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# The Legal 500 Country Comparative Guides

## Thailand

# EMPLOYMENT & LABOUR LAW

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This country-specific Q&A provides an overview of employment & labour law laws and regulations applicable in Thailand.

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## THAILAND EMPLOYMENT & LABOUR LAW



### 1. What measures have been put in place to protect employees or avoid redundancies during the coronavirus pandemic?

A number of employers have been impacted by the COVID-19 pandemic resulting in closures of businesses and shortages of income. These problems have led to a reduction of the workforce. Therefore, measures have been introduced for saving employment costs that protect employees from termination of employment, as follows:

- i. Requesting employees, on a voluntary basis, to reduce wages or take leave without pay; and
- ii. Reducing or not permitting overtime work

Another option has been the temporary closures of businesses due to a lack of raw materials from suppliers, or significant reductions of purchase orders from customers, who have been affected by the COVID-19 pandemic. An employer can temporarily suspend its business operations and pay 75% of wages to employees during a temporary suspension period. This is not the case where an employer has been directly impacted from the COVID-19 pandemic.

### 2. Following the covid-19 pandemic, have new employee rights or protections been introduced in respect of flexible or remote working arrangements?

As of March 2022, there is no official enactment of legislation relating to employee rights or protections regarding flexible or remote working arrangements. However, most companies have implemented a "Work From Home" policy that allows employees to work from home.

In February 2022, the Parliament accepted, in principle, an amendment to the Labour Protection Act wherein an employer and an employee can agree to allow the

employee to work at home for not less than eight (8) hours per week and that such work hours will be regarded as normal working hours. This amendment is under consideration by the Labour Committee of the Parliament.

### 3. Does an employer need a reason in order to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

Yes, an employer does need a reason to terminate an employment relationship. The applicable law provides 'serious grounds' for employment termination to include a case where: (i) the employee commits a dishonest act towards his or her duties or intentionally commits a criminal act against the employer; (ii) the employee intentionally causes the employer to suffer losses; (iii) the employee commits a negligent act that causes the employer to suffer severe losses; (iv) the employee violates the employer's work rules or regulations or orders that are legal and fair, and the employer having already given a written warning, except in serious situations for which the employer is not required to give a warning; (v) the employee neglects his or her duties for a period of three consecutive work days without a reasonable cause; or (vi) the employee has been imposed with imprisonment by a final judgment on account of an offence other than the offences arising out of negligent acts or petty offences, or on account of any offence arising out of negligent acts or any petty offence that has caused damage to the Company.

With any one of these serious grounds, employment may be terminated without any statutory severance pay or compensation. Without the serious grounds, an employment may be terminated with statutory severance pay if there are reasonable grounds, e.g., employee's incompetence, poor quality of work, retirement, chronic illness, etc. However, even termination with statutory severance pay may be subject to the employee's claims for compensation for unfair termination if such reasonable grounds are not well

documented or cannot be proven. Such compensation for unfair treatment can be awarded by the court to the employee in a big amount especially if such employee had a long period of service with the employer.

Precedents set by various Supreme Court decisions indicate that reasonable grounds include circumstances of employer's financial difficulties, or reduction of business units; provided that there is no discrimination or intended persecution against any particular employee.

**4. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?**

Save for statutory severance pay based on the employee's year of service, there is no requirement for additional consideration to apply specifically to redundancy cases under Thai labour law.

**5. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?**

The same rules with respect to statutory severance pay and requirements for fair treatment (as discussed above) apply with no other special requirements for additional considerations under Thai labour law in the context of a business sale.

**6. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?**

The Labour Protection Act requires giving notice at least one full pay period in advance before or on the payday to terminate employment with effect on the following payday. There are no statutory categories of an employee requiring notice entitlement in excess of one full pay period to terminate employment. However, if an employment agreement provides for a period longer than the statutory notice period, such contractual notice period shall prevail. It should be noted that either statutory or contractual notice period seems to protect the employee's right rather than that of the employer.

**7. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?**

Yes, it is possible. The Labour Protection Act allows an employer to terminate the employment with immediate effect, provided that the employer pays wages in an amount to be paid until the end of the statutory or contractual notice period, whichever is longer. In other words, if the employer does not give a notice of termination, the employer must pay wages in lieu of advance notice.

**8. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?**

Yes, an employer can require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work.

**9. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.**

To initiate employment termination, an employer shall: (i) observe either statutory or contractual notice periods, whichever is longer, or make payment in lieu thereof; (ii) pay wages of the last payment period and compensation for any unused leave entitlements; (iii) make statutory severance pay; and (iv) provide the employee with a certificate of employment.

**10. If the employer does not follow any prescribed procedure as described in response to question 8, what are the consequences for the employer?**

Failure to: (i) observe either statutory or contractual notice periods or make payment in lieu thereof; (ii) pay wages of the last payment round; and (iii) make statutory severance pay; within three days from the date of employment termination can result in the employer being subject to a punishment of a term of imprisonment not exceeding six months and a fine not exceeding THB 100,000, or both. In addition, the employer is liable for a

default interest at the rate of 15% per annum on the outstanding sum of such required payments.

**11. How, if at all, are collective agreements relevant to the termination of employment?**

Collective agreements can mention additional requirements for termination of employment, such as investigation before termination, number of investigation committee members from the Labour Union to be appointed, or additional compensation packages for termination of employment.

**12. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?**

The law requires permission to terminate employment of an employee who is a member of an employees' committee. In such case, the employer must obtain an approval order from the labour court prior to the termination of employment. Violation of this requirement will result in the employer being subject to a term of imprisonment not exceeding one month or a fine not exceeding THB 1,000 or both.

In addition, if the employer terminates employment because of improvements in the working unit, production process, distribution or service, arising from the utilization of machinery or a change in machinery or technology, which results in a reduction of employees, the employer must inform a labour official 60 days in advance of the termination date. The notice must include the termination date, reason for termination and a list of affected employees.

**13. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?**

Please refer to paragraph 3 above.

**14. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the**

**context of termination of employment?**

The Court considers that such termination of employment is unfair and thus the court can grant compensation or issue a reinstatement order in favour of an employee.

**15. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?**

There is specific protection for female workers who are pregnant from being terminated because of pregnancy. Also, there is specific protection for employees from termination of employment if they are member of a union, or because they submitted a demand, negotiated, prosecuted or were a witness, gave evidence to a labour officer, labour relations committee or labour court, or because they are going to do so. Also, employees are protected from termination of employment if they are relevant to a collective bargaining agreement during the enforcement of such agreement unless an exception of the law applies, such as dishonestly performing duties or intentionally causing damage to the employer.

**16. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?**

There is no special protection from termination of employment for whistle-blowers unless stipulated in the work rules to protect such workers.

**17. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?**

Financial compensation legally required include:

(i) Statutory severance pay (as mentioned in paragraph 3 above) is stipulated at the following rates:

Length of Service	Rate of Severance Pay (equivalent to the last wage rate per day)
At least 120 days but less than 1 year	30 days
At least 1 year but less than 3 years	90 days
At least 3 years but less than 6 years	180 days
At least 6 years but less than 10 years	240 days
At least 10 years but less than 20 years	300 days
20 years or more	400 days

Note that this amount is calculated based on the latest wages rates. Fixed allowances payable to an employee, which have no clear written purpose of payment as welfare, would be regarded as wages, for instance, living allowances, position allowances, fuel allowances, etc. Therefore, these allowances should be included in the calculation of severance pay.

Note that severance pay is not required to be paid if employment is terminated due to any one of the serious grounds (as described in paragraph 3 above)..

(ii) Payment in lieu of unused annual leave and accumulated unused annual leave (if any)

If the termination of employment is not because of any one of the serious grounds (as described in paragraph 3 above).., an employer must pay an employee's wages for unused annual leave for the year in which the employment was terminated in proportion to the number of days of annual leave to which the employee is entitled. If the employee is entitled to accumulate days of annual leave, the accrued unused annual leave must be paid to the employee as well.

However, if employment is terminated with cause under any one of the serious grounds, payment in lieu of unused annual leave for the year in which the employment was terminated will not be payable to the employee. Note that accrued unused annual leave is still required to be paid to the employee.

(iii) Payment in lieu of advance notice

Instead of observing the statutory or contractual notice periods (as described in paragraph 6 above), an employer may choose to make payment in lieu thereof.

Note that in case of any one of the serious grounds (as described in paragraph 3 above), termination may be made with immediate effect without any payment required.

(iv) Other monetary benefits (if any is promised during the employment period).

(v) Cost of the return journey

If an employee has been brought from elsewhere at the employer's expenses, the employer is obliged to pay the cost of the return journey when an employment contract comes to an end, unless otherwise provided in the contract, provided that the employment has not been terminated because of the fault of the employee and the employee has returned to the original location.

**18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.**

Yes, an employer and an employee can reach a mutual separation agreement. This means that both parties agree to terminate employment mutually and amicably. In this kind of agreement, both parties can stipulate a release of claims clause and non-disclosure or confidentiality clauses in the agreement. This kind of agreement is enforceable. However, during process of negotiation, there should not be actions that would be interpreted as an employee being forced to sign or reach the agreement. Otherwise, such an agreement would be deemed as unilateral termination of employment and could lead to unfair termination of employment.

**19. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.**

An employer does not have supervising authority over a worker after the termination of employment. Thus, there will be no restrictions over the worker from working for a competitor of the employer after the termination of employment.

However, restrictions from working for competitors can be made during employment and after the termination of employment based on a contractual basis in order to prohibit a worker from working for the employer's business competitors as the employee's post contractual obligation. Normally, this restriction would be made in an employment contract or a mutual separation agreement.

The Supreme Court ruled that a non-competition clause is enforceable and not contrary to public order and good morals, to protect an employer's legitimate rights for operating its business if it does not absolutely prohibit

an employee from working in other areas and must not cause the employee to undertake any obligations inappropriately.

**20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?**

Yes, confidentiality requirements should be made in a form of a contractual obligation to bind an employee to keep information related to the employer acquired during employment as confidential. This confidentiality clause will protect legitimate rights of the employer's business.

Apart from post contractual obligations, disclosure of trade secrets without authorization would violate the Trade Secret Act B.E. 2545 (2002) and the Penal Code.

**21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?**

An employer is obliged to provide a certificate of employment upon the end of employment regardless of the reason for termination of employment according to the Civil and Commercial Code. The certificate of employment must stipulate the length of service and description of work performed by the worker. A Supreme Court precedent ruled that an employer has no right to mention the reason for termination of employment.

**22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?**

Most employers believe that they are free of legal risks if all statutory payments (as listed in paragraph 17 above) are paid upon an employment termination. In reality, employers who fail to prepare 'reasonable grounds' (see paragraph 3 above) may be sued by the employees for compensation for unfair or wrongful termination. Therefore, employers must consider whether the reason for termination of employment is just and proportionate. Also, advice on preparation for termination of employment and legal risks in relation thereto should be taken into account.

To mitigate risk, a mutual separation of employment is an option so that an employer and an employee can mutually terminate the employment. Mutual separation of employment is not considered as termination of employment, because it is not a unilateral termination of employment. In practice, most of employers have been facing difficulties as to how implementation of discussions should be made. Therefore, guidelines for discussions with employees should be considered.

Another option is for an employer to ask an employee whose employment is terminated to sign a release of claims letter so that it would reduce the risk of being sued by the employee. In such release, an employee releases and discharges his/her right to initiate a claim against the employer upon termination of employment. However, it is difficult, in practice, for employees to sign release of claims, and employees have no obligation to do so.

**23. Are any legal changes planned that are likely to impact on the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?**

There are no recent legal changes in Thailand in terms of termination of employment that would impact employers.

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