Thailand

Pimvimol (June) Vipamaneerut, David Duncan, and Chitchai Punsan
Tilleke & Gibbins
Bangkok, Thailand

Introduction

Labor and employment law is one of the most developed sectors of law in Thailand. For many years, labor standards existed in the form of regulations announced by the Ministry of the Interior, which handled (and still handles) a broad portfolio of issues, including labor matters, at that time. More recently, however, labor statutes have been enacted through parliamentary processes with the approval of the King. The Ministry of Labor has developed into a sizable regulator, and it has issued numerous labor regulations.

Labor law arises from the law of contract, which is based in the Civil and Commercial Code. While there is a general recognition of freedom to contract, it is not possible to contract around the minimum standards imposed by applicable Thai labor law. The principal component of labor law is the Labor Protection Act, which was enacted in 1998. Despite the Act's relative youth, extensive employment laws had already developed in the form of ministerial regulations, and much of these regulations were simply codified and enhanced in the aforementioned Act. Since enactment, the Labor Protection Act has undergone amendment multiple times. Some of the revisions are substantive and raise employee protections or clarify ambiguities, while others are simply procedural provisions of greater relevance to the internal processes of the regulator.

Trade unions were subject to statute much earlier, with enactment of the Labor Relations Act in 1975. The Labor Relations Act sets the rules on how trade unions can be recognized and how employers may interact with them. The law also sets rules that trade unions themselves must follow.

In addition, a special court system for hearing labor matters was established by the enactment of the Labor Court Act (1979). The Act sets out procedures for use in the Labor Court, which give employees easy access to seek resolution of disputes. Over the years, the amount of employment and labor regulation has steadily increased.

Some of the most significant pieces of legislation that have been enacted are the Social Security Act (1990), the Workmen's Compensation Act (1994) and, more recently, the Occupational Safety and Health Act and the Work from Home

Protection Act (2011). There also are extensive ministerial regulations issued under the various laws, all of which have the force and effect of law.

When considering the current laws that are in place, it is clear that Thailand's policymakers have taken a pragmatic approach to the establishment of labor standards. Even though there appears to be a general policy of raising employment standards and improving employee protections, careful thought is given to the population's level of social development. There is recognition that regulations have a cost.

If it becomes too expensive to employ people in Thailand, companies would simply choose to invest in other countries in the region, or shift their existing Thai operations to overseas jurisdictions with labor regimes that are more employer-friendly. With all of these considerations in mind, policymakers realize that full employment is good for social security, which in turn is good for national security and, ultimately, the overall stability of the Kingdom.

Like most developing markets, Thailand is reliant on expatriate staff. A study of Thai labor law would be incomplete without considering the additional restrictions that are applicable to foreign staff. Under the Foreign Employment Act (1978), a framework was established by which to reserve certain occupations for Thai nationals, and to impose additional regulatory obligations on employment relationships involving foreigners.

Legal Definition of Employment

In General

Employment is referred to as hire of service.[1] An employment relationship exists when an employer agrees to accept an employee to perform certain work in exchange for wages. On the other hand, independent contractor relationships are referred to as hire of work[2] and do not constitute employment.

A hire-of-work agreement is one whereby a service provider (perhaps an independent contractor) agrees to accomplish a certain defined work project for the hirer. The hirer agrees to pay the service provider a service fee for the result of the work, or the deliverable. To determinate if a particular arrangement constitutes hire of work or hire of service, attention is given to the issues of control and discipline.

If the relationship has the authority to control a person's day-to-day workplace activities and/or has the authority to impose disciplinary measures on the person, it is likely that an employment relationship (hire of service) exists. On the other hand, if the relationship is geared around delivery of some end product, it is likely that a contractor relationship (hire of work) exists. To distinguish a hire-

1 Civil and Commercial Code, ss 575–578.
2 Civil and Commercial Code, ss 587–607.

of-work agreement from an employment agreement, a Thai court would typically look to the following four factors:

- Purpose of the agreement — A hire of work agreement would be primarily concerned with the completion of a final end product or service, whereas an employment agreement has the ongoing provision of services to an employer;
- Method of work — A genuine independent contractor would be able to exercise a significant degree of independence in completing the work. In such a relationship, the hirer may issue general rules or directions, but would not have control of the independent contractor's daily activities or operations, such as determining working hours and training needs;
- Level of independence — An independent contractor would work principally for remuneration in return for work done, and would not be subject to disciplinary sanctions, as an employer may assess against an employee; and
- Type of remuneration — Service fees would be paid to an independent contractor on the basis of successful results of the work, perhaps in installments or a lump sum.[3]

If the above requirements are not fulfilled, there is risk that a court may find that an employment relationship exists, thus subjecting the hirer to the applicable requirements of Thai labor law. If met with a claim, a Thai court would look to evidence of the actual relationship between the parties (regardless of the wording used in an agreement) to determine whether an employment relationship exists.

In this regard, Supreme Court decisions have held, after applying the analysis described above, that an independent contractor who was performing services within the scope of the hirer's normal business activities was actually an employee. Thus, if a hirer wishes to engage someone as an independent contractor, and not as an employee, it is important to ensure that the relationship is consistent with the concept of hire of work.

In addition, agents, partners, or directors may or may not be found to have an employment relationship with their principals, partnerships, or companies. A relationship of agency, partnership, or directorship is not dispositive in determining whether there is an employment relationship. Making such a determination would require its own analysis, along the lines of that outlined above.

Contract of Employment

Although people often speak of employment contracts as paper documents, the reality is that an employment relationship also can be made orally, or by performance (implied). All that is needed is that the agreement specifies that a

3 If remuneration were paid without regard to completion or accomplishment of definite work, an independent contractor would be more likely to be seen as an employee.

person agrees to work for another who agrees to pay wages to the first, regardless of how the agreement arises. Of course, if there is no written (and executed) employment agreement, one may encounter difficulty in proving various asserted terms of the employment relationship, or even that the employment relationship exists.

As mentioned, employment arises from the law of contract. This means that a party's capacity is determined in the same way as with respect to most any other contract. One becomes *sui juris* at age 20, or on valid marriage before such age. However, if a minor gets permission from his or her legal representative (usually a parent) to enter into an employment contract, the minor will have capacity to enter into the employment contract, the same as one who is *sui juris.* Of course, if one were found to not be of sound mind, acts made in such state would be voidable.

Special Categories of Employees

Certain special categories of employees warrant additional comment. First, it is important to be aware that part-time employees are entitled to the same minimum rights, benefits, and protections as their full-time colleagues. This does not necessarily mean that an employer must give identical benefits packages to their full- and part-time employees. Rather, it means that the minimums supplied under law are applicable to both full- and part-time employees. In this area, questions often arise with respect to annual leave.

The law provides that, after one year of work, an employee shall be entitled to six calendar days of leave per year. Of course, an employer may choose to provide additional leave days for full-time staff, but all employees, both full and part time, so long as they have been employed for at least a year, are entitled to the six days of leave.[4] With respect to leased employees, the end-employer has an obligation to ensure that equitable benefits are provided to direct employees, as well as those in lease situations. The end-employer can be deemed the employer of the leased employees.[5]

As mentioned, foreign employees are subject to additional restrictions. Subject to certain arcane exceptions, all foreign employees require work permits in order to legally work in Thailand.[6] Moreover, by royal decree, 34 different occupations are reserved for Thai nationals.[7] In addition to the work permit requirement, foreign employees must also have valid immigration approval, such as a substantive visa or permanent residence. Violations of the work permit and visa requirements can result in fines for an employer, and fines, imprisonment, and blacklisting for an employee. Additional penalties, including

4 Labor Protection Act, s 30.
5 Labor Protection Act, s 11/1.
6 Foreign Employment Act.
7 Royal Decree Prohibiting Occupations-Foreigners.

fines and imprisonment, apply to those who facilitate the illegal presence of the foreign workers, as well as those who conceal them. [8]

Work permits are only valid for the place of work and geographic area listed.[9] This means that if an employee is to be moved to work elsewhere in the Kingdom, it is usually necessary to file additional documents with the Ministry of Labor. Work permits also can be approved for work in multiple locations. Foreign employees will be required to leave the Kingdom every 90 days, unless they are granted extensions of stay by the Immigration Department of the Royal Thai Police. In this case, they will be required to file notification every time they remain in the Kingdom for more than 90 days.[10]

To avoid any doubt, work permits also are required for employees who are based in other countries, and who come to Thailand to work for only a brief period of time. However, there is an exception for urgent and necessary work, which requires a simple filing of notification with the Ministry of Labor, and which would then be valid for 15 days.[11] Apprentices benefit from the same employment protections as any other employee, except that the law sets a lower apprentice wage rate that is approximately half of the applicable minimum wage.[12]

With respect to child labor, an employer may not employ a child under the age of 15 years. When a child under the age of eighteen years is employed, the employer has special reporting and record-keeping obligations to the regulator. A child is entitled to a rest period of at least one hour per day after four hours of work. Subject to narrow exceptions such as acting in movies, plays, and the like, an employer may not allow a child to work between 22:00 and 16:00, without the regulator's permission.

When utilizing the exception for movies, plays, and the like, the employer remains obligated to provide the child with rest as appropriate. Employers may not permit children to work overtime or on holidays. Employers may not allow children to perform certain types of hazardous or dangerous work (the restrictions are broader than those applicable to "normal" employees' performance of dangerous work). Employers also are prohibited from allowing children to work in slaughterhouses, places with gambling, recreational places in accordance with the law governing recreation places, or any other place as prescribed in the relevant Ministerial Regulations. An employer may not demand a security deposit from a child, and may not pay the child's wages to any other person. In the interest of promoting children's quality of life and promoting their work performance, children also are entitled to 30 days of paid leave per year, for training, meetings, and similar such events organized by

8 Immigration Act.
9 Foreign Employment Act.
10 Immigration Act.
11 Foreign Employment Act.
12 Announcement of Minimum Wage Rates.

educational organizations or other entities as may be approved by the regulator.[13]

Transfer of Business

Events such as mergers and transfers of business units each require special attention. Transfers of employment from one employing entity to another require the consent of each employee to be transferred.[14] This means that consent is not required in the event a company simply acquires all the shares in another, leaving the acquired entity intact and leaving the employment relationship untouched. However, if the acquired entity is dismantled or integrated into the acquiring entity, or if the target were acquired by way of a purchase of assets, this would result in a change of employer, thus triggering the consent requirement described above.

The Supreme Court has held multiple times that employee consent is required for transferring employees to another employer or changing the employer from one company to another, regardless of whether the employers are of the same group. In one example,[15] the Supreme Court held that even though two companies had the same management and were within the same group, they were separate legal entities for the purposes of dealing with changes in employer.

When one company dissolved and ordered its employees to go to work with a separate company of the same group, the employees refused, and as a result the court found the employer had violated Civil and Commercial Code Section 577 because it did not obtain employee consent. The employees who refused consent to such transfer could then be terminated, which brought the usual requirements of Thai labor law when terminating employees, including severance pay. A similar outcome was reached in another Supreme Court case,[16] involving the order of an employee of a Thai company to go to work for another company of the same group in Hong Kong, and to become its employee. In that case, the court held that it was a transfer of the employer's right to a third person and that employee consent was required.

Amalgamation, as specifically filed with the Ministry of Commerce, does not result in any need for employee consent, as there is no transfer of employment. Rather, the legal entity continues to exist, in amalgamated form. In all cases, the new employer is required to accept all rights and benefits pertaining to the pre-existing employment relationship[17] and employee benefits cannot be reduced without employee consent to that effect.

13 Labor Protection Act, Civil and Commercial Code, ss 44–52.
14 Civil and Commercial Code, s 577.
15 Supreme Court Case Number 671-675/2530.
16 Supreme Court Case Number 46/2537.
17 Labor Protection Act, s 13.

Terms and Conditions of Employment

In General

As noted, law applicable to employment arises out of the law of contract. Though an employer and employee are free to agree on many terms applicable to their relationship, the law steps in to set certain conditions that cannot be varied and certain minimums that cannot be undercut.

Remuneration

Employees may be paid at any frequency, as long as it is at least monthly, unless otherwise agreed to the benefit of the employee.[18] The Ministry of Labor periodically sets minimum wages (applicable on a daily basis), which differ depending on the geographic area.[19] Notwithstanding the foregoing, compensation on the basis of piecework also is possible.[20]

Work Hours

The law sets a limit of 8 hours per day and 48 hours per week for normal work, though flex time allows for an additional one hour per day (for a total of nine), with the weekly limit of 48 still applicable.[21] Employers and employees of certain categories have the option to agree on any number of regular work hours in a day, as long as the total does not exceed 48.[22] There is a limit of seven hours per day and 42 hours per week for dangerous work and a limit of 36 hours of overtime per week, applicable to both categories.[23]

Health Care Coverage

Employers are obligated to register their employees for social security, to withhold and remit contributions from employees' wages, and to make matching contributions to the social security fund. Among the benefits provided is health coverage.[24] Despite the existence of this system, employers often provide private health coverage for their employees, as an additional benefit.

Vocational Training

Employees are entitled to take leave for training, as defined more specifically in ministerial regulations.[25]

18 Labor Protection Act, s 70.
19 Labor Protection Act, ss 87–90.
20 Labor Protection Act, s 70.
21 Labor Protection Act, ss 23 and 26.
22 Ministerial Notification 1997, s 2.
23 Labor Protection Act, ss 23 and 26.
24 Social Security Act.
25 Labor Protection Act, s 36.

Discrimination

In General

Along with the rest of the world, Thailand recognizes the significance of discrimination. The Thai Constitution prohibits all forms of discrimination.[26] Although the country has yet to develop several laws to comply with the discrimination provision of the Constitution, Thailand embeds the Labor Protection Act to address some of the fundamental issues concerning discrimination to protect employees from unfair and unequal treatment due to distinctive features. Such features include gender, age, physical or mental handicaps, race or national origin, and religion.

Gender

Gender is largely used as a basis of discrimination due to the outmoded belief that men are better workers than women. Thailand addresses this issue by essentially ensuring that males and females are subjected to equal treatment in areas such as benefits, welfare, and fair rights.[27] Additionally, the law obligates the employer to treat both genders as equals, and this includes the recruitment and hiring stages of employment.

Thai law also continues to focus on certain situations where discrimination might arise. For example, female employees cannot be terminated due to pregnancy[28] and must be reassigned if medically required.[29] In addition, specific limits must be placed on their work periods. However, there are certain situations where gender discrimination is permitted, as set forth in the Labor Protection Act.[30] Careers such as mining, construction, dangerous scaffolding work, and production or transportation of dangerous materials are areas where an employer cannot employ a female. Furthermore, other categories in which women cannot be employed may be prescribed in ministerial regulations.

Age

Discrimination on the basis of age is only permitted for protection of children. There are not many age discrimination occurrences in Thailand. As long as a child is over the age of 15,[31] he is eligible for work. Children are prohibited from dangerous employment such as work involving toxic materials or work performed underground. The fact that no laws appear to restrain employer interaction with differently aged individuals suggests that such discrimination does not occur.

26 Constitution, s 30.
27 Labor Protection Act, s 15.
28 Labor Protection Act, s 42.
29 Labor Protection Act, s 43.
30 Labor Protection Act, s 38.
31 Labor Protection Act, s 44.

Physical or Mental Handicap

Individuals who possess handicaps of any kind are safeguarded through various legal provisions. The most prominent provision is the Act on Promotion of Quality of Life of Persons with Disabilities. This Act focuses on the rights to which people with disabilities are entitled, so that they are protected from any form of prejudice.

A noticeable initiative of this Act involves the requirement for employers to hire handicapped persons. A ministerial regulation has been issued under this Act requiring that for every 100 employees, there must be at least one disabled worker who is designated work within his or her skill range and capacity.

Race or National Origin and Religion

Aside from being addressed in the Thai Constitution, race, national origin, and religion are not specifically regulated through Thai labor laws due to the prevailing fact that they are not often used as a basis for discrimination. Thai workplaces recognize equality of all individuals of different race, origin, and religion as they support the concept of a "free community".

National origin does, however, pose some exceptions to anti-discrimination laws. Pursuant to the Alien Employment Act, these exceptions involve restricting foreigners from working in 39 areas of employment. The areas of work range from construction to legal representation. Such prohibitions are employed to protect Thai individuals in said professions. Subject to these exceptions, foreigners are free to work in all other career paths.

Collective Bargaining and Worker Participation in Management

Collective bargaining is an essential process between the employees and the employers that negotiate the working conditions and provisions for employees. This process is very important to worker participation because it provides an incentive to maintain a stable and efficient workplace.

Labor unions play a proactive role in collective bargaining for the benefit of employees. All unions must be registered with the proper authority,[32] and members must exclusively be a part of only one union. A proper union will possess the right to consult with the employer to gain better work rights for employees.[33] It is important to note that to be a member of a specific labor union, the employees must be under the control of the same employer.[34] Please refer to the section "Dispute Resolution" for details on how a labor union can push to alter working conditions in Thailand.

32 Labor Protection Act, s 87.
33 Labor Protection Act, s 98.
34 Labor Protection Act, s 95.

Health and Safety Protection in the Workplace

However, in July 2011, the Occupational Health and Safety Act has been regulated under a section of the Labor Protection Act. However, earlier this year, the Occupational Safety and Health Act became law and will be effective in July. This Act establishes a separate agency, the Occupational Safety and Health Bureau, within the Ministry of Labor.

Despite the recent passage of the law, extensive regulations on occupational safety and health were already in place, under the Labor Protection Act. As a general matter, these same regulations remain in effect under the Occupational Safety and Health Act, though efforts are, of course, under way to modernize them and to make improvements in the level of protection for workers.

For example, the Ministry of Interior has produced two important notifications: the Notification re: Working Safety Relating to Harmful Chemicals (1991) and the Notification re: Working Safety in Respect of Environmental Conditions (Chemicals) (1977). The 1991 Notification defines the term "Harmful Chemicals" as substances, compositions, or mixtures, in the form of solid or gas, including those that are:

- Poisonous, corrosive, volatile, allergenic, cancerous, or otherwise harmful to health;
- Explosive, seriously reactive, or highly flammable; or
- Radioactive.

In carrying this out, the Notification looks to an appended schedule for a listing of chemicals considered to be "Harmful Chemicals". However, given the natural presence of various harmful substances in the environment, determining whether a substance is hazardous is more an issue of its concentration.[35] More specifically, employers are to take action so that the concentration of a given harmful chemical does not exceed the limit set in the 1977 Notification, but that if the limit is exceeded, measures are to be taken as prescribed in the Notification.

The 1977 Notification sets a concentration limit for several substances. Otherwise, the Notification contains a requirement mirroring that, in the 1991 Notification, provides for employers to take action to reduce chemical concentrations that exceed the specified limit.

However, it also provides that when reduction is impossible, the employer is to have employees wear personal safety equipment according to standards prescribed in the Notification, whilst performing work in an environment with chemical concentrations exceeding the applicable limits.[36]

35 Ministerial Notification 1991, s 7.
36 Ministerial Notification 1991, s 7.

As a general matter, employers are subject to certain additional obligations to their employees, with respect to work categorized as "hazardous". Employers are obligated to provide appropriate protective gear and to take other measures to minimize contact with hazardous substances and to minimize harm that may arise from these substances. As noted above, the law also provides shorter work hours for employees engaging in hazardous work.[37]

Additionally, employers are responsible for sicknesses and/or injuries their employees incur due to work, including treatment, disability compensation, annuity to the family, and funeral expenses, as applicable.[38] However, if the employer's contributions to the Workmen's Compensation Fund are current, the fund will provide such coverage directly. The employer remains obligated to bear initial expenses, for which reimbursement can be sought from the fund, pursuant to applicable regulations.[39]

Workers' Compensation and Survivors' Benefits

As mentioned above, employers have certain obligations to employees (or to their families) when their employees incur sickness or injury due to work, or who disappear or die in connection with work for the employer. In addition to actual expenses for treatment and rehabilitation, the employee is entitled to an annuity equivalent to 60 per cent of his or her normal wages, for up to eight years.[40]

If the employee has passed away, the employee's family is eligible to receive the annuity.[41] In addition, if the employee dies due to injury at work, the employer is to bear funeral expenses.[42] All of these obligations fall on the employer.[43] However, employers also are obligated to register their employees for the Workmen's Compensation Fund, and to make contributions accordingly.[44]

If the employer is current with respect to contributions, the fund shall bear the aforementioned expenses, though the employer remains obligated to bear initial expenses, but can seek reimbursement from the fund for it. If the employer incurs expenses that are not covered by the fund, the employer is entitled to deduct such expenses from other payments that may be due the employee, subject to applicable limits.[45] Coverage also is provided by the Social Security Fund, assuming the employee is registered for social security and that

37 Labor Protection Act, s 23.
38 Workmen's Compensation Act, ss 13 and 15–20.
39 Workmen's Compensation Act, s 25.
40 Workmen's Compensation Act, s 25.
41 Workmen's Compensation Act, ss 19 and 20.
42 Workmen's Compensation Act, ss 16 and 17.
43 Workmen's Compensation Act, s 25.
44 Workmen's Compensation Act, s 44.
45 Workmen's Compensation Act, s 25.

contributions are current.[46] In this case, however, the Social Security Fund would function as supplementary or secondary coverage to whatever other coverage might provide a benefit.[47]

Dispute Resolution

The settlement of labor disputes in Thailand is governed by the Labor Relations Act (Labor Relations Act). Dispute resolution involves a number of options that differ in their application and nature. A labor dispute occurs when an employee and an employer disagree on the proposed working conditions.

Written working conditions are a necessary requirement for workplaces employing more than 20 employees. Terms of the agreement, such as working hours or wages, are open to amendment through labor demands.[48] Initiation of a labor demand often marks the beginning of a labor dispute. A dispute only becomes a labor dispute when negotiation has not occurred or has failed to resolve the issues at hand.[49] The Labor Relations Act offers a range of means to resolve such issues.

Negotiations represent the least formal procedure for dispute resolution. This process involves a simple consultation between employers and employees to try to reach a reasonable agreement before a labor dispute arises. Negotiations must begin within three days of receiving the demand.[50] Negotiations represent the simpler aspects of settling labor disputes, as they involve mere consultation between the employer and employee to reach a compromise on work arrangements. However, if a mutual agreement cannot be reached, the disagreement is established as a labor dispute.

If the situation becomes more complex and intricate, mediation is available. Mediation is a more formal procedure because it introduces a third party that assists in drawing compromises between the opposing parties. The Labor Relations Act outlines the procedure for notifying a mediation officer.[51]

The officer must be notified within 24 hours of either the expiration of the negotiation prescription period or the moment that negotiations have failed. Mediation also has a limiting period of five days after receiving notification to settle the dispute. The officer acts as an impartial, third-party mediator to help establish a fair compromise between the two parties. If the officer is unable to help foster a resolution to the labor dispute, it is deemed as an "unconcluded" dispute.

46 Social Security Act, ss 62–64.
47 Social Security Act, s 64.
48 Labor Relations Act, s 16.
49 Labor Relations Act, s 21.
50 Labor Relations Act, s 16.
51 Labor Relations Act, s 22.

Arbitration signifies the peak of dispute resolution outside of legal action, and as such it is regulated by the Ministry of Labor. Arbitration places the authority of resolving the arguments in the hands of an official. Unconcluded disputes can be taken either to the Labor Relations Committee or to a labor dispute arbitrator to order appropriate awards. The Committee will make an order within 30 days, with the decision being final and binding on both parties.

On the other hand, if arbitrators are the method for settlement, they will notify parties of a settlement date within seven days of receiving the demand. On this date, the arbitrators will hear statements from both parties and provide opportunities to hear their demands. Subsequently, their award is conclusive and must be complied with. Failure to comply will result in criminal punishments.

Dispute resolution processes differ — in terms of both the basis of representation and the nature of the proceeding — depending on whether employees are members of a labor union. If a group of employees who are not members of a labor union wish to submit a demand, the group must consist of at least 15 per cent of total employees of the company.[52]

The group also must be represented by not more than seven representatives for submitting their demands and conducting negotiation. As for employees who are members of a labor union, the union can play an active role in proceeding with an employee's complaint.

A labor union can carry out the process of submitting demands for amending the employee's work agreement.[53] Furthermore, labor unions act on behalf of the employees during proceedings, which is advantageous to members who would otherwise have to dedicate significant time to the process. The Labor Relations Act fails to address how an individual employee can voice his or her grievance.

The threat of lockouts and strikes provides an incentive to follow proper dispute resolution procedures. A lockout refers to the situation where an employer physically restricts employees from carrying out their duties and takes away their capacity to earn income.

On the other hand, a strike involves an action in which the employees refuse to work until requested conditions are met, thus jeopardizing the employer's operation. The Labor Relations Act plays an active role in controlling such overt behavior by restricting the basis on which lockouts and strikes can be carried out.[54]

Such conduct cannot lawfully occur if demands are not validly submitted, demands requested have already been met by the opposing party, or the matters at dispute are awaiting arbitrational judgment. Additionally, notice must be given 24 hours prior to any lockout or strike.

52 Labor Relations Act, s 13.
53 Labor Relations Act, s 15.
54 Labor Relations Act, s 34.

Termination of Employment

Termination of employment often gives rise to legal action for unfair dismissal. Employers should be aware of the requirements to terminate an employment contract. Similarly, employees should recognize the mandatory steps to avoid conflict. Under Thai law, an employer cannot terminate an employee under the following circumstances:

- It is prohibited for an employer to terminate a female employee because of pregnancy;[55]
- Without a court's permission, it is prohibited for an employer to terminate an employee who is on the Employees Committee;[56] and
- While the matter is not yet concluded, it is prohibited for an employer to terminate an employee who is involved in making a demand for changing of working conditions.[57]

The above prohibitions are the only ones clearly set out in Thai labor laws. In case of violation, the employer is subject to criminal punishments ranging from imprisonment of one to six months and/or a fine of THB 1,000 to THB 100,000. The Labor Protection Act outlines the typical termination process and the circumstances that may arise.[58] The employment contract is essential because it entails the termination date.

Once the date arrives, termination can occur without advanced notice. If no date is listed in the agreement, advanced notice must be given at or before any time of payment, to take effect as of the subsequent time of payment. In the absence of notice, employers may opt to pay several severance in lieu of advanced notice.[59] This allows them to skip the requirement of issuing warning of termination and, as a result, compensate the employee for the lack of warning.

Pursuant to Section 118 of the Labor Protection Act, upon termination, the employer is required to pay severance which varies according to the employee's period of service as indicated below:

- One-hundred-twenty days but less than one year, 30 days;
- One year but less than three years, 90 days;
- Three years but less than six years, 180 days;
- Six years but less than 10 years, 240 days; and
- Ten years or more, 300 days.

55 Labor Protection Act, s 43.
56 Labor Protection Act, s 52.
57 Labor Protection Act, s 31.
58 Labor Protection Act, s 17.
59 Labor Protection Act, s 120.

For each respective period of service, the employee will be additionally paid for the outlined amount of days according to their most recent wage. The period of service must be an unbroken, consecutive phase of work. Furthermore, if a situation arises where business reorganization or improvement is the justification for employment termination, notification must be issued at least 60 days prior to termination.[60] The notification must include details such as termination date, reasons for termination, and the name of the employee.

Failure to give advanced notice can be reconciled by a payment in lieu of advanced notice, which differs from ordinary payments, as it equals 60 days' pay at the latest wage rate. This protocol attempts to compensate the employee for abrupt circumstances. Alternatively, an employer is not required to pay compensation nor give ample notice if an employee acts in a deplorable manner.[61] This includes acts of negligence causing severe losses to the employer and undertaking in criminal activity against the employer.

Finally, the Act on Establishment of Labor Courts and Proceedings states that "in the trial of a case of dismissal of an employee by an employer, if the Labor Court is of the opinion that such a dismissal is not fair to the employee, the Labor Court may order the employer to accept the said employee back to work at the rate of wage existing at the time of dismissal. If the Labor Court is of the opinion that the employer and the employee cannot work together any more, the Labor Court shall fix the amount of damages as compensation to be paid by the employer by taking into consideration the age of the employee, the length of service, the hardship of the employee at the time of dismissal, cause of the dismissal and the compensation the employee is entitled to receive".[62]

This provision ensures that employees receive justice when terminated by permitting the court to impose remedies. As a result, the court can order the employee back into their pre-termination position or appropriately compensate them according to the facts of their service. Therefore, it is imperative for employers to terminate employees under the proper protocol to avoid uncertain outcomes that could be imposed by the court. Similarly, employees should be aware that there are methods of seeking redress if they feel they have been treated inappropriately.

With respect to unemployment insurance programs, Thailand provides worker benefits and security for the unemployed through the National Social Security Fund Program. This Program receives contribution of funds from employers, employees, and the government. Aside from the unemployment benefit, the Program also provides other benefits such as healthcare, child birth assistance, disabilities, death, child support, and retirement. In case of termination, an employee under the Program will be entitled to 50 per cent of the wage for a maximum of 180 days.

60 Labor Protection Act, s 121.
61 Labor Protection Act, s 119.
62 Act on Establishment of Labor Courts and Proceedings, s 49.

After termination, an unemployed person can choose to participate in various training programs provided by the Department of Skill Development at low cost. The Department of Employment also can assist in job placement. However, these programs are not mandatory.

Retirement, Social Security and Health Care, Old-Age Pensions

Thailand offers a variety of retirement funding sources. These can be divided into government-source benefits and private source benefits. Government-source benefits include social security and a basic age pension. Private sources include provident funds and retirement funds. In addition, an employee who retires under a mandatory retirement policy at his or her workplace (i.e., not resigning voluntarily) would be entitled to severance, depending on his or her tenure with the employer.

To be eligible for Social Security retirement benefits, contributions must have been made to the fund for at least 180 months, although such contributions do not need to be consecutive.[63] Such employees can receive benefits after they reach age 55.[64]

However, Thailand has not entered into any Social Security tantalization agreements with any other states. This means that work performed overseas for which no contributions are made to the Thai Social Security Fund will not count toward the 180-month requirement, regardless of whether contributions were made to the social security system in the foreign jurisdiction, in respect of that work. For employees who do not qualify for Social Security retirement payments, the age pension is available and offers a lower payment each month. The only requirement is reaching age 60.[65]

Several employers have established provident funds. If a provident fund is established, it must be jointly set up by the employer and the employees.[66] Establishing such a fund is an additional benefit for employees and is not mandatory under Thai law. Contributions by the employer and the employees are based on a specified percentage of the employee's wages in accordance with the fund's regulations.[67] Provident funds must be managed by a professional manager licensed for this purpose.[68] Upon termination of employment or membership in the fund, employees shall receive their contributions and a percentage of the employer's contribution according to such terms and conditions as stated in the relevant fund's regulations.[69]

63 Social Security Act, s 76.
64 Social Security Act, s 77.
65 Ministerial Regulations on Age Pension, Senior Citizens Act.
66 Provident Fund Act, s 5.
67 Provident Fund Act, s 10.
68 Provident Fund Act, s 11.
69 Provident Fund Act, ss 23/1–23/3.

In addition, the law has described a scheme called the Employee Welfare Fund (EWF), which is to be established and managed by the Employee Welfare Fund Committee upon enactment of a Royal Decree.[70] The Royal Decree has not yet been issued, and thus the EWF is not yet effective. Pursuant to the Labor Protection Act, employers with 10 or more employees would have to be members of the EWF, though this may change before the requirement becomes effective, assuming that it becomes effective at all.

Generally, the EWF would have the same objective as a provident fund. It is to provide financial security for employees, should they resign or retire from work. It would also provide for their beneficiaries in case they should die, or in other cases as prescribed by regulations. In a sense, it would be a public version of a provident fund. The law states that, if an employer has already registered a provident fund or provides welfare for its employees in case of resignation or death in accordance with the rules and procedures prescribed in Ministerial Regulations, the employer will not be required by law to register its employees with the EWF.[71]

Finally, employees who are terminated without cause are entitled to severance. Mandatory retirement under an employer's retirement policy is included within the concept of termination without cause. As such, severance would be payable at the same rates as indicated in the "Termination of Employment" section, above. Social security and age pensions are fully portable within Thailand. Provident funds are employer specific and may or may not be portable, depending on individual fund regulations and employer policies. If a provident fund is not transferable to the provident fund of a new employer, the fund will pay a benefit to eligible departing employees, subject to fund regulations; an employee could then join the new employer's provident fund, if the new employer offered such a benefit. It remains to be seen whether the EWF would provide for portability.

Retirement funds (RTF) are financed personally by the employee, and are thus fully portable. Severance is not a retirement benefit, even though it is viewed as one by many employees. As noted above, an employee's statutory entitlement to severance rises dramatically depending on the employee's tenure with an individual employer. As such, when an employee resigns from one employer before starting a job with another, the severance benefit would be lost and the tenure clock would begin running again, starting with the period of employment with the new employer.[72]

Transfers of employment (e.g., in conjunction with an acquisition of assets, as discussed above) would be handled differently—typically, the 'new' employer would agree to credit the employee for tenure with the 'old' employer, as part of a package agreed with the employee, in order for the employee to consent to the

70 Labor Protection Act, ss 126–138.
71 Labor Protection Act, s 130.
72 Labor Protection Act, s 118.

transfer. This is consistent with the new employer's obligation to accept all rights and benefits when accepting transferred employees.[73]

Summary of Social Costs

Social costs are summarized in the following table:

Benefit	Employer	Employee
Social Security Fund (including injury or sickness benefits, maternity benefits, invalidity benefits, death benefits, child benefits, old-age benefits, and unemployment benefits)	Five per cent of an employee's salary (maximum salary used as a basis for calculation of contribution is THB 15,000. Thus, the maximum monthly employer contribution is THB 750)	Five per cent of an employee's salary (maximum salary used as a basis for calculation of contribution is THB 15,000. Thus, the maximum monthly employee contribution is THB 750)
Workmen's Compensation Fund	As set by the Ministry of Labor (typically two to five per cent of wages)	Null
Provident Fund	May not be less than employee contribution	Two to 15 per cent of wages, as set by fund regulations
Employee Welfare Fund	Not yet established	Not yet established
Severance	100 per cent (benefit calculated according to table above)	Null
Retirement Fund (RTF)	Null	100 per cent (employee may choose to purchase from a bank)

Conclusion

Thailand benefits from pragmatic policymakers. Those in power, while seeking to improve employment terms for Thai employees, are not activists. The development of employment and labor policy, while under the purview of the Parliament or the Ministry of Labor (as applicable), is usually assigned down to representative committees, each appointed for the specific purpose of developing an individual law. The result has been labor policy that is balanced and fair, with the ultimate goal of furthering Thailand's economic development.

To date, labor policy has formed around the assumption that an employee would remain with one employer for much of his or her working life. However, the

73 Labor Protection Act, s 13.

labor market in Thailand is now undergoing dramatic change, as has been observed in other jurisdictions as well. The rapid rise in wages is fuelling significant movement among employers, as employees seek the best compensation package, benefits, work environment, and possibility for career advancement. This change has two main effects. First, higher wages make severance benefits far more expensive because severance is based on an employee's wages, particularly when considering employees who have long tenure. Second, employees who have shorter tenure with several employers may suffer some gaps with respect to their retirement readiness, as many benefits are tied to tenure with a single employer.

Given current birth rates and lengthening life expectancies, it is likely that some policy changes will need to be made in order to maintain a sufficiently large workforce and to provide adequate benefits to those who genuinely need them. This will likely take the form of encouraging employees to work for a longer period of their lives, as well as encouraging them to take grater personal responsibility for their retirement preparations.

The other major source of change will likely come from the ASEAN framework. As ASEAN member states move toward further integration, there will likely be greater convergence among the member countries' labor laws, as well as greater ability for employees to move to positions throughout the region. Realistically, however, full liberalization in movement of natural persons is still some time away.