

# Considerations for terminating employees

While back, the media reported on the financial relief employers obtained during the economic crisis by terminating employees. Less well-known was the labour strife that the relaxed labour rules caused.

A large number of complaints were lodged with the Labour Department by employees seeking severance from employers. Some employees also filed cases with the Labour Court seeking benefits, remuneration, severance and compensation for unfair termination.

It is undeniable that many employers find themselves in a similar predicament and are seeking to terminate employees. If so, correct procedures must be adhered to and employers should be informed when severance and/or other benefits must be paid.

Pursuant to Thai law, if an employer terminates an employee, it has an obligation to pay severance, remuneration, and compensation to the employee. Exceptions apply and are discussed below.

**Severance:** With regard to severance pay, under the Labour Protection Act, an employer can terminate an employee without severance pay only if the employee:

- ◆ (1) is dishonest in his duties or intentionally commits a criminal act against the employer.
- ◆ (2) intentionally causes the employer to suffer losses.
- ◆ (3) performs an act of gross negligence that causes the employer to suffer severe losses.
- ◆ (4) violates the employer's work rules or regulations or orders that are legal and fair, and the employer has already given a written warning (except for serious violations of work rule for which the employer is not required to give warning). Note that the written warning shall be effective for a period of one year from the date of the commission of the violation by the employee.
- ◆ (5) neglects his duties for a period of three consecutive work days without reasonable cause, regardless of whether there is an intervening holiday during such period.
- ◆ (6) is imprisoned by a final judgment, unless the offences arise out of negligent acts or are petty.

We refer to item (4) above regarding the possibility of terminating an employee without severance pay and without issuance of a warning letter in instances where there is serious violation of work rules. Note that in addition to the fact that the "serious violation" must be stipulated as such in the employer's work rules, the court will also consider whether or not the violation is sufficiently "serious" to warrant termination without issuance of a warning letter and without severance. Following are examples of Thai court precedents on this issue:

- ◆ (1) Cigarette smoking beside a box of

papers on the employer's premises is a serious violation. (Supreme Court Precedent Case No. 3495/1983).

- ◆ (2) Cigarette smoking in an area approximately 2.5 metres from the paper warehouse and while standing on a wet floor is not a serious violation. (Supreme Court Precedent Case No. 1269/1983).

- ◆ (3) Tearing a warning letter or refusing to sign/acknowledge a warning letter issued by the employer is not a serious violation. (Supreme Court Precedent Case No. 1458/1981, 3999/1981).

**Remuneration:** With respect to remuneration, if an employer wishes to terminate an employee (where there is no fixed period of employment), the employer will have to provide advance notice of at least one payment period before any termination is to take effect, otherwise the employer will have to pay remuneration. However, an employer is excepted from paying remuneration if the employee (i) disobeys or habitually neglects the lawful commands of his employer, (ii) is absent from service, (iii) is guilty of gross misconduct or otherwise acts in a manner incompatible with the due and faithful discharge of his duty.

The following are examples of court orders relieving the employer from paying remuneration:

- ◆ (1) Where the employee sold personal goods to other employees during working hours. (Supreme Court Precedent Case No. 2299/1985);

- ◆ (2) Where the employee operated a business to compete with the employer. (Supreme Court Precedent Case No. 3862/1987).

Note, however, that the court found that an employer was obligated to pay remuneration to its employee who invited other employees to work at another company. (Supreme Court Precedent Case No. 1378/1992).

**Compensation.** If an employer terminates an employee without sufficient grounds, the employer will have to pay compensation for the unfair termination. Note also that where it has been determined that a termination is unfair, courts may issue orders forcing employers to reinstate employees instead of paying compensation.

With regard to termination of employees as a result of loss of/failure in business, the court has opined that such termination is fair. Accordingly, employers do not have to pay compensation although they do have to pay severance and remuneration (unless the exceptions listed above apply).

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