

Corporate relocation: An employer perspective

0

Share

Published: 3/06/2011 at 12:00 AM

Newspaper section: [Business](#)

Corporate relocation is common in Thailand. Despite their best intentions, however, many employers find themselves in violation of Thai labour laws during the relocation process. This article explains the steps an employer should follow to ensure that the relocation is in compliance with Thai law.

SEVERANCE TERMS

Length of service	Statutory severance
■ 120 days but less than 1 year	30 days at last wage rate or last 30 days' wages for work unit performed
■ 1 year but less than 3 years	90 days at last wage rate or last 90 days' wages for work unit performed
■ 3 years but less than 6 years	180 days at last wage rate or last 180 days' wages for work unit performed
■ 6 years but less than 10 years	240 days at last wage rate or last 240 days' wages for work unit performed
■ 10 or more years	300 days at last wage rate or last 300 days' wages for work unit performed

POSTaraphics

Under Section 120 of the Labour Protection Act, if the relocation of a company affects the ordinary course of an employee's life or that of his or her family, an employer must adhere to a specific procedure:

- First, the employer must notify the employees no less than 30 days prior to relocation.
- Second, if an employee chooses not to relocate with the company, that employee must terminate his or her employment contract within 30 days of receipt of the employer's relocation notification.
- Third, the employer must pay special severance equal to the statutory severance under Section 118 of the Labour Protection Act, no later than seven days following the employee's termination of his or her employment contract.

The amount of the employer's statutory severance obligation depends on the length of an employee's service to the company, as shown in the table.

In theory, the procedure for Section 120 seems straightforward, but in practice it can be fairly complex. The following scenarios illustrate this complexity and suggest avenues employers can take to ensure compliance.

If an employer fails to inform its employees 30 days in advance of relocation, the employer, in addition to paying special severance under Section 120, must also pay an additional amount in lieu of advanced notice. This amount is typically equal to around one month's wages, but can be more in some cases.

If an employer fails to satisfy its special severance obligation, the employee can file a complaint with the Labour Welfare Committee within 30 days of the due date of payment.

It is important to note that the employee must first terminate his or her contract pursuant to Section 120 before the employer is required to pay special severance and before he or she may file a complaint with the Labour Welfare Committee.

If the committee finds that the employee is entitled to special severance, it will issue a written order to the employer within 60 days of receiving the complaint. After receiving the order, the employer must pay the special severance within 30 days. If the employer still fails to pay special severance, the employer could face criminal charges, with its officers or directors facing possible punishment of imprisonment not exceeding six months, or a fine not exceeding 100,000 baht, or both. If the committee finds that the employee is not entitled to special statutory severance, it must inform all parties in writing.

Within 30 days of receiving the committee's order, either party may file an appeal with the Labour Court. If an appeal is filed, the employer must post a bond equal to the amount in dispute. If neither party appeals the committee's order within the 30-day prescription period, the committee's order is final.

Under Section 120, if an employer has two locations and moves its employees to a single location, the employer may not be obligated to pay special severance to employees who do not wish to relocate if the move does not impose an undue burden. For example, the Supreme Court has ruled that combining offices in Bangkok and a factory in Samut Prakan province does not constitute a "relocation" under Section 120. (Supreme Court Precedent Case No. 3398/2003)

In summary, an employer wishing to relocate must first notify its employees 30 days before the relocation takes place. Once those employees who decide not to follow the company to the new location have terminated their employment contracts, the employer must be prepared to make special severance payments to such employees. Finally, employers who decide to combine two premises may not have any severance obligation if they are not seen as "relocating" under Section 120 of the Labour Protection Act.