

## CORPORATE **Counsellor**

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# *Employee discipline for businesses: navigating the Thai legal landscape*

**M**ost employers go to great lengths to ensure that employee discipline is legal and done for legitimate reasons. Despite their best efforts, however, employers frequently find themselves at risk of being sued for the disciplining or firing workers.

Unfortunately, the outcome in Labour Court is not always favourable or satisfying. In fact, the court may order the employer to revoke disciplinary orders or rehire terminated employees due to unfair dismissal. The court may rule that the employer did not follow Thai law or company work rule procedures, thereby making it impossible to punish the employee, even when he or she deserves it. This article seeks to provide an overview of how to reduce the chances of successful claims related to employee discipline.

Although Thai law does not require an employer to appoint a panel to investigate employee violations of company work rules, it is highly recommended in order to investigate all the facts prior to disciplining a worker. This not only helps the employer understand the alleged violations, but also exhibits the company's good faith in pursuing the claims fairly. This is particularly important if the employee decides to challenge the decision in court.

To avoid appearing biased, we recommend that employers form an investigation panel comprising representatives who work in different departments than the affected employee, and one direct supervisor. This will ensure that at least one panel representative has adequate knowledge of the facts of the case and the employee's background.

It is also recommended that the employer consider suspending the

affected employee during the investigation period. This helps protect the employee, preserves important evidence and minimises possible witness tampering.

Thai law requires that company work rules contain a suspension clause; otherwise, the employer is not entitled to issue an order to "suspend" the employee. If the employer does opt to suspend the employee, it should issue a written letter of suspension to the person specifying the violation and the suspension period. If the employer fails to comply with this process, the company may face a fine not exceeding 10,000 baht.

We note that if an employer is not permitted to suspend a worker because the work rules do not contain a suspension clause, the company can still prohibit the affected employee from coming to work during the investigation by paying full wages. This is known as a "non-assignment". Non-assignment is justified because although the employer has a duty to pay wages, it retains the right to determine work assignments. Consequently, the employer is entitled to reassign or place the employee on non-assignment as long as the company continues to pay full wages.

Even where work rules allow for suspension, it is subject to strict controls under the Labour Protection Act. For example, the employer must issue the suspension order to the worker in writing, specifying the violation and prescribing the period of suspension, which cannot exceed seven days. During suspension, the employer must pay the affected employee in accordance with company work rules, but in no case less than 50% of the employee's normal wage. When the investigation is finished and if the

investigation panel finds that the employee is not guilty of wrongdoing, then the employer must pay the wages withheld during the initial seven-day period plus 15%. If the employer fails to pay those wages, it could face a fine not exceeding 20,000 baht. If the investigation is not complete within seven days and the employer wants to continue suspension, then it may place the employee on non-assignment.

A specific circumstance requires attention, however. For example, if the employee in question is a member of an elected Employee Committee formed in accordance with the Labour Relations Act, the employer may not discipline the worker, even if guilt has been established. The employer must petition the Labour Court seeking an order approving discipline of the employee. This may involve a number of hearings before the court decides on the right to discipline. If approved, then the employer may proceed with punishment in accordance with company work rules, which will include issuing a written notification. The court process can be shortened if the affected employee is willing to admit guilt before the court.

While employee discipline relates to a broad range of conduct and enforcement, we hope that we have provided an overview of the Thai Labour Law and the importance of considering options before disciplining employees.

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