

Foreigners beware: Penalties for working without a permit may be dire

0

Share

Published: 9/09/2011 at 12:00 AM

Newspaper section: Business

An increasing number of foreigners are finding investment in Thailand attractive, creating a positive impact on the Thai economy. Undoubtedly, one of the effects of increased foreign direct investment is a greater number of foreigners coming to Thailand for a variety of business-related purposes: conducting business, taking a position of employment, accompanying family members assigned to work in Thailand, and even attending business meetings and seminars.

These foreigners need to be aware that if their purpose of staying in Thailand is to proceed with any work-related activity, either permanently or temporarily, they are required to obtain a work permit from the Department of Employment, Ministry of Labour, prior to starting work.

The Alien Working Act B.E. 2551 (2008) defines the term "work" as any activity whereby one exerts energy or uses knowledge, whether or not in consideration for wages or other benefits. The definition of work under the Alien Working Act is rather broad, as it covers performing all actions relating to business deemed as work under the law (and this even covers volunteer work). For example, if a person took part in negotiations, attended or spoke at a conference, provided technical support, or sourced for a local supplier, each of these actions would be considered work. Most foreigners who enter Thailand for a short business trip of one or two days are not aware that the purpose of their visit requires a work permit in accordance with Thai laws.

Working in Thailand without a work permit entails a penalty on the violator, ranging from a fine, imprisonment and deportation to, in the worst case scenario, prohibition from re-entering Thailand. Under the Alien Working Act, a foreigner who engages in work without obtaining the proper work permit is liable to imprisonment for a term not exceeding five years and/or a fine from 2,000 baht to 100,000 baht. In practice, however, the authorities usually settle the case and deport the person from Thailand.

Foreigners working in Thailand should be aware that authorities have recently been more active in pursuing those who work in Thailand without permission. The number of foreigners arrested for working without permission in the past few years has increased markedly. And this includes not only unskilled workers, but also skilled workers, technicians, specialists, management personnel, and nationals of many countries, from neighbouring Southeast Asian states to European and North American countries.

Currently, in addition to the charges levied under the Alien Working Act, the authorities can impose penalties as stipulated under the Immigration Act B.E. 2522 (1979) on violators as well, by prohibiting foreigners found guilty of working without permission from re-entering the country (otherwise known as being "blacklisted"). Under the Immigration Act, a foreigner who is deported or has been sent out of the country by the competent officials is excluded from re-entering the kingdom.

When a foreigner who performs work without permission is caught, the authorities will take legal action against the violator. If it is found that the foreigner is guilty of working without permission, the immigration official will deport the violator from the kingdom and record their profile in the Immigration Bureau's blacklist database, to prevent them from re-entering Thailand in the future.

Given the seriousness of the penalties, it is highly advisable that foreigners who wish to perform work in Thailand, permanently or temporarily, spend the time and relatively minor financial effort to apply for a proper work permit.

However, an "ordinary" longer-term work permit may not be a suitable option for executives at multinational corporations who manage and oversee their company's operations in many countries or persons who would like to perform temporary or urgent work in Thailand, such as attend a business meeting with a local company or supplier. For these individuals, the full work permit application process may be too arduous, as it normally takes two to three weeks to prepare and process an application.

To address this problem and encourage an investment-friendly environment, the Alien Working Act allows foreigners intending to stay in the kingdom for a short period of time to notify the necessity and urgency of their work to the Department of Employment instead of applying for an ordinary work permit. The notification may take a couple of hours to process and be approved. It should be noted that only the performance of "necessary and urgent" work is eligible for this type of permission, and the maximum period the foreigner will be allowed to stay to perform such work is 15 days per entry, inclusive of weekends and holidays. This type of application may seem like an onerous process for such a short visit, but it will ensure due compliance with the law and prevent any possible headaches resulting from legal violations.