

## Debunking the myths of Fixed-Period employment contracts

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Fixed-term employment contracts are easily misunderstood by employers. Some mistakenly believe that fixed-term contracts will absolve them of the duty to make severance payments to their employees, while others assume that labelling an employment contract "fixed-term" will grant it such status. However, the law sees fixed-term employment contracts very differently, and this article will bust the many major myths surrounding such contracts in Thailand.

**Myth 1: An employment contract is a fixed-term contract if it is labelled as such.** On the contrary, a fixed-term contract must satisfy a number of requirements as set out in the Labour Protection Act (LPA). It requires such an agreement to contain a clause specifying a predetermined fixed period for employment and therefore specifying a termination date. It must be a written agreement and contain, at minimum, (1) a clause setting forth the term of employment, and (2) a clear indication that employment will terminate at the end of such period.

**Myth 2: An employer can extend a fixed-term employment contract.** The fixed-term contract must not contain a clause allowing either party to extend the period of employment. Otherwise, a court may determine that the contract does not qualify as a fixed-period employment contract.

In addition, if an employer enters into multiple, back-to-back, fixed-term contracts with the employee, the court may believe that the employer actually intended to hire the employee on a permanent basis. The court may, by its discretion, invalidate the provisions of the contract that establish a fixed term of employment.

**Myth 3: No payments are due on termination, if the employer terminates a fixed-term contract.** Employers may avoid paying severance, remuneration in lieu of advance notice, and/or compensation for unfair termination only where the fixed-term employment contract is made in accordance with the LPA and Supreme Court precedent opinions.

In order for a fixed-term employment contract to absolve an employer of the responsibility to pay statutory compensation on termination, the contract must:

1. Be in writing (as of the start of the employment period);
2. Be specifically for a special project that is not within the normal business or trade of the employer, where the schedule for start and completion of work is fixed; or apply to work of a temporary nature that has a fixed schedule for its start and completion; or apply to seasonal work for which the employee is engaged; and
3. Be for a period of two years or less. The work specified in the contract must also be of the type that can be completed within two years.

As indicated above, the employer must terminate the contract on the expiration date. Any extension may cause a court to determine that the contract is not a fixed-period employment contract.

**Myth 4: No payments are due on termination, if the contract recites the requirements in the LPA and the employer terminates the contract on the expiration date.** The Supreme Court has determined that the following situations, in which the employer may have intended to enter into a fixed-term agreement, did not actually qualify as fixed-term contracts:

- The employer's business was in construction and the employee was hired as a construction worker; the Supreme Court ruled that the employee was employed in the normal business or trade of the employer.
- The contract contained a clause allowing the employer to terminate it prior to the designated termination date if the employer had no work to assign to the employee.
- The contract contained a clause entitling either party to terminate it prior to its termination date.
- The contract was for a period of employment longer than two years.

In such cases, the Supreme Court held the employment contracts were not fixed-term, and the employees were therefore entitled to severance pay and remuneration in lieu of advance notice.

If, however, a contract is considered to be a fixed-period employment contract under the law, and the employer terminates the employee based on the expiration of the contract, it would be considered fair termination. The employee would not be entitled to severance, remuneration in lieu of advance notice, or compensation for unfair termination. Please note that the LPA is a law regarding public order and good morals, and any employment contract provisions that fail to comply with the LPA will be void. It is important to seek legal advice both prior to drafting and prior to seeking to enforce a fixed-term employment contract.