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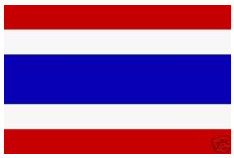

THAILAND

EMPLOYMENT LAW MANUAL

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NOTICE

The information provided in this Employment Law Manual has been researched with the utmost diligence, however laws and regulations in Thailand like everywhere else are subject to change and we shall not be held liable for any information provided. It is suggested to seek updated detailed legal advice prior to commencing any taking any employment law related question.

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Dear Readers,

The intricacies of Thai Employment Law can be daunting and the existing statutory regulations from the Thai Civil and Commercial Code, combined with the Thai Labor Protection Act and other relevant Acts can be rather challenging.

To overcome these hurdles, we have summarized a set of typical questions that investors and international corporations operating in Thailand are regularly faced with on a recurring basis.

Obviously, this catalogue of about 80 typical questions cannot provide a detailed and complete overview of the "do's" and "don'ts" of Thai Employment Law but the goal of this booklet is to provide readers with a solid background to answer most of the typical employment law questions under Thai Law.

If you have any further questions or suggestions, we'd love to hear from you!

Best regards,

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THAILAND – EMPLOYMENT LAW MANUAL

1. Legal Framework

1.1 Currently applicable employment laws and relevant government agencies

The labor and employment laws in Thailand are mainly governed by the following regulations:

- The Labor Protection Act B.E. 2541 (A.D. 1998) (latest amendment B.E. 2562 (A.D. 2019))
- The Thai Civil and Commercial Code ("TCCC") Book III, Title VI Hire of Services (Section 575-586)
- The Labor Relation Act B.E. 2518 (A.D. 1975)
- The Act on Establishment of Labor Courts and Labor Court Procedure B.E. 2522 (A.D. 1979)
- The Provident Fund Act B.E. 2530 (A.D. 1987)
- The Social Security Act B.E. 2533 (A.D. 1990)
- The Workmen's Compensation Act B.E. 2537 (A.D. 1994)
- The Occupational Safety, Health and Environment Act B.E. 2554 (A.D. 2011)

The Labor Protection Act B.E. 2541 (A.D. 1998) together with its amendments in the English translated version that can also be accessed online[1].
Another useful source is the website of the Department of Labor Protection and Welfare[2].

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1 http://web.krisdika.go.th/data/outsitedata/outsite21/file/LABOR_PROTECTION_ACT_B.E._2541.pdf
http://www.pkfthailand.asia/news/news/new-labor-protection-act-no-6-be-2560-2017-is-legally-effective-from-1st-sept-2017/
http://www.cpg-online.de/2019/04/18/thailands-labor-protection-act-no-7/

2 https://www.labor.go.th/index.php/en/more

1.2 Potential upcoming changes in employment laws or relevant government agencies

The relevant laws are regularly updated, but currently, we do not foresee any major changes.

1.3 What are the primary government regulatory agencies (and their responsibilities) in Thailand relevant for employment law?

The Ministry of Labor, including its various subdivisions such as the Department of Employment, Department of Skill Development, Department of Labor Protection and Welfare, Office of Social Security etc., are the primary authorities responsible for setting and enforcing minimum employment standards, labor protection, occupational safety, health, and the working environment. They also have the main duty to develop and promote standards, models, mechanisms, measures and organize labor relations systems, provide social security and ensure fair payment and to solve problems with a view to enhancing competitiveness in trade and developing workers' good quality of life.

Generally, labor disputes, resolutions and procedures for following labor negotiations will be handled by the Department of Labor Protection and Welfare and the Labor Relations Committee. If the dispute still cannot be settled, then the committee will make an appropriate recommendation for the filing of a labor lawsuit at a labor court.

2. Recruitment and Employment

2.1 Requests for personal information of candidates during the recruitment process

Normally, under the **Personal Data Protection Act B.E. 2562 (A.D. 2019)**[3], all types of personal information of the candidate are prohibited for the employer to ask for collection, unless the candidate agrees to provide such information and gives consent to the employer to collect such information (please note that

[3] Unofficial translation: https://thainetizen.org/docs/data-protection-cybersecurity-acts/thailand-personal-data-protection-act-2019-en/

"personal information" under this Act means personal information that can be used to identify the owner of such personal information (except from names, job titles, workplaces and business addresses)). There are still certain types of personal information of the candidate under specific circumstances that the Act allows the employer to collect/disclose without consent.

However, regarding restricting or prohibiting the conduct of background checks, searching for or obtaining information from publicly available sources is permitted. Certain sensible information, such as health reports, criminal records, and personal information kept under control of the relevant government agencies, cannot be obtained without consent in writing given by the person, who is the subject of that information.

Normally, the employer will ask the candidate for such information to use it as a reference to consider whether or not such candidate qualifies for a job/position and to consider which candidate among all is best suited for a job/position. This is also the candidate's right to agree or refuse to provide such information. However, in practice, even though such information is considered personal information, most candidates will still give consent to provide or allow the employer to look for such information because the employer, as said above, normally will ask for such information only to the extent that it must be used to identify the candidate's qualifications for a job/position, in order to decide on the candidate who can benefit the employer the most. Therefore, this is reasonable enough for the candidate to agree to provide or allow the employer to look for such information to prove that he/she qualifies for a job/position in order that he/she will be accepted and employed.

If the employer asks for personal data from the candidate and the candidate does not agree to provide such data, and after that the employer collects such data without the candidate's consent, the employer will be fined an amount not exceeding THB 3,000,000 as administrative penalty as prescribed under the Personal Data Protection Act B.E. 2562 (A.D. 2019)

However, if such personal data collected by the employer without the candidate's consent pertains to e.g. racial, ethnic origin, political opinions, cult, religious or philosophical beliefs, sexual behavior, criminal records, health data, disability, trade union information, genetic data or biometric data, the employer will be fined in the amount of not exceeding THB 5,000,000 as administrative penalties as prescribed under the Personal Data Protection Act B.E. 2562 (A.D. 2019)

In addition, if collection of the candidate's personal data as stated in the second paragraph causes any person to suffer any damage, impair his or her reputation or expose such person to be scorned, hated or humiliated, the employer shall be punished with imprisonment for a term not exceeding 6 months or a fine not exceeding THB 500,000 or both as criminal penalties.

2.2 Discrimination in employment

When recruiting or employing an employee in Thailand, what types of discrimination should an employer be aware of and avoid (e.g. race, nationality, religion, gender, age, disability and etc.)?

Under the **Thai Labor Protection Act B.E. 2541 (A.D. 1998)** ("LPA"), the law specifically prohibits discrimination with regard to gender. Section 15 LPA requires that an employer must treat male and female employees equally in their employment unless the nature or conditions of the work do not allow the employer to do so. For example, careers such as mining, construction, dangerous scaffolding work and production or transportation of hazardous materials are prohibited for females as prescribed by law. The law also focuses on certain situations where discrimination may arise such as (naturally only) female employees cannot be terminated due to pregnancy.

Discrimination on the basis of age is also prohibited unless it is for the prevention of child labor as prescribed by law. For example, the law prohibits employers to hire workers under the age of 18 in certain businesses such as the processing of aquatic animal life, metal pressing or poisonous substances, explosive or inflammable material, other than work in a fuel service station.

In one case, where an employer set out different retirement ages for employees, the Supreme Court of Thailand ruled that, for work with the same job description and nature, differentiation of retirement ages based on gender is a violation of the LPA and is not enforceable.

Supreme Court Judgement No. 865/2548 stated that it is a violation under Section 15 LPA if an employer specifies different retirement ages for male and female employees (for example, 50 years for female employees and 54 for male employees). In addition, this Supreme Court Judgement also stated that to terminate both female and male employees at such different retirement ages by the employer in

this case is also considered unfair termination and shall not be applicable to such terminated (retiring) employees. However, if different retirement ages are based on specific positions, not on a gender basis, such differentiation might be permitted.

2.3 Registration duties

Before recruitment what kind of procedures does the employer need to complete with government regulatory agencies (e.g. tax registration, labor and social security registration, and etc.)?

In Thailand, employers who wish to hire employees are required to register for such employees' social security with the Social Security Office.

According to the **Social Security Act B.E. 2533 (A.D. 1990)**, any employer that employs 1 employee or more must register with the Social Security Office in order to enroll their employees' insurance within 30 days from the commencement date of the employment.

2.4 Employment of foreign nationals/Employments of locals by foreign employees

Generally, the employer in Thailand must recruit employees on the basis of equality of gender and nationality.

However, the government has enacted the **Alien Workers Act B.E. 2551 (A.D. 2008)** and the **Royal Decree of B.E. 2560 (A.D. 2017)** and **B.E. 2561 (A.D. 2018)** which prescribe occupations and professions, currently 28 occupations, prohibited for foreign employees as follows:

- Wood carving;
- Weaving cloth by hand;
- Weaving mats and utensils from reeds, rattan, hemp, straw and bamboo pellicle;
- Making mulberry paper by hand;
- Making silk products by hand;
- Making lacquerware;

- Making nielloware;
- Making Thai musical instruments;
- Making traditional Thai dolls;
- Making gold ornaments, silverware, bronzeware;
- Making alms bowls (for Buddhist monks);
- Making cloth or paper umbrellas;
- Making Buddha images;
- Typesetting in Thai characters;
- Silk reeling and twisting by hand;
- Making silk products by hand;
- Driving commercial vehicles on local routes (other than piloting international aircraft);
- Staffing shops and other retail outlets;
- Auctioneering;
- Cutting and polishing diamonds and other precious stones;
- Hairdressing and beauty care;
- Local brokering;
- Rolling cigarettes by hand;
- Guiding tours;
- Street vending;
- Clerical and secretarial work;
- Legal services work; and
- Thai massage.

Note: As per the Thai Cabinet's Resolution, foreign workers from Myanmar, Laos and Cambodia have been given an indulgence to work in the Kingdom in 2 occupations, which are 1) labor work and 2) domestic work.

2.4.1 When recruiting foreign employees, what conditions must be met by the employer?

Only a Thai employer or a licensed business operator can bring in foreign employees to work in Thailand.

Thai business entities who want to apply for their foreign employees for work permits must have a minimum of THB 2,000,000 fully paid-up registered

capitalization per 1 work permit. In addition, the company must have a ratio of at least 4 Thai employees per 1 foreign employee.

Foreign business entities (i.e. entities with more than 50 % foreign share ownership) who are operating in Thailand can apply for their employees for work permits if they bring at least THB 3,000,000 per employee into the country.

This is done by first making a request to the authority for a quota to hire a specified number of foreign workers. Once the quota is granted, the employer or licensed operator can submit a request to bring the workers into Thailand for work and, subsequently, a request for their work permits.

The entities above may be granted a maximum of 10 work permits each. However, Board of Investment ("BOI")-promoted companies are an exception from the regulations above. The BOI is authorized to grant BOI-promoted companies special rights concerning the issuance of work permits and visas for foreign employees working on those projects as technical experts.

2.4.2 What procedures must employers of foreigner employees complete with government regulatory agencies?

Employers who wish to bring in foreign employees to work in Thailand must comply with the **Royal Decree on Managing the Work of Aliens B.E. 2561 (A.D. 2018)**[4].

Generally, to perform any type of work in Thailand, whether remunerated or not, any person who is not a Thai national must first obtain a visa to enter Thailand and a work permit to reside and work in Thailand.

According to the Announcement of the Department of Employment, issued on March 6th, 2015, the following activities are –however- **not** regarded as "working" under the **Working of Alien Act B.E. 2551 (A.D. 2008)**[5] and, therefore, a work permit is **not required** for these activities:

- Attending a meeting, consultation, or seminar;

[4] https://www.doe.go.th/prd/assets/upload/files/legal_th/92b6c499912462207f579dea958cf8a2.pdf

[5] http://thailaws.com/law/t_laws/tlaw0366.pdf

- Visiting an exhibition or a trade fair;
- Visiting a business or conferring a business negotiation;
- Attending an academic lecture;
- Attending a technical training or seminar;
- Buying products from an expo; and
- Attending a directors' meeting of the company.

The process of obtaining permission to work in Thailand may be different from other countries. Please note that the first step for a foreign employee to be entitled to work in Thailand legally is to obtain a Non-Immigrant "B" visa from a Thai Embassy or Consulate in his or her home country or any Thai Embassy or Consulate outside Thailand. A foreigner who stays in Thailand without a visa or with an expired or revoked visa will be punished with imprisonment not exceeding 2 years and/or a fine not exceeding THB 20,000.

The next step is to obtain a work permit. The employer may apply for a work permit while the foreign employee is still outside Thailand. However, the work permit will not be granted until the foreign employee attends the Labor Office in Thailand in person. Once completed, the application will be submitted to the Ministry of Labor.

A foreign national seeking permission to work in Thailand under the investment promotion laws (such as investment promotion certificates - BOI Certificates -) must submit an application for a work permit within 30 days from entry into Thailand. When getting the work permit, the foreign national will be entitled to reside in the Kingdom and is then also granted permission to work under such law.

The law prohibits employers from allowing foreign employees to perform any function other than that described in such foreigners' work permit. Employers must report changes in employment, transfers and termination of all foreigners in their organization within 15 days from occurrence of such cases. Failure to do so may result in a fine. Changes of an employers' location or a residential address of the work permit holder must be properly endorsed in the work permit by the respective labor authorities.

The law does not prevent a foreigner from working in more than 1 field or for more than 1 employer. However, he/she has to have his/her work permit covering all jobs or employers.

A foreign national who works in Thailand without a work permit may be subject

to a term of imprisonment not exceeding 5 years and/or a fine from THB 2,000 to THB 100,000. A foreigner who works in prohibited occupations or in breach of the conditions specified in the work permit may be subject to a fine not exceeding THB 20,000.

An employer who allows a foreign employee to unlawfully engage in the above work may also be punished with a fine of up to THB 60,000 and/or a term of imprisonment not exceeding 3 years.

2.4.3 According to Thai laws, can a foreign employer registered overseas directly hire employees (execute an employment agreement with a local employee) in Thailand? Or must a foreign employer complete either registration as a foreign enterprise or as a local entity before hiring employees in Thailand?

If the employer is foreign and would like to hire employees in Thailand, the employer may be deemed operating a business in Thailand which requires the employer to apply for a Foreign Business License ("FBL") under the **Thai Foreign Business Act B.E. 2542 (A.D. 1999)**[6], which would also require the employer to set up a legal entity in Thailand.

In addition, if direct employment between the foreign employer and the employee in Thailand is done without a legal entity (apart from the fact that this is illegal), there would be a "permanent establishment" created in Thailand, with the effect that the Thai tax authorities could estimate the likely profit generated by the employer in Thailand and then tax could be assessed in Thailand against the employer in addition to a penalty.

2.5 Negligence of employees to start to work

If an employee neglects his/her duty without justifiable reason for 3 consecutive working days regardless of whether there is a holiday in between or not (including the case that employee did not start to work 3 consecutive working days after the starting date agreed with the employer), this can be a reasonable cause for the employer to be able to terminate the employment agreement without having to

[6] http://thailaws.com/law/t_laws/tlaw0107a.pdf

make a severance payment under Section 119 LPA. Thus, the employer doesn't need to request a confirmation letter from the candidate and can terminate as described above. The employer is recommended to send a written warning letter to the candidate first and send the notice of the termination afterwards.

The employer has to pay attention in case that employees did not neglect to work up to 3 days yet. If the employer terminates before the expiry of this period of time, the employer violates the law and this will entitle the employee(s) to seek severance payment.

2.6 Signing to enter into employment agreements

According to Thai laws, must the employer enter into a written employment agreement with the employee, or may the employer sign the employment agreement with the employee via email or by online verification?

According to Thai laws, there is no statutory requirement that the employment agreement must be in writing. The agreement, whether in writing or verbal, made between the employer and the employee is recognised as an "employment agreement" under the LPA, if it expressly or impliedly conveys that a person (employee) agrees to work for another person (employer), who agrees to pay wages in return during the period of work.

However, it is recommended that the agreement should always be in a written form as it would be an essential evidence to prove to a court the terms of employment in case of disputes between employers and employees.

2.7 Typical contents of employment agreements

2.7.1 According to Thai laws, what are basic items that should be incorporated in an employment agreement? In addition, must various employment documents including an offer and an employment agreement be signed in Thai?

Below are some key issues that should be included in an employment agreement:

- Date, name, addresses of employers and employees
- Functions
- Duties
- Place of work
- Remuneration; especially, base salary
- Performance related bonus (if any)
- Annual leave
- Termination terms and conditions

There is no requirement that the employment agreement must also be made in the Thai language.

2.7.2 Is a collective bargaining contract between an employer and an employee required under Thai law?

This is not compulsory by law.

However, collective bargaining issues are regulated in the Labor Relation Act B.E. 2518 (A.D. 1975)[7]. Under the Act, labor unions (trade unions) can play a proactive role in collective bargaining for the benefit of employees. The labor unions possess the right to consult with employers to gain better work rights for employees.

Collective bargaining by labor unions is common in Thailand. When employees who are members of labor unions comprise at least 20 percent of the total number of the employees, such labor unions can submit a demand to an employer itself anytime (without requiring a number of employees to sign up) to proceed with any collective bargaining with an employer for e.g. better benefits of employees, which facilitates the entire process better than to have a respective employee do this him/herself. Otherwise (without labor unions), if employees would like to have collective bargaining with an employer, there must be employees in the amount of at least 15 percent of the total number of employees signing up for submission of a demand to have collective bargaining (also on condition that such employees must also be relevant to such a demand, only then they will be entitled to sign up). Therefore, it is basically easier and more convenient to have collective bargaining

[7] http://thailaws.com/law/t_laws/tlaw0140_3.pdf

by labor unions because it will take less administrative efforts and time to get a final result.

Practically, labor unions can submit a demand to an employer to have collective bargaining at any time. Such bargaining shall take place within 3 days after the day an employer receives a demand. In case both parties can reach an agreement, such agreement shall be made in writing. An employer shall register this agreement with the Department of Labor Protection and Welfare within 15 days from the day that the agreement is made. Within 3 days from the day that the agreement is made, an employer shall post such agreement at the office for at least 30 days.

However, if collective bargaining does not take place in 3 days as above or collective bargaining takes place but both parties cannot reach an agreement, such unreachable agreement will be called as a "labor dispute". Labor unions shall inform a conciliation officer within 24 hours. A conciliation officer shall proceed with conciliation in order to have both parties agree within 5 days from the day that such conciliation officer is informed by labor unions. In case that both parties can reach an agreement, the actions described in the previous paragraph shall be executed accordingly.

In the event that both parties still cannot reach agreement within the above 5 days of conciliation, such unreachable agreement will be called an "unconcluded labor dispute". Both parties may then agree to appoint one or several labor dispute arbitrators to make a decision on this matter or employer or employees might lock-out or go on strike by giving notice to a conciliation officer and the other party is informed in advance at least 24 hours in advance about the upcoming industrial action.

Please note that in some circumstances, despite the inability to reach an agreement within 5 days of conciliation (which causes an unconcluded labor dispute), some additional requirements may also need to be fulfilled first before a lock out or strike. In addition, in some circumstances and in case that an unconcluded labor dispute happens in some specific business as stipulated under the Labor Relation Act, a lock-out and a strike cannot be done at all. Instead, every party involved shall comply with other ways to settle such unconcluded labor dispute as the Act specifies.

2.8 Duration of employment agreements/Probation

Are there any mandatory regulations regarding the duration of an employment agreement? For example, are fixed-term employment agreements permitted, or must employment agreements be with an open-ended term? And are there any mandatory regulations regarding the duration of the probation period (such as minimum or maximum duration)?

There is no statutory requirement regarding the duration of employment agreements under Thai laws. Either fixed-term or non-fixed term employment agreements are permitted.

There is no mandatory regulation regarding the duration of the probation period. However, in case that an employment agreement does not specify the specific date or in case of a probationary agreement, such agreements should be deemed as permanent agreements. (under Section 17 paragraph 2 LPA.)

2.9 Minimum age of employees

According to Thai laws, what is the minimum age of an employee (child labor)?

With respect to child labor, an employer is prohibited to employ a child under the age of 15 according to Section 44 LPA. However, in the case of employment of a young worker under the age of 18 years, the employer has to;

- Notify a labor inspector regarding the employment of the young worker within 15 days of the young worker commencing work.
- In case of a change in employment conditions, prepare a record of such changed employment conditions and keep it in the employer's place of business or office which is available for inspection by the labor inspector
- Notify the labor inspector regarding termination of the employment of the young worker within 7 days from the date of the young worker being terminated.

2.10 Types of employment

According to Thai laws, what should employers pay special attention to when hiring interns, part-time employees, retired people and other consultants who work in the office as formal employees do?

Regarding hiring interns, it should be noted that the intern is also considered as an employee under Section 5 LPA which states:

> ***"Employee" means a person who agrees to work for an Employer in return for wages regardless of the name used;***

Therefore, employers should for instance not pay wages lower than the minimum wage stipulated by law to interns.

For other special categories of employees such as part-time employees and retired people, it should be noted that part-time employees and retired people employed are entitled to the same minimum rights, benefits and protections as full-time employees. This means the minimum standards supplied under law are applicable to both full and part-time employees.

However, consultants and freelancers are generally not considered as employees under employment agreements but as "contractors" under hire of work agreements. Considering that the nature of such people's work is to use their own expertise to accomplish a definite work in their own way for another person (employer), who agrees to pay them in return a remuneration for the result of the work, without them being commanded by such employer, as such, these people are not employees. Consequently, the minimum wages, rights, benefits and protections under the LPA and other relevant laws applying to employees will not apply to these people. Obligations of the employer to these people and what these people are entitled to depend on what is agreed under hire of work agreements, on condition that such agreement must also comply with provisions in the TCCC.

2.11 Internal guidelines

2.11.1 Are employers required to produce any specific internal regulations under Thai laws?

It is required by Section 108 LPA that an employer who employs 10 or more persons shall provide the work rules in Thai and the rules shall contain at least the following details:

(1) Working days, normal working time and rest periods;
(2) Holidays and rules of taking holidays;
(3) Rules governing overtime and holiday work;
(4) The date and place of payment of wages, overtime pay, holiday pay and holiday overtime pay
(5) Leave and rules of taking leave;
(6) Discipline and disciplinary measures;
(7) Lodging of grievances; and
(8) Termination of employment, severance pay and special severance pay.

The law recognizes the binding power of the employer (company)'s regulations. For instance, under Section 116 LPA, when an employee alleged to have committed an offence is under investigation by the employer, the employer is not allowed to order the suspension from work of the employee during such investigation, unless the employer is empowered by the work rules or an agreement on conditions of employment to order such suspension.

Moreover, the law also empowers employers not to pay severance pay to an employee when an employment is terminated due to the employee's violation of the work rules, regulations or order of the employer, which is lawful and just, and after a written warning having been given by the employer, except for a serious case with no requirement for the employer to give such warning.

2.11.2 Must an employer comply with certain statutory procedures when making and publishing the internal regulations and rules? If so, what are the necessary procedures?

The employer shall announce the work rules within 15 days of the date that the employer employs 10 or more persons and the employer shall always keep a copy of such rules at the place of business or at the employer's office and deliver a copy of the rules to Director- General of the Department of Labor Protection and Welfare or a person entrusted by such Director-General within 7 days from the date of their announcement.

Also, the employer shall distribute and affix the work rules in a prominent position in the workplace available to employees in order to enable them to get knowledge of the rules.

2.12 Union influence

2.12.1 According to Thai laws, are employees permitted to establish an independent trade union by themselves, or are employees permitted to voluntarily choose to join a regional trade union or an industrial trade union?

Trade unions/labor unions, which have objectives to seek for and protect benefits in relation to the conditions of employments and promote better relationships between employers and employees, are permitted to be established by law (the Labor Relation Act B.E. 2518 (A.D. 1975)). All issues related to trade unions are governed by Section 86-111 of the Labor Relation Act.

In principle, a trade union must be registered with a registrar and it will acquire a juristic person status after the registration. Persons who have the right to establish a trade union must (i) be employees working for the same employer (to establish the trade union called as the "house union") or employees in the same description of work (to establish the trade union called as the "industrial union") (ii) reach the legal age and (iii) have Thai nationality.

For filing an application to establish a trade union, there must be not less than 10 employees who have the right to establish the trade union as stated above (promoters), submit a written application to the registrar together with at least 3 copies of the draft regulations of the trade union.

Persons who can become members of the trade union must be (i) employees who work for the same employers as the promoters or employees in the same description of work as the promoters (ii) have an age of 15 years old or above.

However, the law prohibits employees and management level employees under the law on state enterprise relations to become a member of the trade union under the Labor Relations Act.

It also prohibits employees who are supervisors with the power to hire, reduce wages, terminate employments, give rewards or take disciplinary actions to become a member of the trade union established by other types of ordinary employees (e.g. officer-level employees or below officer-level employees). On the other hand ordinary employees cannot be a member of the trade union established by employees who are supervisors.

Therefore, as employers who are supervisors and ordinary employees cannot be members of the same trade union (whether it is the house or the industrial union), then there are 2 separate levels for all the trade unions. Each trade union can contain only either level i.e. 1) the trade union established by ordinary employees and 2) the trade union established by employees, who are supervisors.

2.12.2 What does an employer need to do once a union is established or employees have joined a trade union?

After the trade union is established or employees joined the trade union, the employer shall comply with the following sections under Chapter 9 of the Labor Relation Act:

Section 121:

"An employer shall not:

(1) dismiss the employment of or take any action which may result in an employee, a representative of an employee, a committee member of a Labor Union or labor federation being unbearable to continue working, as a result of the Employee or Labor Union calling a rally, filing a complaint, submitting a demand, negotiating or instituting a law suit or being a witness or producing evidence to competent officials under the law on labor protection or to the Registrar, labor dispute mediator, labor dispute arbitrator or a member of Labor Relations Committee under this Act, or the Labor Court, or as a result of the employee or Labor Union being about to take the said actions;

(2) dismiss the employment of or take any action which may result in an employee being unable to continue working as a result of the said employee being a member of a Labor Union;

(3) prevent an employee from becoming a member of a Labor Union or cause an employee to resign from membership of a Labor Union, or give or agree to give money or property to an employee or official of a Labor Union in order to induce the employee to refrain from applying or to induce the official to refuse the application for membership or to induce resignation from membership of a Labor Union;

(4) obstruct a Labor Union or labor federation from conducting its affairs or prevent employees from exercising their rights to become members of a Labor Union; or

(5) interfere with the affair of a Labor Union or labor federation without lawful authority."

Section 122:

"No person shall:

(1) force or coerce, either directly or indirectly, an employee to become a member of a Labor Union or to resign therefrom; or

(2) take any action causing an employer to violate Section 121."

Section 123:

"While an agreement on state of employment or award is still in force, an employer is prohibited from dismissing an employee, representative of employees, member of committee or sub-committee or member of a Labor Union, or member of the committee or sub-committee of a labor federation who is involved in a demand, unless such person:

(1) performs his/her duties dishonestly or intentionally commits a criminal offence against the employer;

(2) intentionally causes damage to the employer;

(3) violates the articles of association, rules or lawful orders of the Employer who has given a written warning or caution, except in a serious case where the employer is not required to give a warning or caution; provided that such articles of association, rules or orders are not issued for the purpose of obstructing the said person from action in respect of the demand;

(4) is absent from his/her duties for three consecutive days without justifiable reason; or

(5) performs any act thereby inciting, encouraging or persuading a violation of the agreement on state of employment or award."

2.12.3 Is there a right to go to strike or any other kind of collective action?

Employers should note that members of trade unions may have the right to go out on strike when a labor dispute cannot be settled (which becomes an unconcluded labor dispute), provided that the conditions as specified in Section 3.8 above shall be fulfilled. Also, the strike shall be proposed at the general meeting of trade unions to have all members of trade unions vote (the vote must be secret) and more than 1/2 of the total trade union membership must approve the strike so that trade unions will have the right to go out for such strike.

3. Leave and Holidays

3.1 Working hours/Working overtime and overtime pay

According to Thai laws, how many days per week and how many hours per day is the maximum working time?

Section 23 LPA provides that the working hours should not exceed 8 hours per day in each day and the total working time per week shall not exceed 48 hours, on condition that an employer shall arrange a rest period during work for an employee of not less than 1 hour per day after the employee has been working for not more than 5 consecutive hours (Section 27 paragraph 1 LPA).

Regarding the rest period, under Section 27 paragraph 1, 2 and 3 LPA, the employer and the employee may agree in advance that each rest period may be less than 1 hour but the total rest period per day shall not be less than 1 hour. However, the rest period of longer than 1 hour per day can be legally agreed. Please note that the rest period shall not be counted as working time except the total rest period is more than 2 hours per day, the amount of time exceeding such 2 hours shall be counted as normal working time.

Under Section 28 LPA, an employer shall provide a weekly holiday of not less than 1 day per week for an employee after at most 6 consecutive working days and the employer and the employee may agree in advance to fix any day as a weekly holiday.

However, if the employee performs work in the hotel business, transport work, work in a forest, work in a location lacking basic facilities, or any other work as prescribed in the Ministerial Regulations, the employer and the employee may agree in advance to accumulate and postpone weekly holidays to be taken at any time, but they must be taken within a period of 4 consecutive weeks.

3.2 Are there any restrictions on working overtime under Thai laws?

Yes, the following sections under the LPA regulate overtime work:

Section 23 paragraph 1:

"An Employer shall notify a normal working time to an employee, by specifying the commencing and ending time of work in each day of the employee, which shall not exceed the working time for each type of work as prescribed in the Ministerial Regulations and not exceed eight hours per day. Where the working hours of any day are less than eight hours, the Employer and the employee may agree to make up the remaining working hours in other normal working days, but not exceed nine hours per day and the total working hours per week shall not exceed forty-eight hours. Except for the work which may be harmful to health and safety of the employees as prescribed in the Ministerial Regulations for which the normal working hours shall not exceed seven hours per day and the total working hours per week shall not exceed forty-two hours."

Section 24:

"An employer shall not require an employee to work overtime on a working day unless the employee's prior consent is obtained on each occasion.

However, whereas the description or nature of work requires it to be performed continuously and stoppage may cause damage to the work, or it is emergency work, or other work as prescribed in the Ministerial Regulations, an employer may require an employee to work overtime as necessary."

Section 26:

"The hours of Overtime Work under Section 24 paragraph one in total shall not together exceed the numbers of hours prescribed in the Ministerial Regulations." (not exceeding 36 hours per week)

Section 27 paragraph 4:

"Whereas any Overtime Work after normal working time is more than two hours, the Employer shall arrange for the Employee to take a rest period of not less than twenty minutes before the Employee commences the Overtime Work."

Section 31:

"An Employer shall not require an Employee to perform work overtime or on which may be hazardous to the health and safety of the Employee under Section 23 paragraph one on overtime or a holiday."

3.3 What are the rules for overtime payment?

Section 61:

"Whereas an Employer requires an Employee to work overtime on a Working Day, the Employer shall pay Overtime Pay to the Employee at a rate of not less than one and a half times of the hourly wage rate of a Working Day for the number of hours of work done, or, where an Employee receives Wages on a piece rate basis, not less than one and a half time of the piece rate of Wages of a Working Day for work done."

Section 63:

"Whereas an Employer requires an Employee to work overtime on a Holiday, the Employer shall pay Holiday Overtime Pay to the Employee at the rate of not less than three times of the hourly wage rate of a Working Day for the number of hours of work done, or, where an Employee receives Wages on a piece rate basis, at not less than three times of the piece rate of Wages of a Working Day for work done."

Section 68:

"For the purpose of calculating Overtime Pay, Holiday Pay and Holiday Overtime Pay for an Employee who receives Wages on a monthly basis, an hourly wage rate on Working Day means the monthly Wages divided by the product of thirty and the average number of working hours on a working

day."

Section 70:

"An Employer shall pay Wages, Overtime Pay, Holiday Pay and Holiday Overtime Pay correctly and in accordance with the following time:

(1) whereas Wages are calculated on a monthly, daily, or hourly basis, on the basis of another period of not more than one month, or on a piece rate basis or payment shall be made not less than once a month, unless otherwise agreed upon in favor of the Employee;

(2) whereas Wages are calculated other than prescribed in (1), payment shall be made at a time agreed between the Employer and the Employee; and

(3) Overtime Pay, Holiday Pay and Holiday Overtime Pay shall be paid not less than once a month.

Whereas an Employer terminates the employment of an Employee, the Employer shall pay the Employee all Wages, Overtime Pay, Holiday Pay, and Holiday Overtime Pay to which the Employee is entitled within three days from the date of the Employee's termination."

3.3.1 In addition, must an employer make overtime payments to an employee when the employee voluntarily works or studies in the office after working time or in other non-working times due to low efficiency within the working time or desire to study more?

This is not regulated by law thus employers do not have a duty to pay.

3.3.2 In addition, after arranging an employee to work overtime due to business needs, can an employer give an employee compensatory leave afterwards in lieu of overtime payment?

Section 54:

"An Employer shall pay Wages, Overtime Pay, Holiday Pay, Holiday Overtime Pay and other pecuniary benefits related to employment in Thai currency unless the consent of the Employee is obtained to be paid by bill or in a foreign currency."

According to the Judgment of the Supreme Court (No. 5630/2538 B.E), the overtime wages must be paid in money only. Therefore, even though the employer and the employee have agreed to receive the leave instead of wages, the employee is still entitled to claim for overtime wages according to the LPA.

3.4 Public holidays and holiday pay

According to the LPA, "holiday" means a day scheduled for an employee to take a weekly holiday (see No. 3.1 above), traditional holiday or annual holiday. An employer shall provide the employee with traditional holidays and annual holidays according to the following sections under the LPA:

Section 29:

"An Employer shall announce not less than thirteen traditional holidays per year in advance for Employees, including National Labor Day as specified by the Minister.

The Employer shall fix the traditional holidays according to the annual official holidays, religious or local traditional holidays.

If a traditional holiday falls on a weekly holiday of an Employee, the Employee shall take a day off to substitute for the traditional holiday on the following Working Day.

Whereas an Employer does not provide a traditional holiday to an Employee because the Employee performs work of such description or nature as prescribed in the Ministerial Regulations, the Employer shall make an agreement with the Employee to take another day off to substitute for the traditional holidays or the Employer shall pay Holidays Pay to the Employee."

Section 30:

"An Employee who has worked for an uninterrupted period of one year, is entitled to annual Holidays of not less than six Working Days in one year, and the Employer is obliged to fix the Holiday in advance for the Employee or as agreed by the Employer and Employee.

In the following year, the Employer may fix annual Holidays for the Employee of more than six Working Days.

The Employer and the Employee may agree in advance to accumulate and postpone any annual Holiday that has not yet been taken in a year to be included in the following years.

For the Employee who has not completed one year of service, the Employer may set annual Holidays for the Employee on a pro rata basis."

Section 25:

"An Employer shall not require an Employee to work on a Holiday unless the description or nature of work requires it to be performed continuously and stoppage may cause damage to the work, or it is emergency work. In that case, an Employer may require an Employee to work on a Holiday as necessary.

An Employer may require an Employee to work on Holiday in a hotel business, an entertainment establishment, transport work, a food shop, a beverage shop, a club, an association, a medical establishment or any other businesses as prescribed in the Ministerial Regulations.

For the purposes of production, sale and service, an Employer may require an Employee to work on a Holiday as necessary, other than as prescribed under paragraph one and paragraph two, provided that the Employee's prior consent is obtained on each occasion."

Section 26:

"The hours of Holiday work under Section 25 paragraph two and paragraph three in total shall not together exceed the numbers of hours prescribed in the Ministerial Regulations."

Section 31:

"An Employer shall <u>not require</u> an Employee to perform work overtime or on which may be hazardous to the health and safety of the Employee under Section 23 paragraph one on overtime or a holiday."

3.4.1 How much salary does an employer need to pay during statutory holidays?

Section 56:

"An Employer shall pay Wages to an Employee equivalent to Wages of a

Working Day for the following Holidays:

(1) a weekly holiday, except for an Employee who receives Wages calculated on a daily, hourly or piece rate basis;
(2) a traditional holiday; and
(3) annual Holidays."

Section 62:

"Whereas an Employer requires an Employee to work on a Holiday under Section 28, Section 29 or Section 30, the Employer shall pay Holiday Pay to the Employee at the following rates:

(1) for an Employee who is entitled to Wages on Holidays, the payment shall be made in addition to Wages at a rate at least equal to the hourly wage rate of a Working Day for the number of hours of work done, or, where an Employee receives Wages on a piece rate basis, of not less than onetime of the piece rate of Wages of a Working Day for work done; or

(2) for an Employee who is not entitled to Wages on Holidays (i.e. an Employee who receives Wages calculated on a daily, hourly or piece rate basis), the payment shall be made at not less than two times of the hourly wage rate of a Working Day for the number of hours of work done, or, where an Employee receives Wages on a piece rate basis, at not less than two times of the piece rate of Wages of a Working Day for work done."

Section 63:

"Whereas an Employer requires an Employee to work overtime on a Holiday, the Employer shall pay Holiday Overtime Pay to the Employee at the rate of not less than three times of the hourly wage rate of a Working Day for the number of hours of work done, or, where an Employee receives Wages on a piece rate basis, at not less than three times of the piece rate of Wages of a Working Day for work done."

Section 64:

"Whereas an Employer fails to provide a Holiday for an Employee or provides less than that prescribed under Section 28, Section 29 and Section 30, the Employer shall pay Holiday Pay to the Employee and Holiday Overtime Pay according to the rates prescribed under Section 62 and Section 63 as if the employer is assigned to work on the Holiday."

3.5 Vacation and vacation pay

3.5.1 How much salary does an employer need to pay during the paid annual leave?

Section 56:

"An Employer shall pay Wages to an Employee equivalent to Wages of a Working Day for the following Holidays:

….

(3) annual Holidays."

3.5.2 Payment in lieu of vacation

If an employee who is leaving the company has untaken annual leave, can the employer forfeit the untaken annual leave, or must the employer give compensatory leave or corresponding cash payment to the employee?

Section 67:

"Where an Employer terminates the employment of an employee upon any condition other than provided in Section 119, the Employer shall pay wages to the employee for annual holidays for the year of termination in proportion to a number of annual holidays to which the employee is entitled under Section 30.

Where an employee is a party to terminate a contract of employment or the Employer is a party to terminate an employment regardless of any condition under Section 119, the Employer shall pay wages to the employee for accumulated annual holidays to which the employee is entitled under Section 30."

3.6 Other statutory leaves and payment for other statutory leaves

3.6.1 What about other statutory leaves an employee must give an employee (e.g. marriage leave, bereavement leave, maternity

leave, paternity leave, sick leave, military service, and etc.)?

Section 32:

"An Employee is entitled to sick leave as long as he or she is actually sick. For sick leave of three days or more, the Employer may require the Employee to produce a certificate from a first class physician or an official medical establishment. If the Employee is unable to produce a certificate from a first class physician or an official medical establishment, the Employee shall give an explanation to the Employer.

If a physician is provided by the Employer, this physician shall issue the certificate except where the Employee is unable to be examined by the physician.

A day on which an Employee is unable to work on account of injury or illness arising out of employment or on maternity leave under Section 41 shall not be regarded as sick leave under this Section."

Section 33:

"An Employee shall be entitled to leave for sterilisation and leave as a result of sterilisation for a period determined, and with a certificate issued by a first-class physician."

Section 34:

"An Employee shall be entitled to leave for necessary business for not less than three working days a year."

Note: "Necessary business" means any business that an employee cannot avoid to do and this must be done only on weekdays, not on weekends. The LPA does not specify specifically which business is considered necessary. This depends on what an employee and an employer agree to be "necessary" business or alternatively it depends on the work rules of an employer.

However, most companies in Thailand consider bereavement leave (for only first-degree relatives' (i.e. parents, siblings, children) and spouses' funerals) as leave for necessary business. For other kinds of bereavement leave and marriage leave, it needs to be considered on a case-by-case basis depending on what is agreed between an employee and an employer or the work rules and is at the employer's discretion. Some companies may consider this as annual leave but some may consider this as leave for necessary business.

Section 35:

"An Employee shall be entitled to leave for military service for inspection, military drilling or for readiness testing under the law concerning military service."

Section 36:

"An Employee shall be entitled to take leave for training or the development of his or her knowledge and skills in accordance with the rules and procedures prescribed in the Ministerial Regulations."

Section 41:

"A female Employee who is pregnant shall be entitled to maternity leave of not more than ninety-eight days for each pregnancy.

Note: The above 98 days period can cover a period before a female employee gives birth and after that. A female employee who is pregnant can decide when to start maternity leave at her discretion (e.g. 1 or 2 weeks before the due date to prevent her pregnancy from any harm that can be caused by moving and traveling around to be physically present and work at the office).

Maternity leave under this Section shall include leave for prenatal visits.

Any Leave taken under paragraph one shall include Holidays during the period of Leave."

However, there are no paternity rights provided under the LPA for male employees in private sectors. Paternity rights are only provided to male employees in government sectors. Male employees in government sectors will be entitled to paternity rights by receiving a paid paternity leave of up to 15 consecutive working days, which can be taken prior to or within 90 days after childbirth.

3.6.2 How much salary does an employer need to pay during the above leaves?

Section 57:

"An Employer shall pay Wages to an Employee for sick leave under Section 32 equivalent to Wages of a Working Day throughout the leave period, but not exceeding thirty Working Days per year.
Whereas an Employee takes Leave for sterilisation under Section 33, the

Employer shall pay Wages to the Employee for such Leave."

Section 58:

"An Employer shall pay Wages to an Employee for military service leave under Section 35 equivalent to Wages of a Working Day throughout the Leave period, but not exceeding sixty days per year."

Section 59:

"An Employer shall pay Wages to a female Employee for maternity leave equivalent to Wages of a Working Day throughout the Leave period, but not exceeding forty-five days per year."

Please note that such female employee as mentioned above in Section 59 LPA can actually have in total a 53-day leave with pay, provided that 45 days out of the 53-day leave will be paid legally under Section 59 LPA. But for the rest 8 days out of the 53-day leave, it is upon mutual agreement between both an employer and the female employee whether or not the female employee will get paid.

Section 60:

"For the purposes of wage payment under Section 56, Section 57, Section 58, Section 59, Section 71 and Section 72, whereas an Employee receives Wages calculated on a piece rate basis, the Employer shall pay Wages for Holiday or Leave equivalent to the average Wages of Working Day rceived by the Employee during the period of payment before such Holiday or Leave."

3.7 Other releases from work and payment for other releases from work

If an employee has not recovered or is unable to return to work within the statutory maximum period for sick leave, can the employer unilaterally terminate the employment relationship with the employee?

Yes, he/she can. However, this termination is regarded as "termination without cause" therefore, it is required by law that the employer has to give advance notice in writing to the employee on or before any due date of wage payment in order to take effect on the following due date of wage payment. Also, the employee will be entitled to receive severance pay under Section 118 LPA (see No. 8.2 below).

3.8 According to Thai laws, under what circumstances may employees legally launch a strike? When employees go on strike in accordance with the law, can the employer terminate their employment relationship? If not, should the employer pay salary as usual?

Under the Labor Relation Act, employees can legally launch a strike only if they have already submitted to the employer demands for agreement relating to the conditions of an employment or amendments thereto under Section 13, on condition that they have followed all instructions by law but a settlement cannot be reached under Section 22.

Please note that in order to go strike, employees must give notice to the Conciliation Officer and to other parties at least 24 hours prior to the strike according to Section 34 of the Labor Relation Act.

In such above case, the employer cannot terminate the employment of such above employees. Nevertheless, when employees launch the strike, it means that such employees do not work. Once there is no work performed, then the employer does not need to pay salary to such employees during the strike period.

4. Salaries and Benefits

4.1 Minimum wage

Are there any regulations regarding the minimum salary of employees in Thailand?

As of January 1st, 2020, the national legal minimum wage in Thailand is THB 313-336 per day (the rate varies depending on the respective location, i.e. Bangkok is THB 331.) as set out in the Wage Committee Announcement on Minimum Wage Rate (No. 10) under the LPA[8].

The Wage Committee may announce a different rate of the minimum wage for certain types of employees such as skilled labor, which the minimum wage rate currently announced is in a range of THB 345-825 per day. For example, employees

[8] https://www.mol.go.th/en/minimum-wage/

who work as skilled workers such as technicians in maintaining cars (first level) are entitled to a minimum wage of THB 400 per day.

4.2 Payment and reductions

4.2.1 What are the mandatory regulations on the cycle length and the time of salary payment?

There are no mandatory regulations under the LPA on the cycle length and the time of salary payment.

Normally, "wages" under the LPA can be agreed between an employer and an employee to be paid e.g. on an hourly, daily, weekly, monthly, or other periods of time basis as agreed, in return for work done under an employment agreement for regular working periods, or on the basis of piecework done during normal working time of a working day.

4.2.2 According to Thai laws, in what situations can an employer unilaterally reduce the employees' salary?

According to the labor laws, employers are not allowed to reduce the employees' salary unilaterally in any case. Amending the employees' salary is regarded as the change of working conditions which require consent. The working conditions can be amended only in the following 3 scenarios:

- The employer and the employee(s) can voluntarily agree/consent to adjust the terms of an employment agreement by such means as a written amendment agreement; or

- The labor union can negotiate with the employer on behalf of the employee(s) to adjust the terms of the employment agreement. However, the union cannot force the employer to accept its demands; rather if the parties are unable to reach an agreement, then a Labor Department official will become involved to try to get the parties to compromise but if this fails, then the employee(s) can strike or the employer may carry-out a lock-out from the workplace to force compliance with their demands.

- The employer increases or improves the employment benefits of its employee(s);

Thus, if the employer unilaterally alters their staff's working conditions agreements, such change(s) could be deemed to be invalid with the previous working condition agreement to be applied instead.

Moreover, the law allows the employer to make a deduction of the employees' salary in some cases such as withholding taxes for employees' income, payment of labor union dues, payment of debts owed to the saving cooperatives or other cooperatives of the same description, or of debts relating to employees for the benefit of employees solely, with prior consent of employees. However, those deductions will need consent from employees.

4.3 Mandatory benefits

What mandatory benefits must an employer provide to the employees? For instance, must an employer provide employees with medical benefits or other types of insurances?

Generally, an employer must register employment between employees and the employer with the Social Security Office within 30 days after the date that the employer employs respective employees.

If foreign nationals are to be employed in Thailand, the employer must also register such employees with the Social Security Office for social security, in order for such employees to receive benefits as any insured Thai employees from the Social Security Fund.

Apart from the Social Security Fund, the LPA also regulates the mandatory welfare that employers must manage for their employees. Under the provision, welfare is a benefit provided by the employer for the employees' convenience and good health which is regulated by the Announcement of the Ministry of Interior.

Accordingly, the employer has a duty to arrange the following welfare to their employees:

(1) clean drinking water and restrooms; and

(2) first-aid service and medical supplies for employees' injuries or sickness.

If the employer (company) has more than 10 employees, it must have a first-aid kit (including e.g. scissors, cotton, alcohol 70%, medicines, etc.) available at the workplace. In case of an industrial workplace, the following additional facilities have to be provided:

(1) for the place with more than 100 employees, a ward with 1 bed, 1 permanent nurse and 1 doctor who visits occasionally; and
(2) for the place with more than 1,000 employees, a ward with 2 beds, 2 permanent nurses, 1 doctor who is scheduled to visit regularly at least for 2 hours, and a transportation to a hospital.

In case the company fails to provide such facilities, the company shall be liable to a fine of up to THB 100,000 or imprisonment of up to 6 months or both.

4.4 Voluntary benefits

4.4.1 Besides statutory mandatory benefits, what benefits do Thai employers usually voluntarily provide their employees with?

Apart from the above-mentioned welfare, the law does not require the company to provide other welfare/benefits to its staff. However, many companies usually provide the following benefits in order to attract employees to work with them:

- Health insurance;
- Life insurance;
- Monetary benefits such as rewards or bonuses which employees will receive after achieving certain performance goals as set by the company.
- Working clothes or uniforms; and
- Transportation to factory sites (mostly the manufacturing companies)

4.4.2 Is it necessary to provide funding or other support to employees who suffer from significantly serious individual or family difficulties (e.g. serious disease, etc.)?

The Thai labor laws do not require that an employer has to provide such funding or support. The employer (company) may have its own policy to support its workers as an additional benefit.

4.4.3 Is it necessary to provide certain employees with accommodation?

Some construction projects take place over a short-term period so workers must be ready to move from one construction site to another. The Ministry of Labor considered this situation and has announced the Notification of the Labor Welfare Committee regarding accommodation welfare standards of employees in construction work in January 2016. The law regulates that employers shall provide accommodation free of charge for its employees in construction work.

Apart from these specific circumstances, the law does not require that employers have to provide accommodation to their employees.

4.4.4 Is it necessary to purchase commercial insurance for certain employees?

Even though Thai labor laws do not require that employers (companies) have to provide commercial insurance for their employees, many companies in Thailand provide it as an additional benefit to attract employees to work with them.

5. Workplaces and Working Environment/Positions of Employees

5.1 Mandatory requirements for workplaces and working environment

Have Thai laws stipulated any mandatory requirements regarding the workplace and working environment that an employer should provide for its employees?

In Thailand, there is a relevant regulation to this issue, i.e. the so-called

"Occupational Safety, Health and Environment Act B.E. 2554 (A.D. 2011)[9]". The regulation aims to protect employees who have to work in production process, construction and services which may use hazardous machinery, equipment or chemicals that have a tendency to be dangerous and may even cause injury, disability or loss of life.

In essence, the Act provides that an employer is obligated to provide and keep the company and the employee in safe and hygienic working conditions. In addition, the environment of work should support the employee's work and preventing the employee to suffer any harm on life, physique, mentality, and health. The employer is required to administer, manage and operate the occupational safety, health and environment in conformity with the standards prescribed in the Ministerial Regulations.

In this regard, the Ministry of Labor may assign a safety inspector to perform his/her duties under this Act that is empowered to enter an establishment or office of the employer during working hours or when there is an incident, to inspect or record image and sound on working conditions concerning occupational safety, health and environment or to use tools to measure or inspect the machinery or equipment on the working premises.

Failing to comply with the Act and the Ministerial Regulations, the employer may have to face penalties of imprisonment of not more than 1 year or a fine of not exceeding THB 400,000 or both.

5.2 Do employers need to solve daily commute issues for their employees (or instead, do employees solve it by themselves)?

Generally, employers do not have a duty to solve commuting issues for their employees. As Bangkok, the capital city of Thailand, is notorious for its traffic jams, it is advisable for employees to carefully plan their daily travel to and from home to office or to choose a suitable location of their accommodation.

[9] http://web.krisdika.go.th/data/outsitedata/outsite21/file/OCCUPATIONAL_SAFETY,_HEALTH,_AND_ENVIRONMENT_ACT,B.E._2554.pdf

5.3 Change of positions and workplaces

Under what circumstances may the employer change the employee's position unilaterally? For instance, when an employee cannot perform his/her duties or his/her current position is eliminated/laid off, is the employer allowed to change the employee's position unilaterally?

Thai laws do not recognise the automatic right of employers to unilaterally vary the terms and conditions of an employment (work rules). Generally, any change made to the terms and conditions of the employment requires the employees' consent, unless the changes are more favorable to employees that is to say such change increases or improves the employees' benefits. The Ministry of Interior has released the Notification No. 14 (B.E. 2536), which has set forth the rules of changing positions under which the employer can make changes unilaterally:

(1) The new position must not be lower than the previous one;
(2) The wage must not be lower than the previous one; and
(3) The process must be under the principle of "fairness".

5.4 Are employers allowed to unilaterally change employees' work places due to operational needs (including requiring the employees to move to another work place in the same city or to a different city due to office relocation)?

Such unilateral changes are not allowed by law. According to Section 120 LPA, where an employer relocates an establishment to another place and the relocation significantly affects the ordinary way of living of an employee or his/her family, the employer shall inform the employee in advance of not less than 30 days before the date of the relocation. In case that the employer fails to inform the employee in advance, the employer shall pay special severance pay in lieu of advance notice in an amount equivalent to 30 days pay at the latest wages rate, or equivalent to the wages of the last 30 days for the employee who receives wages based on a piece rate.

For this purpose, if any employee refuses to work at the new location, the employee is entitled to terminate the employment agreement within 30 days from the date of

being informed by the employer or the date of the relocation as the case may be. In this regard, the employee is entitled to receive special severance pay in the amount of not less than normal severance pay which the employee is entitled to as specified in Section 118 LPA (see No. 8.2 below).

6. Work-related Injury/Death

6.1 Definitions

6.1.1 According to Thai laws, what conditions must be met in order to determine work-related injury or work-related death?

The Workmen Compensation Act B.E. 2537 (A.D. 1994) provides the definitions of what constitutes work-related injury or work-related death under Section 5 as follows:

- "Sufferings from injury" means physical or mental injury or death suffered by an employee as the result of a work employment or in the course of protecting interests of an employer or according to directions of the employer,
- "Sickness" means illness suffered by an employee as the result of work caused by diseases incidental to the nature or the conditions of work.
- "Disappearance" means an employee has disappeared while he/she is working or doing work by an employer's order and it is reasonable that he/she is dead because of suffering injury during the work or during doing work by the employer's order and including the employee who is absent in the period of travelling by any vehicles on the air, land or water in order to work for the employer and it is reasonable to believe that it was an accident and the employee is dead because of that. The disappearance of the employee must not be less than 120 days as from the day that the cause of the disappearance happened.
- "Loss of the capability" means he/she loses any organ or he/she is incapable to work because of a body or being mentally damaged after a hospitalization or after finishing all medical treatments.

6.1.2 Is it necessary that the employee is injured or dies in the course of work, during working hours and within work premises? Or

would it suffice if such injury or death is work-related (e.g. the employee is injured at weekend during his/her visit to clients without consent or arrangement of the employer)?

Under Thai laws, if an injury or death is the result of work the employee does for the employer, regardless of within the working hours or within the work premises or not, this is regarded as work-related injury/death and the employer will be responsible for such result.

6.2 Responsibility of Employers

6.2.1 If an employee is injured in a traffic accident whilst commuting to or from work, will such circumstances be deemed as work-related injury/work-related death?

This is not regarded as work-related injury/work-related death. However, the employee will be entitled to receive compensation for such injuries/death under the **Road Accident Victims Protection Act B.E. 2535 (A.D. 1992)**[10]. Because under the Act, every car's owners normally must arrange compulsory motor insurance for their cars with insurance companies. Therefore, once such traffic accident happens, the employee will be able to receive compensation from an insurance company who issues the compulsory motor insurance to the owner whose car causes such accident to the employee. But if such accident is caused by the situation that the employee was communicating via a mobile phone while he/she is driving (regardless of the work issue or the employer's order or not), this is a breach of the Land Traffic Act which constitutes a wrongful act of negligence.

6.2.2 If an employee suffers work-related injury or work-related death, is it necessary to complete certain procedures with local regulatory agencies? What are the procedures in detail? What responsibility should the employer bear?

This matter is governed by the **Workmen Compensation Act B.E. 2537 (A.D.**

[10] http://web.krisdika.go.th/data/outsitedata/outsite21/file/Road_Accident_Victims_Protection_Act_BE_2535_(1992).pdf

1994)[11]. The definition of "suffering from injuries" under the Act refers to physical or mental injury or death suffered by an employee as the result of a work employment or in the course of protecting interests of an employer or according to directions of the employer.

The Workmen's Compensation Act requires the employer to provide benefits at rates prescribed by law for employees who suffer injury, illness or death while performing their work. In general, the compensation amount is paid monthly at a rate of 60% of monthly wages, between a minimum of THB 2,000 (USD 50) and a maximum of THB 9,000 (USD 225) per month. In more detail:

- Actual and necessary medical expenses must be paid up to THB 35,000 (USD 875) for normal cases and THB 50,000 (USD 1,250) for serious injury.
- Employment rehabilitation expenses must be paid as necessary, up to THB 20,000 (USD 500).
- In the case of death, funeral expenses will be paid at a maximum amount equal to 100 times the minimum daily wage rate.

6.2.3 If an employee causes injury to a third person at work, what responsibilities must the employer take?

In Thailand, the employer can also be held responsible for wrongful acts of employees even if the employer has not committed any wrongful act himself. As Section 425 TCCC states:

"An employer is jointly liable with his employee for the consequences of a wrongful act committed by such an employee in the course of his employment."

Section 426:

"The employer who has made compensation to a third person for a wrongful act committed by his employee is entitled to reimbursement from such employee."

[11] http://thailaws.com/law/t_laws/tlaw0391.pdf

6.3 Financial obligations

According to Thai laws, must an employer purchase work-related injury insurance for its employees?

Depending on the risk levels of any given business, the Workmen's Compensation Act B.E. 2537 (A.D. 1994) may require a company to pay annual contributions at the rates of 0.2 to 1% of all wages. This contribution is to be used for paying workmen's compensation in respect of work-related injury, sickness, loss of organs, invalidity, death or disappearance to employees who are insured persons. All insured persons will be eligible to receive medical expenses, compensatory income for incapacitated periods, funeral allowances or rehabilitation expenses depending on the seriousness of injuries.

7. Social Security and Tax

7.1 Social security contributions

According to Thai laws, what statutory mandatory social insurance plan must the employer participate in for its employees (e.g. the social insurance plan of pension, medical care, work-related injury, unemployment, maternity, housing, and etc.)?

- All establishments in Thailand with employees must register for social security with the Social Security Office for their employees. An employer and an employee must make equal monthly contributions to the Social Security Fund at the rate of 5% of the employee's income, but not exceeding THB 750 per party per month.

Employees are eligible to receive compensation and benefits consisting of medical services, monthly indemnity, rehabilitation and funeral grants in case of work–related causes. The contribution will be collected from the employer annually (once a year). At the first year, employers have to pay contributions within 30 days after the first employee was employed. For the next year, employers have to pay contributions within the month of January each year. The contribution rate varies from 0.2–1.0% of wages based on the risk rating of the establishment type as classified.

7.2 Tax deductions

In employment/labor relation, what categories of statutory tax should employers and employees pay, including but not limited to individual income tax?

Employees generally have a duty to pay personal income tax on their employment income such as salary, bonuses or any other benefits together as withholding tax based on their employment income.

8. Termination of the Employment

8.1 Formal requirements of termination

8.1.1 What types of contract are available and when does a contract end or can be terminated?

Thai laws categorize termination of an employment agreement in 2 types:

(1) A "**fixed-term**" employment agreement. In this case, the employment is for a specified period of time. In such case, the law does not require both parties to give notice to terminate the agreement. However, such fixed-term employment agreement shall not be made for the normal business or trade of an employer and a specified period of the employment shall not exceed 2 years, which the employer shall make a written agreement with an employee at the beginning of the employment. However, please note that as this type of employment agreement has a specific term of the employment, then if either party terminates this employment agreement before the employment term as agreed therein ends, this means that such party breaches this employment agreement. And if this termination causes damages to the other party, the other party may sue the terminating party for such damages (unless it is allowed by law to terminate) so e.g. in case that an employee either expressly or impliedly warrants special skills on his/her part to do a job under such employment agreement, but it turns out that the employee actually does not have such skills. This absence of such skills will entitle an employer to terminate the agreement without being considered that the employer breaches such agreement (Section 578 TCCC).

(2) A "**Non-fixed-term**" employment agreement. Section 17 LPA and similarly Section 582 TCCC state that *"Where the period is not specified in the contract of employment, an Employer or an employee may terminate the contract by giving advance notice in writing to the other party at or before any due date of wage payment in order to take effect on the following due date of wage payment, with no requirement for advance notice of more than three months."*

8.1.2 Must the employer obtain the employee's resignation in written form? Or is it sufficient for the employer to retain the emails or instant messages or messages in any other form through which the employee has expressed his/her intention to resign?

There is no written form requirement under Thai laws for the termination declaration. The Thai Supreme Court has expressly confirmed this in its decision in case No. 5681-5684/2555 on the grounds that both Section 582 TCCC and Section 17 LPA do not require the notice of termination to be in writing. Therefore, even verbal notice is sufficient for this purpose.

However, to be on the safe side, employees are recommended to serve a written notice for resignation.

8.1.3 When the employer terminates labor relations with the employee, is it necessary to sign a written notice/agreement with the employee? Or do emails or instant messages or other forms of communication that prove the employee has been informed of such termination suffice?

The answer depends on the type of employment agreement according to the TCCC. If an employment agreement is a fixed-term agreement, such fixed-term agreement normally will automatically expire at the end of the agreed employment period. Therefore, due to this automatic expiry, advance notice in order to terminate such fixed-term agreement does not need to be provided by either party to the other party.

However, if an employment agreement is a non-fixed term agreement (or so called "a permanent agreement"), such permanent agreement will normally continually

take effect until either party would like to terminate it. So in case either party would like to terminate such permanent agreement, such party can terminate it by giving advance notice in writing to the other party on or before any due date of wage payment in order to make the termination effective on the following due date of wage payment, provided that a notice period of such advance notice does not need to be more than 3 months.

There still is the alternative to the employer to terminate a permanent agreement immediately without giving notice by paying an employee his/her remuneration up to the expiration of the notice period.

8.2 Termination at will by employers

Is the employer entitled to terminate the employment relationship at will?

Yes, the employer is entitled to terminate the employment relationship at will. The employer may terminate an agreement by giving advance notice for a non-fixed term employment agreement on or before any due date of wage payment in order to take effect on the following due date of wage payment, but the advance notice does not need to take more than 3 months. However, the immediate dismissal is possible if the employer pays wages in lieu of notice to an employee as prescribed in Section 17 LPA below:

Section 17:

"A contract of employment shall expire upon the completion of the period specified in the contract of employment with no requirement for advance notice.

Where the period is not specified in the contract of employment, an Employer or an employee may terminate the contract by giving advance notice in writing to the other party at or before any due date of wage payment in order to take effect on the following due date of wage payment, with no requirement for advance notice of more than three months. In addition, a probationary contract shall also be deemed as an indefinite period contract of employment.

Upon the notice of contract of employment under paragraph two, the Employer may pay wages in an amount to be paid up to the due time of termination of the contract of employment as specified in the notice and may dismiss the Employee immediately. The advance notice under this Section shall not apply to the termination of employment under Section 119 of this Act and Section 583 of the Civil and Commercial Code."

In addition, the employer is subject to severance payment as prescribed in Section 118 LPA as follows:

Section 118:

"An Employer shall pay severance pay to an employee who is terminated as follows:

(1) if the employee has worked for an uninterrupted period of one hundred and twenty days but less than one year, he or she shall be entitled to receive payment of not less than his or her last rate of Wages for thirty days, or of not less than his or her Wages forth last thirty days for an Employee who receives wages on a piece rate basis;

(2) if the employee has worked for an uninterrupted period of one year but less than three years, he or she shall be entitled to receive payment of not less than his or her last rate of Wages for ninety days, or of not less than his or her Wages for the last ninety days for an employee who receives wages on a piece rate basis;

(3) if the employee has worked for an uninterrupted period of three years but less than six years, he or she shall be entitled to receive payment of not less than his or her last rate of wages for one hundred and eighty days, or of not less than his or her Wages for the last one hundred and eighty days for an Employee who receives Wages on a piece rate basis;

(4) if the employee has worked for an uninterrupted period of six years but less than ten years, he or she shall be entitled to receive payment of not less than his or her last rate of Wages for two hundred and forty days, or of not less than his or her wages for the last two hundred and forty days for an Employee who receives Wages on a piece rate basis; or

(5) if the employee has worked for an uninterrupted period of ten years or more, he or she shall be entitled to receive payment of not less than his or her last rate of wages for three hundred days, or of not less than his or her wages for the last three hundred days for an Employee who receives Wages on a piece rate basis; orif the employee has worked for an uninterrupted period of twenty years or more, he or she shall be entitled to receive payment of not less than his or her last rate of wages for four hundred days, or of not less than his or her wages for the last four hundred days for an Employee who receives Wages on a piece rate basis.

Termination of employment under this Section means any act where the Employer refuses to allow an employee to work without paying wages on expiry of Contract of employment or any other cause, and includes where the employee does not work and receives no wages on the grounds that the employer is unable to continue the undertaking.

The provisions of paragraph one of this Section shall not apply to an Employee whose employment is for a definite period and the employment is terminated at the end of that period.

Employment for a definite period under paragraph three is allowed for employment in a specific project which is not the normal business or trade of the Employer and requires a definite date to commence and end the work, or for work which is occasional with a definite ending or completion, or for work which is seasonal and the employment is made during the season. Such work shall be completed within a period not exceeding two years and the Employer shall make a written contract with the employee at the beginning of the employment."

8.3 Unilateral termination by employers

8.3.1 When is the employer entitled to terminate an employment contract unilaterally? Are there any procedures that the employer must go through? Must the employer make severance pay to employees under different circumstances?

According to Section 119 LPA, employers are entitled to terminate the contract unilaterally without a notice period and obligations to pay severance pay in the following cases of employees' misconduct:

(1) performing his/her duty dishonestly or intentionally committing a criminal offence against the employer;
(2) willfully causing damage to the employer;
(3) committing negligent acts causing serious damage to the employer;
(4) violating work rules, regulations or orders of the employer which is lawful and just, and after written warning has been given by the employer, except for a serious case with no requirement for the employer to give warning. The written warning shall have been issued and be valid not exceeding 1 year from the date when the employee commits the offence;
(5) absenting himself/herself from a duty without justifiable reason for 3 consecutive working days regardless of whether there is holiday in between;
(6) being sentenced to imprisonment by a final court judgment.

In item (6), if the imprisonment is for offences committed by negligence or a petty offense, it shall be the offense causing damage to the employer.

8.3.2 If the employee is a poor performer, is it possible for the employer to unilaterally terminate the employment relationship? What records/evidence should an employer retain to prove the poor performance of the employee?

Since the termination is possible at any time at will the employment can be terminated by the employer due to the employee's poor performance at any time without any proof required.

8.3.3 If the employee violates internal policies, or the principles of loyalty and honesty, or commonly accepted professional ethics, is it possible for the employer to unilaterally terminate the employment relationship? What terms and provisions must be incorporated in an employment contract or internal policies based on which the employer may unilaterally terminate the employment relationship?

According to Section 119(4) LPA (see No. 8.3.1 above), the employer can unilaterally terminate the employment relationship with no severance pay if the employee violates such internal policies or principles, provided that the employee has already been given at least one written warning by the employer. However, in a serious case of violating work rules, regulations or orders of the employer which were lawful and just, there is no requirement for the employer to give warning, meaning that the employer can terminate right away if the employee does such serious cases.

Please note that the right of the employer to terminate as above is provided under the LPA already. Therefore, it statutorily can take effect without any terms and provisions stating such right of the employer being incorporated in an employment contract or internal policies.

8.3.4 When an employee violates local laws, is it possible for the employer to unilaterally terminate the employment relationship?

Yes, the employer can terminate the employment relationship but has to pay severance pay unless the termination falls under the scope of Section 119 LPA (see No. 8.3.1 above).

8.3.5 When the employment contract expires, is it possible for the employer to unilaterally decide not to renew?

When the contract expires, the party will automatically be free, so it is possible to not renew the contract. In case that the employer does not want to renew the contract, he/she must stop the employee to continue working.

According to Section 581 TCCC, if after the end of the agreed employment period, the employee continues to render services and the employer does not object, it will be presumed by law that the parties have renewed the contract. Then such renewed contract will become a "permanent (non-fixed term) contract", which can be then terminated by either party as prescribed in Section 17 LPA with severance pay being paid under Section 118 LPA (in case the employer is a person who terminates) (see No. 8.2 above).

8.4 Probationary period termination

During the probation period, is it possible for the employer to terminate the employment relationship, without giving any reasons to the employee?

Since the termination is possible at any time at will the employment can be terminated by the employer during the probation period as well.

8.5 Protection of specific employee groups

According to Thai laws, are there any limitations when terminating employees during pregnancy, breastfeeding or illness, or those who suffer work-related injury, or is a member of labor union, or any other employees with special identities?

According to Section 43 LPA, *"An Employer shall not terminate the employment of a female Employee on the grounds of her pregnancy."* Thus, to terminate a pregnant employee is prohibited by the LPA. If terminating the pregnant employee, the employer will then be considered as having committed a criminal offense and will be liable to a fine of up to THB 100,000 or imprisonment of up to 6 months or both.

In addition, there are no limitations when terminating employees due to breastfeeding, illness or work-related injury suffered by such employees, meaning that the employer can terminate such employees by giving advance notice or paying wages in lieu of notice together with giving severance pay to such employees as prescribed under Section 17 and 118 LPA respectively (see No. 8.2 above).

However, please note that in case such employees deem these reasons for the termination unreasonable or unfair. In such cases, employees may sue the employer for unfair termination at a labor court. If the court holds that such termination is considered unfair termination, then the court may render a judgment which orders the employer to pay employees damages arising from such unfair termination as incurred by such employees or orders the employer to employ such employees to work for the employer again.

Lastly, please note that terminating employees because he/she is a member of the

labor union is prohibited under the Labor Relation Act. Such termination will cause the employer to be liable to a fine of up to THB 10,000 or imprisonment of up to 6 months or both.

8.6 Limited term and retirement

According to Thai laws, what conditions need to be satisfied for retirement? Is it necessary for the employer to pay any compensation in the case of retirement? Is it necessary to go through certain procedures with local regulatory agencies?

Section 118/1 LPA states that retirement as mutually agreed between the employer and an employee or as prescribed by the employer shall be regarded as termination of employment. As such, the employee shall be entitled to severance pay.

However, in the event that there is no mutual agreement between the employer and the employee on retirement or if the employer and the employee mutually agree on a retirement age to be more than 60 years old, once the employee has reached the age of 60 years old upwards, the employee shall have a right to retire by notifying the employer. Such retirement will become effective after 30 days from the date of the notification. In such event, the employer shall also provide severance payment to the retiring employee as stated in Section 118 LPA (see No. 8.2 above).

The failure to make severance payment to the retiring employee will be an offense punishable with a term of imprisonment of not more than 6 months and/or a fine of not exceeding THB 100,000 or both.

8.7 Mutual agreement and severance pay upon mutual agreement

Is it possible for the employer to terminate the employment relationship through mutual agreement with the employee under any circumstances? If the employment relationship is terminated upon mutual agreement, is it necessary for the employer to make severance pay to the employee?

Yes, it is possible to terminate the employment relationship by mutual agreement and then in theory, if the employee does not insist on receiving any severance payment, none will be due.

However, in practice, most mutual agreements will be made under the LPA including severance payment.

8.8 Non work-related death of employees

If an employee dies accidentally (non work-related), is it necessary for the employer to pay any compensation? Is it necessary to go through certain procedures with local regulatory agencies?

In case the employee dies of a non-work-related matter, the employer does not need to pay severance pay or other payments because death is not within the meaning of "termination" under the LPA and no regulation forces the employer to do so.

8.9 Payment term of the last month's salary and severance pay

Does Thai law stipulate when the salary of the last month before termination date and severance pay should be paid to the employee? Or may the employer and employee reach an agreement on the date of such payment?

Sections 9 and 70 LPA state that when there is termination of employment, the employer has to pay the employee the salary of the last month within 3 days from the termination date and pay the employee severance pay that the employee is entitled to on the termination date ("due dates"). If the employer does not pay so or pays later than the due dates, he must pay interest to the employee at the rate of 15 percent per annum during the default period.

However, in case that the employer intentionally ignores to pay the employee the foregoing amounts or pays later than the due dates without any reasonable causes for such non or late payment, after 7 days from the due date, additional interest at a rate of 15 percent of the amounts due will be charged to the employer and the

employer must pay this additional interest to the employee every 7 days that the amounts remain outstanding.

8.10 Deduction and withholding of salary

8.10.1 If an employee has not completed procedures regarding work handover as required by the employer, or has not returned any equipment (e.g. laptops etc.) owned by the employer, is it possible for the employer to withhold his/her salary until the work handover is completed or such equipment has been returned?

In case that the work must be handed over by the employee, the employer has rights to withhold payment of such employee's salary until the work handover is done, provided that this work handover condition must be written in an employment agreement. Moreover, if the equipment consists out of items that the employer lends to the employee, the employer can recall such lent properties before paying salary to such employee and the employer can report to the police if such employee objects to return the lent items.

8.10.2 If the employer pays the employee extra salary or other payment (e.g. expense reimbursement etc.) by mistake, is it possible for the employer to deduct the money back from the salaries of the last the month when the employee leaves the company? Or should the employer ask the employee to return the extra salary or other payment paid to him/her?

Basically, the employer (company) can bring the money back in any way that is convenient and does not violate the rules of employment of the company.

8.10.3 If the employee refuses to return laptops and other office equipment on purpose or for some reason, is it possible for the employer to deduct the money from the salaries of the last month when the employee leaves the company? When there is confidential information stored in any such laptop, is it possible

for the employer to deduct a large amount of money as punishment? If so, is there a limit on the amount?

If the employee objects to return any office equipment notwithstanding that there is confidential information stored in such equipment, under Section 76 LPA, the employer is not entitled to deduct the money from the employee's salary of the last month regardless of whether the money is a small or large amount.

However, there is also an alternative under the TCCC for the employer to obtain money from the employee to compensate for such no return. The TCCC states that the employer has the right to ask the employee to pay the employer damages arising from such non-return, provided that this condition to pay such damages arising from the non-return of office equipment is written in the employment agreement.

9. Compliance Investigation

9.1 Internal investigations

9.1.1 If an employee is involved in any violation of professional ethics or internal policies and rules, what should be paid attention to when conducting internal investigations? For instance, is it possible for the employer to record the conversation with the employee without the employee's permission? After the investigation, can the employer require the employee to sign the written minutes that record the conversation?

In the view of the Labor Relation Act, the employer can bring this violation issue to the labor inspector to resolve in accordance with the procedure foreseen in the Labor Relation Act.

The employer is not authorized to record anything of the conversation taking place without the employee's consent. Furthermore, the employer cannot force the employee to sign any recorded conversation minutes.

9.1.2 Can the employer save and inquire the employee's internet browsing history? Is the employer entitled to inspect the employee's emails, record of instant messages, information and documents stored in the computer or other devices or other work

record? Would such investigation method count as invading employees' privacy? Are there any typical cases where the employer has been held by judiciary authorities to have invaded employees' privacy during investigation?

The way to investigate as mentioned in the question would be considered accessing the employee's computer system and data under the **Computer-related Crime Act B.E. 2550 (A.D. 2007)**[12] and also considered collecting the employee's personal data (and if such data are also used or exposed, this investigation would also be considered using and exposing the employee's personal data) under the **Personal Data Protection Act B.E. 2562 (A.D. 2019)**.

However, to avoid invading the employee's privacy under both Acts, the employer must have the employee's consent by e.g. mutually agreeing in an employment agreement with the employee to be legally granted access to the employee's computer system and data and to collect, use and expose the employee's personal data. In addition, as specifically stated under the Personal Data Protection Act, for the employer to ask for such consent from the employee to collect, use and expose the employee's personal data, such asking shall be expressly made in writing or via electronic system stating the purposes of such collection, usage and exposure of the employee's personal data. Messages for such asking shall be placed separately from other messages distinctively and shall be easily accessible, comprehensible with a readable language and shall not deceitfully mislead the employee about the purposes of such collection, usage and exposure of the employee's personal data.

Nevertheless, there is a Supreme Court Judgment No. 2564/2557 which states that the employer can access the employee's computer system and data and can collect, use and expose the employee's personal data without being considered that the employer invades the employee's privacy if the employer finds that the employee uses the employer's computer to surf the internet to chat with others for personal matters during working hours. In addition, in case the employer finds so, the employer can also terminate the employment agreement with the employee and this is not considered the unfair termination of employment.

It should be noted that this decision had been rendered before the enactment of the Personal Data Protection Act ("PDPA"). It remains to be seen whether the Supreme Court would uphold its previous judgment after the implementation of the PDPA (in May 2021).

[12] https://freedom.ilaw.or.th/sites/default/files/CCA_EN.pdf

9.1.3 According to Thai laws, regarding employees who are suspected to have violated any rules, can the employer suspend the employee from his/her job duties during investigation, or require him/her to take garden leave, and during such period, the employee is deprived of the access to the work place and the work? If so, is it necessary to pay the employee as usual during such period? In addition, is an employer permitted to disclose such matters within the scope of the department or to the whole company or even outside the company? If so, is there any restriction on the disclosure? (For example, what matters are prohibited from being publicly disclosed?)

According to Section 116 LPA, the employer is entitled to suspend the employee from work while the employee joins the investigation provided that this suspension condition must be stated in the work rules. The suspension must not exceed 7 days and the employer has to give notice of such suspension to the employee before such suspension takes place.

During the suspension under the LPA, the employer shall make payments to the employee according to the rate specified in the work rules or the agreement on conditions of employment agreed between the employer and employee. Such rate shall not be less than 50 percent of the wages of a working day received by the employee prior to his or her suspension. In addition, upon the completion of the investigation, if it appears that the employee is not guilty, the employer shall pay wages to the employee equivalent to the wages of a working day from the date of suspension. The payment made by the employer under Section 116 LPA shall be included as part of the employee's wages and interest at a rate of 15 percent per annum shall be paid to the employee also according to Section 117 LPA.

In addition, the employer is permitted to disclose such matters within the scope of the department or to the whole company if this condition is written in the work rules. But outside the company, the employer can also disclose but only to the extent that this disclosure must not violate anybody's privacy unless such matters are considered as crimes which affect the public policy or good morals.

9.2 Reporting duties

9.2.1 If the employee is suspected to have been committing crimes such as offering and accepting bribes, disclosing trade secrets,

what government agencies may the employer report the case to (or just local police)? What is the relevant procedure in detail?

Firstly, the employer can terminate the employment agreement without paying severance pay under Section 119(1) LPA and Section 583 TCCC. In addition, in case the employee causes any damages, the employer can charge the damages by following the criminal jurisdiction procedure, provided that such causing damages shall be reported to the police. Furthermore, in the case of disclosing trade secrets, the employer has the right to commence legal proceedings at the Central Intellectual Property and International Trade Court against the employee.

9.2.2 What are common local employee-related and duty-related crimes besides for offering and accepting bribes and disclosing trade secret?

- Employees work for a third party during working hours and use the employer's property for their outside work;
- Theft of the employer's property;
- Gambling;
- Drug related offences.

9.3 External support

9.3.1 According to Thai laws, is the employee obligated to cooperate during the investigation, or is he/she entitled to remain silent? Does the employee have the right to ask for a lawyer to communicate with the employer on behalf of him/her?

The employee is obliged to cooperate during the investigation. But to protect himself/herself, he/she has also the right to ask for a lawyer to communicate with the employer on behalf of him/her.

9.3.2 According to Thai laws, is it possible for the employer to entrust a local lawyer or professional investigation corporation to conduct the investigation

According to Thai laws, the employer cannot entrust a local lawyer or professional

investigation corporation to conduct the investigation. Such investigation must be brought to a labor court only (except stated otherwise in an employment agreement) and the investigation will be presented by a lawyer or by the labor legal officer at the labor court according to the **Act on Establishment of Labor Courts and Labor Court Procedure B.E. 2522 (A.D 1979)**[13].

9.3.3 According to Thai laws, while an employee/employer is investigated by government regulatory agencies for alleged violation of laws, when must an employer hire an external and independent lawyer for the involved employee? Besides, is the employer entitled to ask the involved employee to be represented by the employer's counsel?

Basically, the investigation by government regulatory agencies would be conducted in case there are criminal offences occurring and there is no provision stating that the employer must hire an external and independent lawyer for the employee. However, if the employer would like to do the employee a favor by hiring an external and independent lawyer for the employee, the employer can do so after agreeing with the employee.

In addition, the employer's counsel is also entitled to represent the employee in case that the investigation conducted relates to the employer's business and affects the employer's business.

9.3.4 According to Thai laws, are there any specific matters that must be investigated by the police, and that investigation may not be conducted by the employer, lawyers or professional investigation corporations?

Most cases that the police will investigate themselves without the employer, lawyers or professional investigation corporations involved would be the cases of unauthorized foreign employment (e.g. foreigners working in Thailand without work permits or the employer employing foreigners who do not have work permits).

For other cases e.g. serious injury and fatality happening with employees because of work that such employees do, safety inspectors under the Department of Labor

[13] http://thailaws.com/law/t_laws/tlaw0013.pdf

Protection and Welfare are still responsible for investigating it and it does not involve the police in the investigation.

9.3.5 According to Thai laws, does the local police have the jurisdiction over crimes committed by people with other nationalities?

According to Section 4 of the Criminal Code as regards any crimes that occur in Thai territory, the Thai police and/or Thai courts have the jurisdiction to enforce or make a legal action under Thai laws. This does as well apply in cases where crimes are committed by foreign nationals.

10. Non-Compete

10.1 Requirements and responsibility of candidates and potential competing employers hiring candidates

During recruitment, if there is a candidate who is expressly required by his/her former employer not to join a specific company, must the named company not hire this candidate? Or does this only involve the risk of breaching a contract by this candidate him/herself, and it is up to this candidate him/herself to decide whether to join the named company and bear such risk? In the meantime, could the employee be required to handle the matters by himself/herself where his/her former employer asks him/her to take relevant liabilities after he/she joins the named company? In this scenario, except for the risk for the candidate, are there any risks for the named company if it hires this candidate? Will the risks or liabilities for this company differ if the named company knows/does not know that the candidate is under a non-compete obligation?

There are no legal provisions and so far no Supreme Court Judgements are published which specify that the named company cannot hire such candidate. But from a practical point of view, there is a legal risk that an injunction is obtained against the employee and/or damage claims are raised.

As for the candidate, he/she could decide whether or not to join such new company. If he/she decides to join, this would involve the risk of breaching a contractual

obligation. The former employer may identify that he/she is in breach of the non-compete obligation and then the former employer may sue him/her for liquidated damages or a contractual penalty (depending on what is specified in the contract for the breach).

As for the named company, as the employment contract has been made between the former employer and the candidate, therefore, as a general rule, there is no legal binding effect on the named company under such employment contract. Basically, notwithstanding the fact that the named company knows or does not know such non-compete obligation, the named company actually does not need to be responsible for the breach of the contract by the candidate. Thus, the candidate needs to handle the matters by himself/herself when his/her former employer asks him/her to take relevant liabilities after joining the named company. To handle the matters in this case has nothing to do with the named company. And regardless of the acknowledgement of such non-compete obligation by the named company, the risks or liabilities on the candidate for the breach of the contract will be as limited as specified in the contract. However, such liabilities may be reduced from what is specified in the contract if the former employer sues the candidate for the breach of the contract and it is deemed by the court that such liabilities are excessive.

However, the additional risk that the named company should be aware of is that even though the named company is not legally bound under the (old) employment contract as mentioned above, the candidate and the former employer may have a confidentiality clause written in the contract for the purposes of non-disclosure of the former employer's trade secrets or the candidate may just have such trade secrets in his/her head without any written confidentiality clause. If he/she discloses trade secrets to the named company, he/she will commit a violation of the *"Thai Trade Secrets Act B.E. 2545 (A.D. 2002) ("TTSA")*[14]*"* and if the named company deprives the former employer of such trade secrets or uses such trade secrets, the named company will probably be considered that it violates the TTSA as well. On the other hand, as long as the candidate discloses trade secrets of the former employer but the named company does not deprive the former employer of such trade secrets or use such trade secrets at all, then the named company would still not violate any law. As a result, no liabilities or penalty shall be imposed on the named company.

[14] http://web.krisdika.go.th/data/outsitedata/outsite21/file/TRADE_SECRETS_ACT,B.E._2545.pdf

10.2 Approaches to avoid the risk of being under employment with competing employers

In the event that there is a candidate who is expressly prohibited by his/her former employer not to join a specific company, has any company, in order to avoid the risk, attempted to put the candidate under the employment of a third company but in reality let the candidate work for its own company? Are there any other approaches commonly used to avoid risks?

No, the named company cannot avoid the risk by putting the candidate under the employment of a third company but letting the candidate work for its own company in reality because this will be considered as a "concealed fraud" under Section 155 paragraph 2 TCCC, which will cause the employment between the candidate and the third party to be void and the actual employment between the candidate and the named company will come into effect instead.

For any alternative approaches to avoid risks, the named company shall ask the candidate whether he/she is currently a party to any non-compete or similar agreement. If yes, the named company shall examine such agreement and decide if it can employ the candidate without breaching the agreement. However, if to employ such candidate will breach the agreement and the named company still would like to employ so, the candidate will be the only person who takes relevant liabilities arising from the breach of the agreement as stated above, but if the former employer asks the candidate to take such liabilities, this may involve a lawsuit which is going to cause difficulty for both the candidate and the named company to deal with.

10.3 Compensation pay/Maximum period

Is the employer allowed to ask an employee to take a non-compete obligation for a certain period of time during and after the employment? If so, must the employer pay any compensation?

Generally speaking, non-compete clauses are valid in Thailand even without compensation being paid by the employer. The employer is allowed to ask the employee to agree to a non-compete obligation during and after the entire term of the employment contract, provided certain conditions are met i.e. in order to be

valid. According to the Thai Courts general approach, non-compete clauses must be "reasonable" and not prevent the employee from working altogether.

In more detail, non-compete clauses are only reasonable if 2 conditions are (at least) met i.e.

- there must be a time limitation, for example, non-compete clauses may not be for more than e.g. 12 months. Therefore, after such 12 months have ended, the employee is allowed to work for a company who is a competitor of the employer; and

- there must be a geographical limitation. Non-compete clauses could never apply on a world-wide basis. For example, under non-compete clauses, the employee may not be allowed to work for a company who is a competitor of the employer only in case that such competing company's office is located at the same place as where the employer has valid business interests. Therefore, the employee can still work for other competing companies whose offices are located outside areas that are geographically limited under non-compete clauses.

10.4 Remedies in case of violation

10.4.1 If an employee has signed an agreement and agreed to take the non-compete obligation for a certain period of time after employment, but then, during the restriction period, the employee joins a competitor which is expressly nominated by his/her former employer, what kind of liabilities may the former employer ask the employee to take?

Normally, when the employee agrees to have the non-compete obligation with the former employer, such non-compete obligation as specified in a non-compete clause would often contain liquidated damages or a penalty to be imposed on the employee when the employee breaches such non-compete obligation. Therefore, if stated so, the former employer may sue the employee for such liquidated damages or penalty.

However, if there is no liquidated damages or penalty clause specified in the contract, the former employer would be able to sue the employee for actual

damages incurred due to the breach.

In addition, apart from all the above-mentioned, the former employer may also ask the court to have a judgment to order the employment between the employee and the named company terminated. However, the extent of enforcement of such actual liquidated damages, penalty, actual damages, or cessation of employment as stated above are still subject to the court's discretion.

10.4.2 According to Thai laws, may the employer and the employee agree in a stock incentive contract that, if the employee joins a rival company during his/her non-compete period (e.g. within 12 months after leaving the office), the employer will be entitled to cancel the vested incentive stocks or buy-back the incentive stocks at the original purchase price? Are such provisions valid and enforceable under local laws?

Such provisions are valid and enforceable under Thai laws, provided that the above provisions should be obviously specified in both a non-compete clause in an employment agreement and a stock incentive contract to display to the parties that there is a connection between these two contracts that the parties should be aware of.

11. Mergers & Acquisitions

11.1 Concerns about labor-related matters arising from mergers and acquisitions

Except for questions mentioned herein, when the company merges and acquires local companies, on the aspect of labor-related matters of the target companies, what needs to be considered?

Section 13 LPA regulates that where there is a change of an employer in any business due to a transfer, inheritance, or in any other cases, or whereas the employer is a juristic person and a change, transferor merger with another juristic person is registered, all rights due to the employee from the previous employer shall continue to be due to the employee, and a new employer shall assume all rights and duties relating to such employee.

However, transfers of employment from one employing entity to another always require consent of each employee to be transferred according to Section 577 TCCC. The Supreme Court has held that an employees' consent is required for transferring employees to another employer or changing the employer from one company to another, regardless of whether employees are the same group i.e. even though two companies had the same management and were within the same group, they were separately legal entities for the purposes of dealing with changes in the employer. The employee who refuses to such transfer could then be terminated in accordance with the usual requirements under Thai labor laws including severance pay.

11.2 Requirements for employment relations regarding mergers and acquisitions

11.2.1 According to Thai laws, when the company merges and acquires local companies, in terms of employment/labor relations, are there any special provision, such as reporting requirements or waiting periods?

In the event that such M&A causes a transfer of employees from a previous employer to a new employer, the new employer shall update a list of the employee specifying the name of employees who were transferred from the previous employer on the list and then submit the list to the Social Security Office within 30 days from the date of such transfer.

11.2.2 According to Thai laws, is it necessary for the company to maintain the original employment arrangements for a certain period after an M&A transaction?

If the employer (company) merges or acquires local companies and by this, it causes a change in the employer and a transfer of employees to a new employer, the new employer after the M&A transaction (regardless of the fact that consent of employees has been given or not for such transfer), shall maintain all the original employment arrangements and all the rights of employees transferred from a previous employer to the new employer. Therefore, to specify only a certain period for maintaining the original employment arrangements by the new employer as questioned would not be applicable. What will apply to employees and the new

employer will only depend on the original employment arrangements transferred from the previous employer to the new employer.

12. Labor Disputes

12.1 Procedures

According to Thai laws, in cases of labor disputes between the employer and employee, what third-party dispute resolution may the employee choose? Which institutions are responsible for handling the labor dispute? What is the respective basic procedure for labor dispute resolution?

Third-party dispute resolutions applicable to labor disputes could be either litigation or arbitration. Labor courts throughout Thailand will handle the labor disputes (depending on jurisdiction of such labor courts). The procedure to comply with for the labor dispute resolution in the labor court in Thailand is the *"Establishment of and Procedure for the Labor Court Act B.E. 2522 (A.D. 1979)"*

However, if the employer and the employee agree to have the dispute resolved by arbitration, both parties need to expressly specify in the employment contract that when it comes to a dispute, what kind of matters the parties desire to settle by which dispute resolution mechanism. For example, if the parties specify that they would like any contractual disputes to be settled by arbitration, then other matters e.g. to sue for entitlement to severance pay under Thai labor laws (which is to sue for a legal right), would still need to be settled by litigation in the labor courts.

In addition, if the parties would like only arbitration to be applicable in case any kind of disputes occurring, the parties need to expressly specify so.

12.2 Statute of limitations

How long is the statute of limitations for the employee to file a labor dispute case?

It depends on a subject of such labor dispute case. The general limitation will be

10 years after a claimant is entitled to claim (pursuant to Section 193/30 TCCC), for example, if the labor dispute case is about to sue the employer for wrongful termination of employment or severance payment (which there is no limitation specified for such case), the limitation allowed for the employee to file a labor dispute case is 10 years from the time that the employee is entitled to claim e.g. 10 years from the termination date or from when the severance payment is due.

For some specific cases, e.g. claims of the employee for the wages or other remuneration, including disbursements, the limitation for the employee to file a case is 2 years from the time that the employee is entitled to claim e.g. the time that the wage is due but the employer does not pay (pursuant to Section 193/34 (9) TCCC).

13. Personal Data Security

13.1 Requirements and restrictions to collection, storage and disclosure of personal information

13.1.1 May employees' personal information and data be saved in a server located abroad?

In May 2021 Thailand the *"**Personal Data Protection Act B.E. 2562 (A.D. 2019)**[15]"* will enter into force in order to protect people's personal data from being unlawfully used by others. Therefore, by virtue of this Act, the employer cannot save employees' personal information (except from names, job titles, workplaces and business addresses) in foreign countries unless the employer acquires written consent from the employer or acquires such consent via the electronic system e.g. emails.

This Act originally was supposed to enter into effect on May 27th 2020, but now has been postponed to the end of May 2021. However, it should be noted that there are additional regulations pursuant to the Royal Decree dated May 21st, 2020 which exempt some organizations from complying with some chapters under this Act until May 31st, 2021, in order to allow such organizations some more time to

[15] https://www.etda.or.th/app/webroot/content_files/13/files/The%20Personal%20Data%20Protection%20Act.pdf

be fully ready to comply with the Act so that they can undertake personal data collection, retention, disclosure and using data legally according to the Act.

13.1.2 Are there any mandatory provisions in relation to the data collection, retention and disclosure for candidates' personal information and data?

Yes, by virtue of the Personal Data Protection Act, to undertake the data collection, retention, usage and disclosure of a candidates' personal information, where such personal information can be used to identify that the candidate is the owner of such personal information (except from names, job titles, workplaces and business addresses), the employer shall acquire written consent or acquire such consent via the electronic system e.g. emails from the candidate as well. If the candidate has consented, sufficient security measures shall be provided for such personal information.

In addition, the Personal Data Protection Act also allows the owner to have the right to access, edit, delete and take control of its personal information collected, retained, used or disclosed by the employer.

13.1.3 Are there any mandatory provisions in relation to the data retention for the personal information and data of a person who was a previous employee and has left the company?

Yes, the mandatory provisions to apply to the data retention for the personal information and the data of a person who was a previous employee and has left the company are as specified in No 13.1.2 above.

13.1.4 When the employee leaves office, if his/her potential future employer asks about his/her employment history, work performance and/or the reason of leaving the office, may the former employer disclose such information truthfully? Or can some information be disclosed while the others cannot? Specifically, if an employee is unilaterally terminated for violation of company's policies, the principle of honesty and loyalty or professional ethics which has been widely accepted by the society, may the employer disclose the information about

such violation and the reason for leaving the office according to the fact?

By virtue of the Personal Data Protection Act, the employer could disclose the employee's personal information without the employee's consent only to the extent that such disclosure legally benefits the employer or other people unless the benefit for the employer or other people from such disclosure is less important than fundamental rights of the employee.

In addition, to disclose the employment history, work performance and/or the reason of leaving the office of the employee, violation of company's policies, the principle of honesty and loyalty or professional ethics by the employee is obviously significant indication for the potential future employer to decide to or not to hire such employee. This is considered a significant indication because if the potential future employer is not informed about the above facts of the employee, such employer may hire such employee without any hesitation or suspecting such employee. And after employing such employee, the employee may again cause such incidents to happen to the potential future employer, where the occurrence of such facts is so crucial that it may negatively impact the potential future employer. Therefore, in summary, such disclosure of the above facts could be legally done by the employer.

13.1.5 According to Thai laws, may the employer use network control tools (e.g. office network access tools, information leakage prevention tools etc.) to collect work-related information (e.g. the logging in and logging out records of employees' work account, information about browsing history, approval record, download and upload record, revision and deletion actions, and sending and receiving record of emails, etc.) from the computers or mobile phones that are provided by the employer or the employees and are used for work?

The above actions can be done because this is for the purposes of benefiting the employer and because such benefits for the employer from such collection is not less important than fundamental rights of the employee.

However, the Cyber Security Act in Thailand now indicates that the employer needs to ensure that such network control tools can work efficiently e.g. not to harm the entire network, destroy or disclose the personal information which causes a

violation of the Personal Data Protection Act.

14. Non-executive Directors

14.1 Requirements for appointing non-resident non-executive directors by foreign investors

According to Thai laws, if the foreign investor appoints one of its employees to be the non-resident non-executive director, shall the foreign investor and such employee comply with local employment/labor laws? If yes, are there any differences between such employee and the resident employee while applying local laws?

If the employee to be appointed as the non-resident and non-executive director has an employment agreement with the foreign investor and where such foreign investor is the employer under an entity in Thailand, the same Thai labor laws shall apply to such employee as to apply to the resident employee. But in case the employee has a direct employment agreement with the foreign investor but such foreign investor's entity as the employer is located abroad (incorporated under foreign laws), on condition that such employee is just only appointed to be the non-resident and non-executive director for the foreign investor's entity in Thailand, then Thai labor laws will not apply to such employee.

15. Case Publications

15.1 Publication of infringements and labor dispute cases

All cases (not only employment issues) will be published and available for search on http://deka.supremecourt.or.th/, when courts have made judgements for such cases.

15.2 Examples of infringements and labor dispute (employers punished)

As the above website does not provide an English version of any cases, there are some examples of cases here where the employers have been punished by the

supervision department of the government as a result of violating the law, e.g.:

- The employer terminated employees without the employees having committed any serious offences, but such termination was caused because the employer would just like to remove the positions in which the employees used to be, as such positions were no longer necessary for operating the employer's business. As a result, the employer decided to terminate such employees. This termination was obviously intended by only the employer but not the employees. And according to this termination, such employees at that time were too old to get employed by new employers, then such employees sued the employer for damages for not being able to obtain new jobs. The labor court held against the employer that the employer wrongfully terminated employees under Section 49 of the Act on Establishment of Labor Courts and Labor Court Procedure B.E. 2522 (A.D. 1979) and ordered to pay the employees damages.

- The company employed the former employee of its competitor and the employee told the company about trade secrets of the competitor. The company deprived the competitor of trade secrets and used such trade secrets without consent of the competitor. Then the competitor sued the company for a violation of Section 6 under the Thai Trade Secrets Act B.E. 2545 (A.D. 2002). The Central Intellectual Property and International Trade Court held against the company and imposed a fine on the company for such violation.

16. Others

16.1 Other reporting duties about employment matters by employers

According to Thai laws, except for the questions mentioned herein, under what circumstances must the employer report to government regulatory agencies about employment matters? When the employer reports to government regulatory agencies, what shall be included in the report?

When the employer would like to start business in Thailand, for the purposes of employees being entitled to receive money (e.g. for medical care or for living during unemployment or retirement) from the Social Security Fund under the Social Security Office, when the employer hires 1 employee or more, the employer shall

register itself as the employer and submit a list of employees under the Social Security Act B.E. 2533 (A.D. 1990) with the Social Security Office. This should be done within 30 days from the commencement date of the employment. Documents required for the above registration and submission include:

(1) Registration from for the employer (Form Sor Por Sor 1-01)
(2) Form containing the list of employees (Form Sor Por Sor 1-03)

In the event the employer hires more employees, the list of employees (Form Sor Por Sor 1-03) shall be updated and submitted with the Social Security Office again within 30 days from the commencement date of the employment.

However, in the event that the employee resigns from the company (employer), the employer shall submit a form for informing about the termination of the employment (Form Sor Por Sor 6-09) with specifying the reason of such resignation by the 15th day of the following month.

In addition, in the event that an accident occurs with the employee and the employee is injured or dead or lost due to performing work for the employer, the employer shall inform the Social Security Office of the above facts within 15 days from the date that such accident occurs. This is for the purposes of the employee being entitled to receive money to get a medical treatment to cure such injury etc.

16.2 Other important matters to consider when hiring employees in Thailand

If the employer is a foreign company and would like to hire employees in Thailand, the employer may be deemed operating a business in Thailand which requires the employer to apply for a Foreign Business License ("FBL") under the Thai Foreign Business Act B.E. 2542 (A.D. 1999) and also requires the employer to set up a legal entity in Thailand.

However, if the employer's business to be operated in Thailand falls under lists of business that the Thai Board of Investment ("BOI") is entitled to support under the Investment Promotion Act B.E. 2520 (A.D. 1977) ("BOI Act"), the employer could apply for the investment promotion certificate ("BOI Certificate") which would help exempt the employer from some relevant taxes imposed on the employer. In addition, such BOI Certificate would facilitate the process of getting the Foreign Business Certificate ("FBC") (this document has the same concept as

the FBL but under a different name, because it is issued by virtue of the BOI Certificate under the BOI Act). The BOI Certificate would be like a "lubricant" to have the FBC granted and issued faster, provided that to get the BOI Certificate and the FBC, the employer must have a legal entity in Thailand too (the same concept as to get the FBL).

Another issue: when the employer is operating a business in Thailand and earns income from such operation in Thailand, the employer shall pay corporate income tax to the Revenue Department under the Thai Revenue Code as well.

16.3 Implications and influence of COVID-19 with regard to Thai employment laws

16.3.1 Which Thai labor and employment laws are relevant in view of the current Covid-19 situation?

Generally, the **Occupational Safety, Health and Environment Act B.E. 2554 (A.D. 2011)** and **The Communicable Diseases Act B.E. 2558 (A.D 2015)**[16] govern the obligations of employers as regards the safety of the workplace and reporting duties in case of any contagious diseases of employees.

In addition, the national and provincial governments have issued a number of emergency orders and decrees to control the spread of the virus and to counter the economic effects of the governmental measures.

16.3.2 What happens, if an employee falls sick or is infected with Covid-19?

In addition to the general rules on sick leave, which continue to be applicable (see Section 32 and 57 LPA specified in No. 3.6 above), a Social Security Benefit of 50% of the normal wage up to a maximum of THB 7,500/month can be paid to the employee by the Social Security Office under specified circumstances.

In case the government initiates quarantine, the regular 30-day sick leave obligation may be used first. If the employee does not agree, he may take leave without pay, while applying for Social Security Benefits of up to THB 9,300/month for a

[16] https://ddc.moph.go.th/uploads/ckeditor/c74d97b01eae257e44aa9d5bade97baf/files/001_2gcd.pdf

maximum of 90 days.

The parties to the employment contract may also agree to use the remaining annual leave entitlements first and take sick leave later.

Similar rules apply for quarantine at the initiative of the employer (e.g. in case of suspected infections at the place of work) and self-quarantine of employees.

In any case the privacy rights of the employee(s) concerned need to be observed, thus a public disclosure of personal details is regularly not permitted.

16.3.4 Can the working time and subsequently the remuneration be reduced unilaterally by the employer?

Any reduction of salaries requires the express consent of the employee concerned. Even with consent, the minimum wage (see Section 90 LPA) must be paid. A threat of termination or other coercion is not permitted in that context. Any furlough or unpaid leave also requires a contractual agreement between the parties.

16.3.5 What happens, if the employer stops all payments to employees?

This may be considered to be an unfair dismissal with all consequences by law, such as the obligation to pay severance and damage payments.

16.3.7 What are the consequences of a government order to shut down the business?

In such case the principle of "no work, no pay" applies, as far as the employees cannot work from home. Leave entitlements will not be affected through such situation. Employees may apply for Social Security Benefits of up to THB 9,300/month.

In this respect, it is recommendable for employers to keep records of official shutdown orders for proof in case of later disputes.

16.3.8 What about voluntary shutdowns at the initiative of the employer?

In case of "force majeure", the "no work, no pay" rule applies. In April 2020, the Ministry of Labor enacted the "Force Majeure Regulation" and the "Economic Crisis Regulation" to clarify this term under the current circumstances. Both regulations are limited in time. The Force Majeure Regulation is effective until 31. August 2020 and the Economic Crisis Regulation is effective from 01 March. 2020 until 28. February 2022.

In all other cases, Section 75 LPA may be used according to which (only) 75% of the wages need to be paid (a notice period of three days applies).

In addition, to help both employers and employees through the Covid 19 situation, the government further temporarily reduced the Social Security Contributions by 1% for employees and 4% for employers from March 2020 until May 2020 and they will also further reduce the Social Security Contributions by 2% for both employees and employers again from September 2020 until November 2020.

16.3.9 What about the termination of employment?

The general rules (see No. 8 above) apply. The government did, however, raise the unemployment benefits for unemployment caused by Covid-19 to a maximum of THB 10,500/month for a maximum of 200 days.

16.3.10 What is the immediate outlook?

At the time of writing this summary, the country has decided to keep its borders closed to most foreign visitors. There have been hardly any local infections in recent time. This did, however, have a huge impact on the local economy, which is performing worse now than many other ASEAN countries. Thus, it can be expected that the focus of the near-term legislation will be on further stimulus measures including continued unemployment benefits.

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