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Renegotiating Employment Conditions in Thailand

Thailand has long been viewed as an attractive option for foreign investors in the manufacturing sector. The country has already positioned itself as a regional leader in automotive assembly and parts production, while the electronics and textile industries are also well-established strengths. These areas, along with other manufacturing industries, are expected to see continued growth in the years to come as the Thai government has shown a strong commitment to eliminating barriers to trade. The recent implementation of the ASEAN Free Trade Area and the China-ASEAN Free Trade Agreement are likely to bring about further growth in Thailand's strong manufacturing sector.

One of the reasons for Thailand's competitiveness in this area is the country's relatively low rate of unionization, which currently stands at less than 10%. But as the recent wave of labor unrest in China has shown, the level of labor militancy can shift quickly, especially as investment continues to pour into a growing economy. For this reason, companies that are investing in Thailand need to familiarize themselves with the legislative framework for dealing with unionized employees.

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A key cause of labor unrest in Thailand occurs when employers try to implement changes in the workplace unilaterally, without realizing that their actions result in unlawful changes to legally protected conditions of employment. This article will discuss the process and the pitfalls of changing conditions of employment.

Conditions of Employment

The Labor Relations Act is the primary statute that governs relationships between employers and employees operating collectively as a union or other group. Under the Labor Relations Act, employers are not permitted to change the conditions of employment unilaterally if doing so will result in a reduction of the employees' employment benefits, unless the employer obtains the employees' informed consent. If consent is not forthcoming, the employer must retain existing conditions of employment or proceed to change them in accordance with the procedures specified in the Labor Relations Act.

"Conditions of employment" is a broad concept under Thai law, and includes everything from the obvious (wages, welfare, working days, and hours, etc.) to less obvious items such as rules about the submission of employee complaints, termination of employment, and other disciplinary measures, amendment of the work rules, and all other conditions in the workplace that have become obligatory by contract or practice. For example, the criteria underlying a variable bonus could be considered conditions of employment and may be difficult to modify if the employer has not expressly reserved that right in writing, and certain soft perks like a shuttle service, for example, can become conditions of employment over time.

Even well-meaning employers can be surprised by the fallout from a unilateral change in conditions of employment. For example, with some exceptions the maximum lawful number of work hours per week in Thailand is 48, but even when an employer wishes to reduce the hours to 40 per week, it can run into colorable objections from the workforce if it also reduces compensation accordingly. The employer needs to consider the net impact of a change in conditions of employment in order minimize the possibility of labor unrest and/or legal proceedings.

How to Change Employment Conditions Legally

When a collective bargaining agreement (CBA) reaches expiration and/or the employer or its employees want to negotiate new conditions of employment, each party must proceed under the Labor Relations Act.

Employer or employee demands for new conditions of employment or a new CBA (collectively, Labor Demand) must be submitted to the other party in writing. If submitted by the employer, the Labor Demand must include the names of the persons who will negotiate on the employer's behalf. If submitted by employees, the Labor Demand must include the names and signatures of each employee involved in the Labor Demand, which must include the support of at least 15% of all employees in the company. If a labor union submits a Labor Demand on behalf of its members, the union's membership must total at least 20% of the employer's total employees, but the employees who are involved in the Labor Demand do not need to be named.

Of course, employees usually request an increase in wages, bonus, or welfare items such as transportation, medical treatment, etc., and they almost always inflate their Labor Demand in order to leave room for negotiation. By a similar token, many companies submit hard-line counter-demands after receiving the employees' Labor Demand. This is often a positioning tactic to force employees to reduce or withdraw their demand sooner, since employees are aware that a lockout is one possibility if the parties cannot reach an agreement.

Once a formal Labor Demand is received from the employer or employees, the law requires the parties to begin negotiations within three days. If they can reach settlement, they may enter into a new CBA signed by their representatives. Within three days after signing a new CBA, the employer must display it at the workplace for at least 30 days and must register the CBA with the Ministry of Labor within 15 days.

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The new CBA binds the employer and all employees named in the Labor Demand, plus all employees who participated in elections for the employee representatives. If the Labor Demand was submitted by at least two-thirds of the employees with the same or similar job, or by a labor union representing at least two-thirds of the employer's total employees, then the new CBA binds all employees working in the same or similar job.

Settlement of Labor Disputes

If the parties fail to reach an agreement after negotiation, or if no negotiation takes place within the prescribed three-day period, the Labor Demand will become a "Labor Dispute" by law. In this event, the party that submitted the Labor Demand must inform a conciliation officer appointed by the Labor Ministry in writing within 24 hours after the negotiations break down, or within 24 hours after the three-day statutory negotiation period expires.

The conciliation officer is then obligated to conduct mediation and try to effect settlement within five days. If a settlement is reached, the employer must proceed with the same notice requirements discussed above. If the parties cannot reach settlement, the Labor Dispute becomes an "Unsettled Labor Dispute," and (i) the parties may agree to appoint a Labor Dispute arbitrator or (ii) the employer may begin a lockout of the employees and/or the employees may go on formal strike.

If the employer and employees refer the dispute to arbitration, they will each be afforded an opportunity to submit arguments and evidence to support their positions, and the arbitration award shall include a discussion of the issues, the facts as determined by the arbitrators, the reasons for their decisions, and the requirements to be performed by the parties.

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Employers and employees are prohibited from engaging in a lockout or a strike until the above preliminary procedures are completed. In other words, a Labor Demand must be formally submitted by one party to the other, and it must have evolved into an Unsettled Labor Dispute. In addition, the parties may not strike or engage in a lockout while waiting for an award by a Labor Dispute arbitrator or without giving prior notice to the conciliation officer and 24-hour notice to the other party.

Unsettled Labor Disputes involving ports, rail transport, telecommunications, utilities, energy, and hospitals, all must be referred to the Labor Relations Committee. In addition, if the Unsettled Labor Dispute does not encompass one of these industries, but affects the economy or public order, the Labor Minister is entitled to transfer the matter to the Labor Relations Committee. Likewise, if the government has declared martial law or a state of emergency, the Labor Ministry is authorized to announce in the *Government Gazette* that Unsettled Labor Disputes must be considered by persons appointed by the Ministry, whose orders are final and require compliance by the employer and employees.

Guidelines for Employer Actions

It is extremely difficult for an employer to terminate or transfer employees once a formal Labor Demand has been submitted. By law, if the Labor Demand is under negotiation, settlement, or arbitration, the employer cannot terminate or transfer employees, employee representatives, committee members, or members of the labor union. Employers who violate this rule are subject to criminal charges and possible imprisonment of up to six months. Moreover, if the affected employee is a member of an employee committee, the employer must petition the Labor Court for permission to terminate the employee.

The only exceptions allowing for termination are if an employee commits one of the following acts:

1. Performs dishonestly or intentionally commits a criminal offense against the employer;
2. Intentionally causes damage to the employer;
3. Violates the employer's work rules, regulations or lawful orders, after a written warning by the employer for matters not deemed serious; or
4. Neglects his or her duties for a period of three consecutive work days without reasonable cause.

In cases where an employer violates the above rules regarding termination during a Labor Dispute, the employee is entitled to submit a complaint to the Labor Relations Committee within 60 days after the violation. The Labor Relations Committee will then ask both parties to explain the matter and will issue an order within 90 days after receiving the employee's complaint. If the Committee cannot issue the order within that deadline, it may obtain an extension from the Labor Minister.

Also note that employers are not permitted to interfere with the employee's right to unionize. This means that employers may not terminate an employee or take any other action that would make an employee unable to continue work merely because the employee is a member of a labor union, or calls a rally, files a complaint, submits a Labor Demand, or engages in other lawful related activities. Nor may employers induce or prevent an employee from becoming a member of a labor union, or cause or induce an employee to resign from a labor union. Violations are subject to possible criminal prosecution and imprisonment of up to six months. These provisions apply whether or not a Labor Demand is in process, but they come into play especially often when employers anticipate a strike, because they need to encourage some employees to cross the picket line without running afoul of the law that prohibits discrimination against union members, membership, and lawful union activities.

Employers must be mindful of these prohibitions in all of their dealings with their employees, and particularly when a Labor Demand has been submitted. This will ensure that employers are able to minimize the risk of sanctions, including criminal liability, which could result from unwitting or overly aggressive actions.