

## Employee Termination in Thailand – caution, not as simple as you might assume

Occasionally an employer-employee relationship does not work out. In fact, sometimes the relationship degrades to such a degree, that one or both of the parties wishes to terminate it immediately. In general, for the employee this is simple. Unless the employee's contract contains a provision which otherwise regulates the employee's self-termination, he or she may simply quit by giving notice of termination of the employment at least one full wage payment cycle before such termination is to take effect. However, for the employer who wishes to terminate an employee the situation is not so simple.

The Labor Protection Act (1998)(the "LPA") was largely enacted to protect employees whom it assumes are generally in a less powerful position than their employer and, therefore, in need of such protection. However, the LPA does allow an employer to terminate an employee for "cause" as the LPA defines such – in other words, any one of the following limited reasons:

1. the employee has worked dishonestly or intentionally committed a criminal offence against the employer;
2. the employee intentionally caused damage to the employer;
3. the employee committed a negligent act that caused serious damage to the employer;
4. the employee violated the employer's work rules, regulations or any lawful and fair order of the employer, and the employer given the employee a written warning of such violation within the previous twelve months. (Note however, where the violation is particularly egregious, the employer is not required to

give such a warning);

5. the employee was absent from work, without justifiable cause, for at least three consecutive working days; or
6. the employee was sentenced to imprisonment by a final court judgment. However, if the imprisonment is for an offense of mere negligence or a petty offense, that offense must have caused damage to the employer for this reason to qualify.

It is very important to note that if employer does terminate an employee for such “cause” the employer must also notify the employee of the reason the termination at that time — if not, the employer will not be permitted to claim that the termination was for “cause” and the termination will be treated the same as if it were without cause.

However, if an employer terminates an employee for any other reason than “cause” as defined above by the LPA, the employer may be held liable for any one or more of the following:

1. **“Payment in lieu of notice”**

Section 582 of the Civil and Commercial Code of Thailand, requires an a party to an employment agreement to give the other party notice of termination of the employment at least one full wage payment cycle before such termination is to take effect. However, notice need not be given more than three months prior to the termination being effective (where, for example, a wage cycle was longer than three months).

In other words, if for example, an employee is paid at the end of every month, it is 12 March, and the employer wishes to terminate the employee as soon as possible without such liability — then, the employer cannot terminate the employee at the end of March because that would not be one full wage cycle. Thus, the earliest the employer could properly terminate the employment without this liability would be 30 April — even if the employer gave the employee notice on 12 March. Note however, the employer could wait until 31 March, to give notice of termination effective 30 April, without being liable. If however, in our example, the employer did give notice

on 12 March of termination on 31 March, the employer would then be liable for a full month of pay because the employee should have been allowed to work until the end April.

## 2. “Severance Pay”

Pursuant to Section 118 of the LPA if an employer terminates an employee without “cause” as defined by the LPA, the employer may be held liable to the pay “severance” pay to employee in the following amounts depending on the duration of employment.

<b>Employment Term</b>	<b>Severance Payable = Amount Equal to these Days at the Employee’s Most Recent Wage</b>
120 days ≤ 1 Years	30
1 ≤ 3 Years	90
3 ≤ 6 Years	180
6 ≤ 10 Years	240
10 Years or more	300

## 3. “Unfair Dismissal Compensation”

Apart from the above-mentioned employer liabilities, if the termination of employment is found to be “unfair”, under Section 49 of the Establishment of and Labor Court Procedure Act (1979) (“Act”) the court may also require the employer to pay any amount of additional compensation to the employee for such unfairness that the court deems appropriate.

The Act does not explicitly define what the term “unfair” means. That said, the following summaries of actual labor court rulings provide some guidance as to when such unfair is and is not likely to be found:

- A. an employer’s termination of an employee was found to be unfair;

1. an employee's husband was working for other competitive company;
2. an employee worked as a technician in a field which required a legal license but employer discovered that employee's license was expired and terminated the employee. Many of the employee's co-worker technician's licenses were also expired too, but they were not terminated because of that;
3. an employer's business's annual profit decreased compared to previous years and yet remained profitable but in response, the employer terminated an employee; and
4. an employee was gambling outside of working hours, and the applicable employer work regulations stated that the punishment for such conduct would be a financial penalty, but instead the employer terminated the employee.

However,

B. an employer's termination of an employee was found not to be unfair, where:

1. an employee's performance was not sufficient during the employer's "probation period"
2. an employee was terminated in line with the employer's work regulations retirement conditions; and
3. an employer's business was unprofitable for successive years and the employer had taken several steps to alleviate the costs of employing the employee (e.g. proffering a volunteer resignation option) but the employer eventually was forced to terminate the employee who did not agree to resign in order to save the business as a whole.

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