

Warning letters: guidelines for employers

Managers and human resources personnel may have experienced situations where disciplinary actions are revoked by the Labour Court in court proceedings filed by the employee. The reason is that the disciplinary actions may not have been procedurally correct or the punishment may have been too severe for the type of misconduct committed by the employee.

For example, one of the grounds for dismissal with cause under Section 119 of the Labour Protection Act is when an employee repeats wrongdoing for which a warning letter has been issued. The employer may issue a warning letter and when the employee later commits the same violation, the employer believes he is within his rights to dismiss the employee for serious cause. But if the warning letter is not in compliance with the law, the Court may judge that the employee has been unfairly dismissed because no proper warning letter has been issued in respect of that offence. What follows are the requirements for a

warning letter under Thai law.

Although Section 119 (4) provides for dismissal for serious cause of an employee who has committed a repeat violation of an offence for which a written warning has already been given, it does not give any guidance as to the form or requirements for the warning letter itself. Therefore we have to look to Supreme Court precedent for such guidance.

Prior to issuing the warning letter, the employer should first consider the work rules. If the work rules contain a disciplinary procedure consisting of several stages that have to be followed step by step, the employer cannot punish the employee by skipping a stage. For example, the employer's work rules may provide for the following levels of disciplinary action: (1) verbal warning, (2) first warning letter, (3) second warning letter, (4) termination of employment without severance pay. If the employee violates the work rules by coming into work late, the employer has to punish the employee by issuing a verbal warning

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first. This is because the work rules of the employer are more beneficial to the employee than the law requires (we refer to Supreme Court Precedent cases nos. 5679/1987 and 4921/1989).

Providing the work rules empower the employer to punish the employee by issuing the warning letter, the employer can proceed to do so. The warning letter must contain the following:

1. Date of issuance of the warning letter.
2. Name and position of the employee.
3. A description of the behaviour of the employee which constitutes a violation of the work rules.
4. A reference to the work rules that the employee has violated.
5. A statement that if the employee commits the same violation of the work rules again, the employer will punish the employee pursuant to the procedure in the work rules.

In addition, the employer should ask the employee to sign to acknowledge the warning letter. If the employee refuses to sign, the employer cannot punish the employee based upon a violation of the employer's order (we refer to Supreme Court Precedent case no. 5560/1987). But the employer is entitled to read the letter to the employee and ask two witnesses to sign the letter to confirm the employer has read it to the employee and the employee refused to sign.

Moreover, if the employee signs a confession letter to the employer admitting he committed an offence and violated the work rules, and is willing to accept disciplinary action pursuant to the work rules, the court has considered that this letter is not a warning letter under the law. If the employee later commits the same offence, the employer cannot rely on the confession letter to

dismiss him (we refer to Supreme Court Precedent case no. 1252/1983).

In addition, we note that if the affected employee is a member of the Employee Committee formed in accordance with the Labour Relations Act, the employer may not discipline the employee, including by issuing a warning letter, even where there has been a determination of guilt.

The employer must submit a petition to the Labour Court seeking an order approving the discipline of the employee. If approved, then the employer may proceed with the punishment in accordance with the work rules, which will include issuance of written notification of discipline by the employer. This court process can be shortened if the affected employee is willing to admit guilt before the court.

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