

## LABOR LAW IN THAILAND: PART 5 – The Labor Protection

### Act: termination

The major legislation governing labor protection law in Thailand is the Labor Protection Act (the “LPA”). The LPA prescribes labor protection standards applicable to both employers and employees working in Thailand. However, the LPA does not apply to Government and State Enterprise employees.

Where employment is for a defined period of time with a fixed termination, the contract of employment expires upon the completion of the period specified in the contract without the need to give advance notice. However, where employment is not for a defined period of time, the employer must give advance notice of the termination, in writing, to the employee before the employee’s next regular wages pay-date.

Where notice is required and the termination is “without cause”, then the employer must pay the employee additional “severance pay” as follows:

| <b>Duration of employment</b>  | <b>Amount of severance pay[1]</b> |
|--------------------------------|-----------------------------------|
| 120 days but less than 1 year  | = 30 days most recent wages       |
| 1 year but less than 3 years   | = 90 days most recent wages       |
| 3 years but less than 6 years  | = 180 days most recent wages      |
| 6 years but less than 10 years | = 240 days most recent wages      |
| 10 years                       | = 300 days most recent wages      |

Under the LPA, “cause” for termination exists and allows the employer to terminate the employment of the employee without severance payment for only if the employee does at least one of the following:

- (1) performs his/her duty dishonestly or intentionally commits a criminal offence against the employer;
- (2) intentionally causes damage to the employer;
- (3) causes serious damage to the employer as a result of the employee’s negligence;
- (4) violates the lawful and just work rules or regulations or orders of the employer, after receiving written warning of the employer. In this regard, such written warning is valid for only one year. Except in the case of a serious violation, in which case the employer need give no prior written warning;
- (5) leaves his/her duty without justifiable reason for three consecutive working days regardless of there is holiday in between or not; or
- (6) is sentenced to prison by a final judgment, except for a penalty for an offence arising out of negligence or for a petty offence, unless the negligence or petty offence caused serious damage to the employer.

However, if an employee is terminated for such “cause”, the employer must notify the employee of such cause for the termination at the time of termination, not later; if not the termination will be deemed to be “without cause”.

Furthermore, where employment is terminated by *either* the employer or the employee for any reason — including the six LPA “for cause” reasons mentioned above — the employer must pay the employee for all accumulated annual leave days to which the employee would have been entitled at the time of termination.

It should also now be clear that an employer cannot include a three-month “probation period” in a new employee’s contract and then terminate that new employee at the end of the three months without incurring liability to pay that employee for both: an additional fourth month (i.e., the mandatory notice period) wages; as well as, severance pay equal to thirty days of wages.

Note: any employer who violates or fails to comply with the LPA may be punished according to the level of his or her offence with a fine of Thai Baht 5,000 to Thai Baht 200,000, or imprisonment of up to one year, or both.

[1] Calculated based on the employee's most recent base wages payment.

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