

HELP FOR HOME-BASED WORKERS

The Act Protecting Home-Based Workers will go into effect on May 15. In recent years, the employment landscape has changed dramatically from employees working at an employer's premises to companies outsourcing work and hiring outside personnel to work from home. This allows employers to cut labour costs and avoid complying with Thai labour laws. Without an employer-employee contractual relationship, there is no protection for workers hired to perform the same work as those working directly for employers.

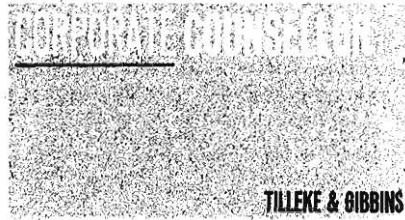
Interestingly, "work performed at home" is defined as work that an industrial business operator assigns to persons to manufacture at home or outside the operator's premises. The Act does not provide for the meaning of "industrial business", however, and it is unclear what kind of work will fall under the Act. It is expected that the Labour Ministry will define this term in the near future, so as to avoid any ambiguity for business operators who will be affected.

To protect workers covered under the Act, hirers must arrange documents related to the type of work, one of which will be kept on the hirer's premises while the other one would be delivered to the worker. They must contain details such as:

- ◆ the name, address, sex and age of the worker;
- ◆ the name and address of the hirer;
- ◆ the amount of remuneration and its calculation rate;
- ◆ the amount of security received from the worker;
- ◆ the type, quantity, and value of the work performed;
- ◆ the commencement date and expiry date of each work installment;
- ◆ the due date of the work; and
- ◆ the signatures of the hirer and worker.

The hirer must maintain these documents for at least two years from the date of the remuneration payment.

Although the contractual relationship does not constitute that of an employer and employee, labour officials will now have the authority to aid workers by providing legal assistance and representing them in court. (All disputes between hirers and workers will fall under the jurisdiction of the Labour Court.) Should the terms and conditions specified in the document between hirer and worker result in a disadvantage for the worker, the Labour Court will have the authority to order those terms and conditions changed.



The remuneration paid shall not be less than the wage rate stipulated by the Thai Labour Protection Act, and the hirer must pay such amount within the agreed time but not more than seven days from the date the worker delivers the work. The hirer is prohibited from deducting any amount from the remuneration, except for income tax, other payments as required by law, compensation due to the willful acts or gross negligence of the worker (with the worker's consent), and any damages or fines due to delay in delivery of work (also with consent).

Violators will be subject to penalties as set forth in the Act. For entrepreneurs, it is important for government officials, especially Labour Ministry officials, to clarify any unclear aspects of the Act.

Legal practitioners will be interested in officials' explanations regarding the differences between the contract between the hirer and worker pursuant to the Act and the hire of work contractual relationship as specified under the Thai Civil and Commercial Code.

Under a hire-of-work arrangement, the concept of freedom of contract is recognised, whereby the employer and contractor can negotiate terms and conditions as they see fit. Thus, the question may arise as to the necessity of the new Act. And, as explained above, business operators that fall under the Act will be subject to increased administrative burdens.

For operators that already comply with applicable laws and treat their contracting parties fairly, the Act may not be viewed as necessary. On the other hand, the concerned government agencies have a duty to protect workers who labour outside the hirer's premises.

To be fair, the relevant government officers, the Cabinet, the House of Representatives, and the Senate have carefully scrutinised the potential effects of the Act. The only remaining concern is whether the Labour Ministry will clarify certain ambiguities in the new Act.

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