

New Labor Regulation Provides Protections for Domestic Workers

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The Minister of Labor has issued a new Ministerial Regulation under the Labor Protection Act, which extends certain protections to domestic workers (i.e. housemaids and nannies). The Ministerial Regulation came into force on November 9, 2012.

This article provides an overview of the new regulation and guidance to employers of domestic workers in Thailand to ensure that they are compliant with the new regulation.

HOLIDAY AND WEEKLY LEAVE

A domestic worker is entitled to at least one day per week as his or her weekly holiday. The interval between each weekly holiday must not exceed six days.

The law requires employers to inform their domestic workers of the annual holidays for the year, at the beginning of the year. A housemaid is entitled to at least 13 traditional holidays per year, one of which must include National Labor Day (May 1). Traditional holidays must be fixed by the employer in accordance with annual government holidays, and religious or local customary holidays. Should a traditional holiday fall on a weekly holiday, the succeeding working day must be treated as a substitute holiday.

ANNUAL HOLIDAYS

A domestic worker is entitled to annual holidays of at least six working days per year, after having worked continuously for one full year. These annual holidays shall be fixed in advance by the employer or fixed as agreed between the employer and the housemaid. In subsequent years, the employer may fix annual holidays for a domestic worker, of more than six working days. The employer and the housemaid may agree to accumulate and/or postpone the annual holidays, to be taken together with those in a subsequent year. For a domestic worker who has worked for less than one full year, the employer may fix annual holidays, on a pro rata basis.

SICK LEAVE

A domestic worker is entitled to leave for days as he or she is actually ill. However, the law provides only 30 days of paid sick leave per year. If the housemaid takes sick leave for three or more consecutive working days, the employer may require the housemaid to produce a medical certificate, issued by a first-class licensed physician or a government clinic. If the domestic worker cannot produce such a medical certificate, the domestic worker must provide an explanation to the employer.

HOLIDAY WORK AND HOLIDAY WORK PAY

An employer may not order a domestic worker to work on a weekly holiday, traditional holiday, or annual holiday, without the domestic worker's prior consent, except where work is of a continuous or urgent nature, or it is otherwise necessary.

When the employer asks the domestic worker to work on holidays, the housemaid is entitled to holiday work pay, which is equal to two times his or her normal wage rate, for the number of such hours worked.

RESIGNATION AND PAYMENT UPON RESIGNATION

When a domestic worker resigns, the employer is obligated to pay:

- Wages and holiday work pay, if any
- Payment of wages for accumulated annual holidays

TERMINATION OF EMPLOYMENT AND PAYMENT UPON TERMINATION

When a domestic worker is terminated, the employer is obligated to pay wages, holiday work pay, and payment of wages for accumulated annual holidays, within three days from the date of termination of employment. If the termination is for cause for reasons specified in the law, the employer is only required to pay for accumulated annual holidays from past

years. If, however, the termination is without cause, the employer must also pay for prorated annual holidays for the year in which the housemaid is terminated.

DOMESTIC WORKERS WHO ARE CHILDREN

The law does not allow the employment of housemaids under 15 years of age. In addition, for employment of those who are at least 15 years of age, but less than 18 years of age, an employer is not allowed to demand any security deposit, nor is the employer allowed to pay the wages of such employee to any other person.

PENALTIES

Any employer who fails to meet the above requirements may be subject to fines up to Baht 100,000 and/or up to six months in prison. In addition, in the case of failure to pay wages and holiday pay by the deadlines, the employer is obligated to pay interest to the employee during the period of default, at the rate of 15 percent per year. If the employer intentionally refuses payment without reasonable cause, then, at the expiration of seven days from the due date, the employer can be made to pay an additional amount to the employee at the rate of 15 percent of the amount outstanding, for every seven-day period.

APPLICABILITY REGARDLESS OF NATIONALITY

Nearly all employees working in Thailand, regardless of their nationality or terms of employment, are protected under Thai labor law. Thus, employers of domestic workers from neighboring countries and overseas must also comply with these important requirements. ■

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