

EMPLOYMENT CONTRACTS: GUIDELINES FOR EMPLOYERS

Many employers may not appreciate the importance of a properly drafted contract of employment until they find themselves before a Labour Court embroiled in a dispute with one of their employees. Since Thai labour laws do not require a written employment contract, there may be many employers who have never required their employees to sign a written employment contract. However, employers may lose some specific rights unless they are expressly stated in an employment contract.

Therefore, in this article we address the main clauses that should be included in an employment contract. The employment contract can be made in a foreign language if the employee is a foreigner. However, if the employment contract is to be submitted to the court in a labour case, it must be translated into Thai first.

The following clauses should be included in the contract of employment:

1. Name of employer and employee.

In particular, care should be taken in groups of companies, where it is common for the same form of contract to be used, to ensure that the correct company name is stated as the employer. This will prevent the employee from making a claim against the parent company in the future.

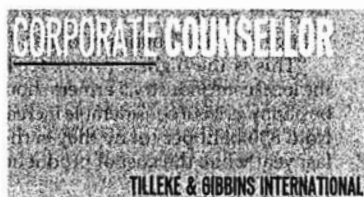
2. Position and starting date. The start date should be the first day on which the employee started working, including any probation period.

3. Salary and any benefits that will be provided to the employee. The payment day for payment of salary should be specifically stated.

4. Probation period. If there is to be a probation period, this must be stated in the contract. The probation period should not be longer than 119 days in order to avoid having to pay severance pay to the employee if he or she does not pass probation. In addition, if the employer terminates the employee during the probation period, the employer must comply with the Labour Protection Act (LPA) by giving the employee advance notice of termination or, alternatively, by paying remuneration in lieu of advance notice.

5. Termination clause. The contract should set out the circumstances in which the employment contract may be terminated. The period of advance notice of termination should not be longer than three months. If no period of advance notice is stated in the contract, the employer must give advance written notice to the employee on or before a payment day to take effect on the following payment day, in accordance with the LPA.

6. Assignment of work. The employer should reserve the right in the contract to assign the employee to perform work for a subsidiary company. If the employee is assigned to work for a subsidiary company, the employee's working period



must be continuously counted from the date of starting work with the parent company. The employer should also reserve the right to rotate the employee to a different position within the company or to change the employee's place of work.

7. Work rules and policies. The contract should state that the employee must comply with the work rules and policies in effect at the time of signing the contract and any future versions of the work rules or new policies that may be issued. This is to prevent the employee from arguing that he is not bound by a work rule or policy that was issued after the date on which he signed the employment contract.

8. Working days and holidays. The employee's normal working days and hours should be stated in the contract but the employer should expressly reserve the right to change the working days and time on giving notice to the employee. The number of days of holiday to which the employee will be entitled should be stated, and should be no less than required by labour law.

9. Provident fund and social security fund. Details should be included in the contract or the contract may refer to a separate document containing information regarding the provident fund and social security fund.

It is not recommended to include an arbitration clause in the employment contract, since arbitration will be more expensive than litigation in the Labour Court.

If the employment contract contains any provision that benefits the employer to the detriment of the employee, the court is entitled to enforce the contract only to the extent that it is fair and appropriate in the circumstances. For example, if the contract contains a restrictive covenant preventing the employee from working for any other company with a similar business in the future, the court may consider that this is an excessive limitation on the employee and order that the limitation should only apply for a specific time period. In Supreme Court precedent case no.4368/2006, the Supreme Court imposed a two-year time period during which such a restriction would be effective.

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