

## Laying off employees: Considerations for manufacturers

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As companies start to rebuild and recover from the recent devastating floods, many managers are taking a hard look at the bottom line, searching for ways to survive and minimise loss.

This assessment is happening in accounting departments nationwide but is particularly prevalent in Thailand's once-flooded industrial parks, where managers must contend with damaged machinery and a workforce on standby.

Manufacturers may be tempted to implement layoffs as an easy cost-saving measure. But any layoffs should be considered carefully and executed correctly.

We recommend that employers adopt a three-pronged approach whereby employee terminations are conducted (1) for the right reason, (2) in the right way and (3) with the right compensation.

For the right reason

Employers must have just cause to terminate employees. The Supreme Court of Thailand has held that the following scenarios constitute proper grounds for laying off employees:

- The company suffered consistent losses for a prolonged period of time.
- The company needed to reorganise its business due to a significant economic crisis.
- A decline in purchase orders seriously affected the company's performance.

The court, however, possesses the discretion to assess the facts and to determine whether the particular employment termination was unfair. A court could hold, for example, that while the flooding in Thailand was widespread, it was temporary. As such, business losses due to flooding are also temporary.

In the right way

If the employer decides to terminate employees, the employer must ensure that the process for selecting which employees will be laid off is transparent and fair. If the selection process is not fair or transparent, the Supreme Court may determine that the termination of a particular employee was unfair, even though there may be an underlying justifiable reason for the termination.

Employers of union members should also consider the terms of any collective bargaining agreement (CBA). If the CBA specifies a process or method for layoffs, the employer must take care to follow this process.

In addition, even though there is no legal requirement to inform the labour officer before terminating employees, it may be worth doing so as a courtesy.

This is especially true where there is likely to be a backlash by employees or where the labour union is particularly strong, in order to ensure that the labour officer is fully apprised of the matter and can deal with any complaints or demands.

In addition, the employer should try to minimise the damage to the employees by issuing an announcement regarding pending layoffs in advance, to enable employees to prepare themselves for possible unemployment in the event that they are selected.

For example, employers may wish to consider providing training for alternative careers or job fairs in cooperation with companies that seek to increase their workforce.

With the right compensation

On termination, sums payable by the employer under Thai law may include (1) statutory severance pay, (2) payment in lieu of advance notice, (3) accrued and unused annual leave, (4) other benefits as provided in the employer's work rules, regulations and the employment contract and (5) compensation for unfair termination.

Under the Labour Protection Act, the employer is required to pay statutory severance pay, which varies from 30 days (one month's wages) to 300 days (10 months' wages), depending on the employee's term of employment.

In general, if an employer wishes to lay off an employee, the employer must give advance written notice at or before the date of any payment of wages in order to take effect on the next payment date. If advance notice is not given, the employer must pay remuneration in lieu of advance notice.

The employer must pay the employee in respect of any accrued annual leave for previous years and annual leave for the year of termination on a pro rata basis. Further, the employer is required to compensate the employee in accordance with the employer's work rules or regulations (if any) and the employment contract.

Finally, if the employer is not justified in terminating the employee, the employer must pay compensation for unfair termination.

The amount of compensation depends on the length of service of the employee, his or her wages, and other factors. Employers may wish to consider this principle when providing ex gratia (or voluntary) payments to departing employees.

In sum, laying off employees as a business preservation measure must be undertaken carefully and with the assistance of qualified legal counsel. If layoffs are not executed for the right reason, in the right way and with the right compensation, managers may be setting their company up for numerous unfair termination lawsuits. Indeed, a flood of litigation may damage a business more than the flood itself.