖ Wage on holidays = 2 times
- ❖ Sick leave = 1 time (not more than 30 business days)
- ❖ Overtime on working days = 1.5 times of hourly wages
- ❖ Overtime on holidays = 3 times of hourly wages

❑ Suspension of the business (Temporarily)

- ❖ Necessary causes
- ❖ Do not include 'Force Majeure'
- ❖ Give a notice to an employee in advance not less than 3 business days prior to the date of suspension of business
- ❖ An employee is paid not less than 75% of wages

Labour Protections Act B.E. 2541 (A.D. 1988) (Updated B.E. 2562) (2/5)

❑ Laying off and Severance Pay

- ❖ Inform employees at least 1 month or a wage period
- ❖ Payment of severance pay varies and is based on employees' working uninterrupted period;
 - 120 days – 1 year = 30 days
 - 1 – 3 years = 90 days
 - 3 – 6 years = 180 days
 - 6 – 10 years = 240 days
 - 10 – 20 years = 300 days
 - 20 years or more = 400 days

❑ Special Severance Pay – Relocate an Establishment

- ❖ Employees will be granted special severance pay if the relocation has a significant effect to normal life

Labour Protections Act B.E. 2541 (A.D. 1988) (Updated B.E. 2562) (3/5)

❑ Special Severance Pay – Relocate an Establishment

❖ Employer's duties

- inform the employees in advance not less than 30 days before the date of relocation
- pay the special severance pay if employees refuse to work at the new workplace

❖ Employee's duties

- Entitled to receive the special severance pay in lieu of the advance notice = equivalent amount to 30 days
- Entitled to terminate an employment contract
- Entitled to receive severance pay under Labour Protections Law

❑ Special severance pay and/or severance pay must be made within 7 days from termination date

❑ If an employer fails to make a payment, an employee is entitled to lodge a complaint to the Labour Welfare Committee

Labour Protections Act B.E. 2541 (A.D. 1988) (Updated B.E. 2562) (4/5)

❑ Example Cases (from Supreme Court)

❖ Fair Dismissal

- An employer changes an employee's position. The employer does not break any work rules
- An employee wishes to terminate the employment contract

❖ Retirement agreed upon an employer and an employee

- Regarded as a termination of employment
- An employee receives severance pay

Labour Protections Act B.E. 2541 (A.D. 1988) (Updated B.E. 2562) (5/5)

❑ Example Cases (from Supreme Court)

- ❖ The employer is not required to pay severance pay to employee in the case that an employee
 - Performs duties dishonestly, committing a crime *e.g.* forge a document, defamation
 - Intentionally causes damages to an employer *e.g.* striking
 - Causes serious damage to an employer as a result of negligence *e.g.* lacking of control and management over stock
 - Violates work rules (written warning is already given to the employee) *e.g.* intentionally leaking confidential information to competitors, drunk worker

Labour Relations Act B.E. 2518 (A.D. 1975)



- ❑ Employment Conditions
 - ❖ Working days, hours, wages, termination of employment, workplace, benefits etc.
 - ❖ Put in writing – agreement relating to employment conditions
 - ❖ Mutually agree between employers and employees on amendment of employment conditions
 - ❖ Posting the new employment condition agreement openly at the employees' workplace
 - ❖ Register to the Director-General of the Labour Welfare and Protection Department
- ❑ Worker Participation
 - ❖ Labour Union
 - ❖ Protecting the interests of employees relating to employment conditions
- ❑ Labour Dispute
 - ❖ Both parties disagree on employment conditions
 - ❖ Several 'Dispute Resolutions' starting from 'Negotiators to Arbitrators'
 - ❖ Labour Union submit the demand for amending employment conditions to the arbitrators
 - ❖ Both parties must abide by the Award of the arbitrators

The Disable Persons Promotion and Development Act B.E. 2550 (A.D.2007)

❑ Disabled Person in workplace

- ❖ Every 100 employees (non-disable) to 1 disabled person (100 : 1)
- ❖ More than 50 employees = hire another 1 disabled person

❑ Failure to recruit disabled persons

- ❖ An employer makes contribution to the State Fund for Rehabilitation of Disabled Persons

❑ Failure to recruit disable persons and make contribution

- ❖ Arrange a place to supply goods or services
- ❖ Recruit disabled persons under temporary contracts
- ❖ Provide a training session

❑ Example Case

- ❖ An employer engages in the outsource labour business which sends employees to work for the employer. The employer needs to recruit one disable person if there are more than 100 employees, even though the employees were sent to work by the outsource labour business, but they were sent due to employer's order

The Establishment of and Procedure for Labor Court Act

B.E. 2522 (A.D. 1979) (1/3)

□ Unfair Dismissal

- ❖ File the complaint with the labour court
- ❖ Reinstate the employees at the same level of wages at the time of dismissal
- ❖ Both parties cannot work together – Fixing the compensation amount paid to employees
- ❖ Not include being asked to resign due to financial difficulties

□ Example cases

- ❖ Employment Termination without any reason
- ❖ Dismissal without any fault
- ❖ Dismissal with other reason not included in the employment's contract terms
- ❖ Employment Termination – cross disciplinary punishment
- ❖ Termination with discrimination against employees

The Establishment of and Procedure for Labor Court Act

B.E. 2522 (A.D. 1979) (2/3)

□ Example Cases from Supreme Court

- ❖ Termination without any reason
 - Relocate the Establishment and terminate the contract on the same day
- ❖ Employee is at fault, but there is no reasonable ground to terminate the contract
 - Disagreement on stock management and gave inappropriate comments toward the employer
- ❖ Dismissal without the employee's guilt
 - The employee's husband works with another company, which has been a competitive business with the employer's business
- ❖ Termination of employment and punishment exceeded the stipulated level
 - The employee gambles off-site and outside work hours. The sanction shall only decrease salary, not terminate the contract

The Establishment of and Procedure for Labor Court Act

B.E. 2522 (A.D. 1979) (3/3)

□ Example Cases from Supreme Court

- ❖ Termination of employment crosses disciplinary punishment or procedures
 - The employee made mistake for the first time, but the employer terminated the employment contract
- ❖ Termination of employment against the regulations of the employer
 - The regulation specifies punishment by decreasing salary or wages, termination of the employment contract is considered as unfair dismissal
- ❖ Having no evidence to claim against employee's fault
 - There is no witness to support that the employee stole baby clothes from the employer's shop.
- ❖ Dismissal with discrimination against the employee
 - Other employees did the same action as the employee but only of the employee is terminated because the employee filed a complaint for fairness

Social Security Act B.E. 2533 (A.D. 1990)

□ Insured Person

- ❖ An employee not younger than 15 years and not older than 60 years old
- ❖ Remit contributions(5%) to the Social Security Fund
(* Rate is changed temporarily due to COVID-19)
- ❖ Cease the status as Insured Person
 - Death
 - Termination of Employment Contract

□ Employer

- ❖ Deduct the contribution of the employee from the wage of the employee and remit the contribution to the Fund
- ❖ Remit the contribution of the employer at the equal amount
- ❖ Deduct and remit within 15 days of the following month

Provident Fund Act B.E. 2530 (A.D. 1987)

- ❑ 'Voluntary Contribution' – an employee contributes 2% - 15%, up to 500,000 baht a year
- ❑ An employer matches employees' contribution
- ❑ An employer remits the contribution within 3 business days from the date of payment of wages
- ❑ The remittance can be suspended or postponed due to economic crisis or disaster
- ❑ Management of the Fund
 - ❖ Fund manager is not the employer and is licensed under securities and exchange law
 - ❖ Employee's savings will be invested for benefits
 - ❖ Investment has to be in accordance with employee's investment policy
- ❑ Payments out of the Fund
 - ❖ Employment's membership termination upon the end of employment contract

Workmen's Compensation Act B.E. 2537 (A.D. 1994)



- ❑ Workers' Compensation Fund - Financed by the employers
- ❑ Employee's benefits
 - ❖ Medical Compensation
 - 50,000 baht per case (generally)
 - ❖ Rehabilitation Expenses – not exceeding 160,000 baht
 - ❖ Temporary Disability and Sickness Benefits
 - Monthly payment – 70% of monthly wages, 1 year
 - ❖ Permanent Partial Disability Compensation
 - Monthly payment – 70% of monthly wages, 10 years
 - ❖ Permanent Total Disability Compensation
 - 70% up to 15 years
 - ❖ Death or Disappearance Compensation
 - 70% paid to the entitled person, up to 8 years
 - ❖ Funeral Grant – lump sum of 40,000 baht

Measures during COVID – 19



'No Work No Pay' Principle

- ❑ A hire of service (employment contract) = *'A Reciprocal Contract'*
- ❑ Employees during quarantined period
 - ❖ A failure to perform a certain work in exchange for wages
 - ❖ Entitling employer's right not to pay wages
 - ❖ An employee is still entitled to receive compensation paid from the Social Security Fund ('SSF') at the rate of 62% of daily wages

New Measures from Social Security Act (1/4)

- **Compensatory Benefits in the Event of Unemployment due to 'Fore Majeure'**
 - ❖ **Force Majeure Regulation**
 - ❖ **Force Majeure extends to cover**
 - 'hazards from COVID-19 pandemic or other dangerous communicable disease affecting the public'
 - ❖ **Pandemic causes the insured persons unable to work**
 - ❖ **Qualifications of the Insured Persons to receive compensation from the SSF**
 - **Eligible to receive the unemployment benefits**
 - **Suspended from working temporarily between 1 March and 31 August 2020**
 - **not resign from the employer or dismissed by the employer**

New Measures from Social Security Act (2/4)

□ Compensatory Benefits in the Event of Unemployment due to 'Fore Majeure'

❖ Qualified Insured persons are paid if they struggle one of the following:

- Being asked to be quarantined for 14 days (the risk group e.g. contact infected patients, travelled abroad)
- An employer has to be in quarantine
- Suspended business is forced by laws and the 'emergency decree on public administration'

❖ Receive compensation at a rate of 62% of the daily wages during working suspension

New Measures from Social Security Act (3/4)

□ Economic Crisis causes employment termination

❖ Economic Crisis Regulation

❖ Qualifications of Insured persons to receive the compensation

- Registered with the SSF
- Has remitted contributions to the SSF at least for prior 15 months
- Has been complying with SSF regulation

❖ Compensation amount calculated upon the following

- Terminate the contract (dismissal) – receive 70% of daily wages, up to 200 days per termination
- Resign – receive 45% of daily wages, up to 90 days per unemployment period

New Measures from Social Security Act (4/4)

❑ Deduction of Contribution amount

❖ Temporary Deduction amount

- An employer from 5% to 4%
- An employee (Insured Person) from 5% to 1%

❖ Effective period is from March 2020 to May 2020

❖ Request a refund from the over-deducted compensation amount

❑ Unqualified Employee under SSF regulations

❖ Receive Baht 5,000 per month for 3 months (April – June 2020)

❖ An employee affected from COVID-19 will receive a soft loan

Relief Measures under Provident Fund Act

- ❑ Remittance of contribution to the Fund can be ceased or postponed due to COVID-19
- ❑ The suspension or postponement starts from May to December 2020
- ❑ Status as the member of the Fund is maintained
- ❑ Temporary suspension or postponement has to get approval from a General Meeting of Members
- ❑ An employer or the Fund committee informs the suspension or postponement to the officer with:
 - ❖ Confirmation Letter prepared by the employer about financial difficulties due to COVID-19
 - ❖ Minutes of a General Meeting or the Fund Committee with the following statements
 - the employer's business actually struggles with financial difficulties due to COVID - 19
 - the meeting resolved the temporary period for suspension or postponement of remitting contribution

Work From Home Policy

- ❑ Workplace is one of employment conditions
- ❑ Changing workplace requires approval from both parties (employers and employees)
- ❑ The demand of changing workplace will be submitted in writing to the employee
- ❑ The amended agreement will be notified on a post board openly at employees' workplace
- ❑ Notify within 3 days from the date of the amended agreement

Quarantined — Infected Patient



- ❑ Test positive for COVID – 19
- ❑ An employee can take sick leaves up to 30 working days
- ❑ An employer pays wages at the equivalent rate of a working day

Wages Decreasing

- ❑ Wage is one of 'employment conditions'
- ❑ Employment conditions are inserted in 'employment condition agreement'.
- ❑ The amendment of employment conditions has to be agreed mutually (employer and employee)

Thus...

- ❑ The demand of decreasing wages in writing will be submitted to employees first
- ❑ The conclusion of new wage amount will be made in writing signed by both parties
- ❑ The amended employment condition agreement will be notified openly at employees' workplace
- ❑ Notify within 3 days from the date of the amended agreement

Special Permission to Foreign Employees (1/2)

- ❑ Foreign employees are permitted to stay longer in Thailand even working period is over
- ❑ Permission granted to foreign employees who fall under any of the following qualifications
 - ❖ First Scenario
 - Cambodian, Laos, and Myanmar employees
 - Allowed to work in Thailand following the MOU between Thailand and such foreign countries
 - Working period – 4 years
 - Expired Work Permit within 30 April 2020, which is extended until 31 July 2020

Special Permission to Foreign Employees (2/2)

- ❑ Permission granted to foreign employees who fall under the following qualifications
 - ❖ Second Scenario
 - Cambodian, and Myanmar Employees
 - Entered Thailand with the border passes or official documents entitling to work
 - Expired Work Permit within 30 April 2020, which is extended until 31 July 2020
- ❑ Qualified foreign employees working for the same employer
- ❑ Old version of Work Permit can be presented to the officer when being asked

Thank You



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