

## Understanding the new work permit law

**M**ost foreigners working in Thailand are well aware that they need a visa and work permit to stay and work in the country. Yet, they find the law and regulations rather complicated and difficult to comprehend, especially with immigration rules dramatically evolving in the past few years and posing a challenge to the status of many expatriates. Unfortunate expats who either lacked knowledge or failed to keep track of developments in immigration and labour laws and practices have paid a price for their oversight or negligence.

On Feb 23, 2008, the law governing work permits (Working of Aliens Act) generated much attention when it emerged to replace its 30-year-old predecessor. Although the implementation of the major part of this new law has been delayed pending the issuing of several ministerial regulations, it would be prudent for working aliens to familiarise themselves with some key changes.

The greatest point of interest is the punishment imposed on both employer and employee for an employee working without a work permit. The new Act imposes a heavy fine ranging from 2,000 to 100,000 baht upon a violating [alien] employee, significantly increased from 5,000 baht, and/or a five-year term of imprisonment, increased from three years. An employer hiring an alien without a work permit will face high fine of 10,000 to 100,000 baht, although the former three-year imprisonment has been eliminated. Labour officials are now empowered to arrest (without a warrant) any alien suspected of working without a work permit.

Depending on one's point of view, the penalties seem to be harsher for employees and lighter for employers. The new law will allow any alien worker who pleads guilty and voluntarily leaves Thailand within 30 days to be fined without a trial.

Under the new law, a work permit of up to two years may be granted instead of one year under the old law. The most welcome change is that a work permit will no longer be tied to the duration of stay that is stamped on an alien's passport. In other words, work permit holders who do not have a one-year duration of stay will not need to keep extending their work permits by leaving and returning to Thailand on a "visa run" to get a new duration of stay. Nevertheless, work permit holders will still have the duty under immigration laws to maintain a valid duration of stay

while in Thailand. This new development awaits implementation in the near future.

The new work permit fee is 20,000 baht. Renewal will cost the same price. In addition, an employer applying to hire alien employees who are not deemed skilled or expert will be charged a 10,000-baht fee per alien. The Department of Employment has not applied these new fee rates as yet.

Employers or employees are no longer obligated to report to the Department of Employment and return a work permit when employment has ended. Under the old law, those who failed to comply would have to pay a fine of 1,000 baht at a police station, which was quite unnecessary and inconvenient.

Nonetheless, labour officials still encourage both parties to report the cessation of employment, otherwise their system would not permit the employee to get a new permit with another employer or the old employer to fill the vacant position.

The Immigration Bureau has reacted to this development. The usual seven-day period of stay after the cessation of work will no longer be automatic but will be granted upon request and payment of 1,900 baht. Most importantly, a further temporary stay while a new work permit application is under consideration will not be given anymore. As a result, aliens switching jobs would be compelled to process their new work permit within seven days or leave Thailand to get a new business visa from a Thai consulate.

Several provisions dedicated to a fund for sending aliens out of the Kingdom have been added. In addition to the existing personal income tax and social security withholdings, the employer will soon be obligated to contribute to the fund by withholding a certain amount from the income paid to work permit holders. The criteria and conditions relating to the contribution are to be set forth later. The fund is intended to relieve the government of the high cost of deporting guilty working aliens and illegal immigrants.

In general, the major changes in this law seem to be positive and more liberal. It is hoped that they will help resolve the enduring problems that have troubled both aliens and the Thai government in the past.

**Written by Kobkit Thienpreecha, Attorney, Commercial Department, Tilleke & Gibbins International Ltd. Please send comments or suggestions to Marilyn Tinnakul at [marilyn.t@tillekeandgibbins.com](mailto:marilyn.t@tillekeandgibbins.com)**