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Important considerations for employment contracts under Thai law

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Under Thai law, there are no requirements that employment contracts be made in writing. For some employers, this may create the perception that they can simply reach a cursory agreement with an employee on a few basic issues, such as job role and salary, and work out any other issues as they arise. In reality, this could not be further from the truth.

It is strongly advised that employers and employees have written contracts to clearly specify the terms and conditions of employment. Later, if any dispute arises, the parties can refer to a written contract to help determine the actual agreed-upon provisions.

In Thailand, employment contracts can be broadly categorised into two main types: fixed-term and open-ended. Accordingly, it is important to be aware of the type of contract being offered or entered into, as the rights and legal ramifications associated with each differ.

Fixed-term employment contracts: With provisions that specify the start and end dates of employment, this type of contract will end when the agreed period of employment expires, without the need for advance notice of termination. The contract cannot nor terminated prior to the expiration of the agreed period, unless there is termination with cause.

The Supreme Court has ruled that fixed-term contracts must not contain any provisions that purport to allow an employer or an employee to terminate it prior to the expiration of the agreed period, or to extend the term. If it contains such provisions, it will lose its status as a fixed-term contract.

By way of an example, if a contract contains the provision that "the employment shall be for a period of 12 months, but either party may terminate the employment contract by giving the other party two months' advance notice", then it would not be effective as a fixed-term contract.

Another important consideration is the parties' performance. Even if a fixed-term contract is in place, if the employee continues working and the employer continues paying wages after the expiration of the agreed period of employment, then the fixed-term contract would effectively convert into an open-ended contract.

There is no requirement to give advance notice of termination for fixed-term contracts. In practice, however, it is still advisable for employers to inform their employees, preferably in writing, that in accordance with the contract, the employment will expire at the end of the agreed period. This will help to ensure that everyone is on the same page.

Open-ended employment contracts: Such contracts will only specify the commencement date of employment but not the end. An employee may resign or an employer may terminate the contract at any time, subject to the contract, their rights and obligations under law, and the employer's Work Rules and Regulations.

For open-ended contracts, advance notice of termination is required, unless there is termination with cause and/or unless the employer is not required to provide advance notice of termination by law.

Necessary provisions in employment contracts: To adequately safeguard the basic rights of both the employer and employee, employment contracts should always contain the following provisions:

- date the contract was made;
- names of parties to the contract;
- commencement date of employment;
- expiry date (for fixed-term contracts);
- probationary period;
- duties and responsibilities of the employee;
- wages, benefits and welfare;
- security deposit/guarantee (if applicable);
- working days, hours and holidays;
- position and right to change position;
- workplace address/location;
- non-competition and non-solicitation;
- confidentiality/non-disclosure;
- intellectual property;
- reference to work rules and regulations; and
- termination of employment.

Language requirements for written contracts: One of the most frequent questions clients ask is whether it is mandatory for contracts to be written in the Thai language. It is not.

However, if an employee is Thai and cannot understand English well enough to fully comprehend the terms of the contract, then it is strongly advisable to have the contract written in Thai or to have bilingual provisions. This way, both parties can understand the terms, and it guards against employees raising the issue that they misunderstood the terms in English.

Fair contract terms: Although an employer and employee are generally free to negotiate and agree to the terms and conditions of a contract, such terms and conditions must be fair.

If any terms or conditions result in the employer having excessive advantage over an employee, the court would be empowered to modify them as it deems fair and appropriate. Therefore, employers need to take great care in crafting their contracts to ensure legal compliance.