



How to Hire and Fire: A Global Guide

2015 Edition





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This e-book is divided into chapters by country, listed in alphabetical order. In the case of a federal country (eg USA), there are separate chapters covering the individual state jurisdictions as well as a chapter covering federal law itself.

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If you would like to contact the author of a chapter directly, click the individual's name at the top of the relevant chapter to open a blank email addressed to the person, ready for you to complete and send with your enquiry.

To find out more about the member firm in any particular jurisdiction, please click on the firm name (which is both at the top of each chapter - underneath the author's name - and again at the end of each chapter) and you will be directed to the firms' website.

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Thailand



Thailand



Pimvimol ("June") Vipamaneerut

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01. General Principles

Forums For Adjudicating Employment Disputes

Employees may bring employment disputes before Labor Officials at the Ministry of Labor. In addition, Thai Labor Courts have exclusive jurisdiction for labor claims brought within their territorial jurisdictions. The Central Labor Court has jurisdiction with respect to labor claims brought within Bangkok and the surrounding provinces. Appeals from Labor Courts go directly to the Supreme Court, bypassing the appellate level. If the place of work is not located within the territorial jurisdiction of a Labor Court, the claim may be brought in a Court of First Instance.

The Main Sources Of Employment Law

Labor matters are generally governed by the Labor Protection Act B.E. 2541 (A.D. 1998) (as amended) and the Civil and Commercial Code. Other Laws include the Labor Relations Act, the Act Establishing the Labor Court and Labor Court Procedure, the Provident Fund Act, the Social Security Act, the Employment and Job Seeker Protection Act, the Skill Development Promotion Act, the State Enterprise Labor Relations Act, the Workmen's Compensation Act, and the Foreign Employment Act. The Thai labor force is largely non-unionized, so collective agreements do not play a large role in regulating working conditions, except in those workplaces which are unionized or which otherwise have collective bargaining agreements. The Ministry of Labor, including its various subunits, is the primary authority responsible for setting and enforcing minimum employment standards.

National Law And Employees Working For Foreign Companies

Thai labor law provides a minimum level of protection for all employees working in Thailand regardless of nationality, origin, or the law purportedly governing their employment contracts.

National Law And Employees Of National Companies Working In Another Jurisdiction

Except in certain limited circumstances, Thai law does not apply to employees of Thai companies working in another jurisdiction.



02. Hiring The Employee

Legal Requirements As To The Form Of Agreement

Thai law categorizes employment agreements as contracts for the hire of service. The law does not require a contract of employment to be made in writing. Where the contract of employment is in writing, the employer should provide a copy to the employee after it has been signed. Thai law requires companies having ten or more employees to publish written work rules in the Thai language and file them with the District Labor Office.

Mandatory Requirements:

Trial Period

Thai law does not specifically address trial or probationary periods in employment relationships. However, under Thai law, only employees who have worked for 120 days or more are entitled to severance pay if they are terminated without cause. An employee who has worked for less than 120 days can be terminated without receiving severance pay. For this reason, many employers set probation periods of up to 119 days.

Hours Of Work

The law provides maximum working hours based on the type of work. In general, normal working hours cannot exceed eight hours per day and 48 hours per week – or lesser hours if agreed upon by an employer and an employee. In cases of hazardous work, normal working hours may not exceed seven hours per day and 42 hours per week.

Earnings

Employees may not be paid less than the minimum wage. From 1 January 2013, the minimum wage is THB 300, nationwide. Note that other minimum wage rates are established for certain skilled occupations.

Holidays/Rest Periods

Employees are entitled to at least one rest day per week and one rest hour per day. In addition, they are entitled to a minimum of 13 public holidays per year, one of which must be the National Labor Day. After one year of service, employees are entitled to a minimum of six working days' paid annual leave.

Minimum/Maximum Age

Employees must be 15 years of age or older. For those over age 15 but under age 18, additional restrictions apply, such as with respect to permissible types of work and a requirement to inform the applicable Labor inspector.

There is no maximum age of employment in the private sector. Note, however, that public sector employees are typically subject to maximum age restrictions depending on their positions.

Illness/Disability

An employee is entitled to sick leave for such days as the employee is actually ill, but is only entitled to receive pay for 30 such days per year. When an employee cannot work because of a work-related injury or illness, this is not regarded as sick leave, and is handled separately.

When an employee takes sick leave for three or more days consecutively, the employer can request the employee to produce a medical certificate issued by a first class physician or a government clinic. If the employee cannot produce such a medical certificate, the employee must give an explanation to the employer.

Location Of Work/Mobility

Under the Labor Protection Act, if an employer plans to relocate its place of business such that this would materially impact the employee's life or that of his/her family, the employer must notify the employees at least 30 days before the date of the relocation. Should shorter or no notice be given, the employer is obligated to pay special severance in lieu thereof, equal to 30 days' wages. Following such notice, should an employee wish to terminate the employment, normal severance obligations would apply.

Pension Plans

A compulsory old age pension scheme for private sector employees is administered by the Social Security Office. 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.

The Royal Decree has not yet been issued, and thus the EWF is not yet in existence. Under the Labor Protection Act, employers with ten or more employees would have to be members of the EWF. The EWF is to have the same objectives as a provident fund, i.e. is to provide financial security for employees, should they resign or retire from work, and for their beneficiaries in case they die, and/or in other cases as prescribed by the Employee Welfare Fund Committee.

A provident fund may be jointly set up by the employer and the employees. 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. Provident funds must be managed by a professional manager licensed for this purpose. Upon termination of membership in the fund, employees are to receive their contributions and the employer's contributions which have vested, according to the relevant fund's regulations. The law provides that if an employer has already registered a provident fund and provides welfare for the employees in case of their resignation or death in accordance with the rules and procedures prescribed in Ministerial Regulations, the employer is not required by law to register its employees with the EWF.

Note that other arrangements exist for public sector employees, such as the Government Pension Fund.

Parental Rights (Pregnancy/Maternity/Paternity/Adoption)

A pregnant employee is entitled to a maximum maternity leave of 90 days per pregnancy, including holidays, and is entitled to receive pay for up to 45 of those days. Employers are not allowed to terminate a female employee because of pregnancy. Under the Labor Protection Act, there are no other parental rights.

Compulsory Terms

The law requires employers to provide working conditions that, at the very least, meet the minimum standards set by law, such as paying at least the minimum wage. Employers with ten or more employees must submit their written work rules in the Thai language to the District Labor Office and must post a copy thereof in a prominent location at the place of work. Work rules must cover such matters as working days, regular hours and rest periods; holidays and rules for taking holiday, rules on overtime and holiday work; date and place of wage payment, overtime pay and holiday pay, leave and rules for taking leave; disciplinary measures and punishment; procedures for submission of grievances; and procedures for termination of employment including severance pay and special severance pay.

Employees' records must contain the employee's name and surname; sex; nationality; date of birth or age; present address; date of commencement of employment; position or duties; rate of wages and other benefits as agreed between employee and employer; and date of termination of employment.

Documents relating to the payment of wages, overtime pay, holiday pay and holiday overtime pay must contain at least the particulars of the working day and working hours; work done by employees who receive wages on a piece-rate basis; and rate and amount of wages, overtime pay, holiday pay and holiday overtime pay. The particulars may be contained in one or more separate documents, each of which must be signed by the employee as evidence of payment. Where an employer pays an employee by transfer of money into the deposit account of the employee, evidence of the transfer is deemed as the document relating to such payment.

An employer must keep the employees' records and documents relating to payment of wages, overtime pay, holiday pay, and holiday overtime pay for a minimum of 2 years from the date of termination of employment of each employee or from the date of such payment.

Non-Compulsory Terms

The employer and the employee are free to agree on any other terms in addition to the compulsory provisions, provided that the agreed terms are no less favorable than rights provided by statute. Agreed terms will only be enforced to if they are not contrary to public order or good morals and to the extent such terms are fair and reasonable.





Types Of Agreement

Employment relationships are contractual in nature, whether or not the terms are reduced to writing. Contracts of employment (whether express or implied) may provide for different employment arrangements, such as fixed term, full-time, or part-time. Compulsory terms, as provided in law, are applicable regardless of the type of contract contemplated.

Secrecy/Confidentiality

Thai law sets out provisions for protecting the employer's information, such as those in the Trade Secrets Act and the Penal Code. To prevent future disclosure and ensure protection, employers often include express terms within employment agreements that specify the types of information considered to be trade secrets or otherwise confidential. They may also include restrictive covenants as a means of protecting future confidentiality. In addition, if an employee causes damage to the employer, e.g., by releasing confidential information such that the employer suffers damages, the employer may claim for damages.

Ownership of Inventions/Other Intellectual Property (IP) Rights

In the absence of any contractual terms, there are statutory provisions that determine the ownership of IP rights, under the Copyright Act and the Patent Act. With respect to Copyright, copyright in work created by an author in the course of employment vests in the author, unless otherwise agreed in writing, provided that the employer is entitled to communicate such work to the public in accordance with the purpose of the employment. In a hire of work, copyright in the resulting work shall vest in the in the hirer, unless the creator and the hirer have agreed otherwise. As for patents, in the Patent Act, the right to apply for a patent for an invention made in the execution of an employment contract or a contract for performing certain work shall belong to the employer or the person having commissioned the work, unless otherwise provided in the contract. However, this does not apply where an employee does not exercise any inventive activity, but the employee has made an invention using any means, data, or report that the employee's employment has put at the employee's disposal. Moreover, the Patent Act provides that employers must provide additional remuneration to employees who develop inventions that benefit their employers.

Hiring Non-Nationals

Employers are obliged to ensure that their employees are authorized to work in Thailand. Different requirements apply depending on the nationality/status of the individual concerned. Specific rules and exceptions for non-nationals are provided by the Foreign Employment Act and related regulations and decrees. In most cases, foreign workers must have valid work permits and visas in order to lawfully engage in work.

Hiring Specified Categories Of Individuals

There are restrictions on who can be employed to carry out certain hazardous activities, as well as restrictions on the types of work that vulnerable groups (e.g., children, pregnant women) can be required to undertake. In addition, special requirements apply to the employment of persons under age 18, as mentioned above.



Outsourcing And/Or Sub-Contracting

Employees in subcontracting arrangements can look to any entity along the subcontracting chain for payment of sums to which the employee is entitled under the Labor Protection Act, if the direct employer does not make the required payments. Moreover, an employer who engages a person or an outsourcing company to arrange for outsourced workers to work for the employer is obligated to ensure that such workers who work in the same manner as its direct employees, receive fair rights, benefits, and welfare, without discrimination.

03.

Maintaining The Employment Relationship

Changes To The Contract

An employer may only change the terms of an employment agreement with the employee's consent. Such consent may be express (by the employee agreeing to the change) or implied (by the employee continuing to work for the employer without protest for a reasonable period of time after being made aware of the change).

Any change of terms to which the employee does not consent would constitute a breach of contract.

Change In Ownership Of The Business

When there is a change in ownership of a business by share purchase, the original employer remains intact and each employee continues with the same employer on the same terms and conditions. However, in the case of a purchase of assets, a transfer of employees from the original employer to the new employer would be contemplated. In such a situation, each employee's consent would be required. The new employer would have to accept all rights, duties, and obligations in connection with transferred employees. An employee could refuse to transfer to the new employer. In the case of such a refusal, the employee would continue to be employed by the original employer. If the original employer terminates the employee without cause, the employee would be entitled to severance pay.

Social Security Contributions

Pursuant to the Social Security Act, B.E. 2533 (A.D. 1990), all employers are required to register for and contribute to the Social Security Fund. Both employees and the government are also required to make contributions to the Social Security Fund. Generally, employers and employees each make monthly contributions at a rate of 5% of an employee's wage (up to a maximum of THB 750 per month). If an employer fails to make the required contributions to the Social Security Fund within the specified time, the employer would be required to pay an additional 2% of the outstanding contribution which has not been made, per month of the deficiency.



The Social Security Fund provides seven types of benefits to employees, including sickness or injury not suffered in the course of employment, maternity, disability not suffered in the course of employment, death not occurring in course of employment, child welfare, unemployment, and old age pension.

The Social Security Act does not cover certain employees, including government officials, employees of foreign governments or international organizations, employees working in foreign countries for Thai firms, teachers at private schools, students who work for schools, universities, and hospitals, and other types of employees according to Royal Decree. Contributions paid to the Social Security Fund by employers and employees are tax deductible and the benefits payable are tax exempt.

Accidents At Work

An employee who suffers an injury or illness due to employment is entitled to medical treatment and other compensation; in the case of death, the employee's heirs are entitled to funeral expenses and other compensation.

Under the Workmen's Compensation Fund Act, employers are required to register all their employees with the Workmen's Compensation Fund. In addition, employers are required to contribute to the fund annually (by January 31 of each year) at the rate the Labor Minister sets for the business. Applicable rates depend on the type of business and nature of the work. Contribution rates range between 0.2% and 1% of the total payroll, up to a prescribed maximum. If an employer fails to pay, the employer is required to pay an additional 3% of the outstanding contribution for each month of the delinquency. The fund provides compensation in the event of injury, illness, disappearance, or death, related to work.

The employer is not obliged to pay compensation to employees who intentionally inflict injury upon themselves or others, or who allow another person to inflict injury upon them, or if such employee was injured as a result of the employee's own intoxication beyond limits of self-control.

Discipline And Grievance

Procedures regarding discipline and grievances are to be described in the work rules, which must be submitted to the District Labor Office. In addition, an employee may bring grievances to a Labor Official or a court.

Harassment/Discrimination/Equal pay

The Labor Protection Act requires equal pay for men and women who perform equal work. It also provides that employers must treat male and female employees equally in their employment, unless the nature or conditions of the work does not allow the employer to do so. The law also forbids termination on the grounds of pregnancy. It forbids sexual harassment by management and inspectors.



Compulsory Training Obligations

A business operator with 100 or more employees is required to arrange yearly labor skill training for at least 50% of its employees. If the employer fails to arrange such training, the employer is required to make a contribution to the Labor Skill Development Fund before February of the following year. Currently, the amount of the contribution is 1% of the minimum daily wage for the previous year x 30 days x 12 months x the number of employees who should have undergone training but did not. If the employer fails to make such a contribution per the above guidelines, then the employer is required to make an additional payment of 1.5% of the outstanding contribution per month, until payment is made in full.

Some professions are also subject to specific educational and training requirements.

Offsetting Earnings

It is possible for employers to offset earnings only in certain situations. The employer may only make deductions from employees' wages for: income tax; contributions to a labor union; payment of debts to a savings co-operative or debts which have been incurred for the purpose of the employee welfare for the sole benefit of the employee (but only with the consent of the employee); security deposits or compensation for damages incurred by the employer due to willful act or gross negligence of the employee; and for contributions to provident or similar funds. Some of these deductions are limited to 10 per cent and may not, in the aggregate, exceed one-fifth of the employee's wages, unless the employer has the employee's consent. When documenting consent, it is recommended that the employer should prepare a written document and have the employee sign it.

Payments For Maternity And Disability Leave

A pregnant employee is entitled to 90 days' maternity leave per pregnancy, inclusive of holidays, and is entitled to receive pay for up to 45 of those days.

Generally, employers would handle disability leave in a manner similar to sick leave or as an injury at work (depending on the circumstances), both discussed above. Depending on the specifics of the disability and how it was incurred, payments may be made by the Social Security Fund and/or the Workman's Compensation Fund.

Compulsory Insurance

Please refer to "Social Security Contributions" and "Accidents at work", each above.

Absence For Military Or Public Service Duties

Employees are entitled to military service leave for mobilization exercises for inspection, military training, or testing of combat readiness, in accordance with laws governing military service, with pay for the entire duration of leave, but not exceeding 60 days per year.

The law does not provide a category of leave for public service.



Works Councils Or Trade Unions

Employees working for the same employer or doing the same type of work may establish a trade union for the purpose of protecting the employees' conditions of employment and promoting better relationships between employers and employees and among employees themselves. Trade unions must be registered with the registrar of the Ministry of Labor and may only operate after issuance of a license. Licenses are issued after the trade union has been investigated by the registrar to confirm that the regulations of the union are not contrary to law and public order and that it does not constitute a threat to national security or the economy.

Initially, a trade union must have at least ten members. Supervisory employees with responsibility for recruitment, promotion, sanctions, and termination of employment cannot become members of a trade union established by other types of employees, or in which such other employees are members. Supervisory employees can establish their own trade unions, but only supervisory employees can be members thereof. Trade unions registered under the law can submit demands for better conditions of employment and carry out other activities for the benefit of their members.

Employees' Right To Strike

Employees who intend to strike must submit a demand to strike and can only do so after negotiation or reconciliation has failed. Under no circumstances may the employees strike without providing a written notice to both the Labor Dispute Conciliator and the other party. Such notice must be given at least 24 hours in advance. Even then, the right to strike may still be limited by the Ministry of Labor, if the strike would pose a threat to the economy, national security, or the public, or would be contrary to public order.

Employees On Strike

Employers may not dismiss employees on strike simply due to their union activities. However, termination could take place for other reasons, such as dishonest performance of duties, if applicable.

Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except to the extent their employees act outside the scope of their employment.

04. Firing The Employee

Procedures For Terminating the Agreement

In all cases, the termination of an employment agreement must conform to the terms of the agreement, applicable work rules, and applicable law.

Under the Labor Protection Act, fixed term employment agreements will automatically terminate at the end of the fixed period, without the need to give prior notice.

If an employee is employed under an indefinite employment agreement, the employee is entitled to notice of at least one full payment cycle in advance of the effective date of termination, or payment of wages in lieu thereof. The termination notice must be on the employee's payday or in advance thereof, such that the effective date of termination would be the following payday. An employer can immediately terminate the services of an employee by making a payment of wages in lieu of notice, equal to the number of days by which the notice is deficient.

Following termination, employees may bring claims for unfair/wrongful termination. In such cases, if the labor court is of the opinion that termination was unfair/wrongful, the court may order the employer to reinstate the employee at the employee's wage rate at the time of termination. If the labor court finds that the employer and the employee cannot work together any more, the Labor Court may award monetary damages to be paid by the employer, taking account of the employee's age and tenure, employee hardship, the cause of termination, and the compensation to which the employee might be entitled. Compensation for unfair/wrongful termination is not fixed by statute, but the Labor Court is generally consistent in its calculation of damages. In successful claims, the typical award is equal to one to two months of compensation for the first year of service and one month of compensation for each subsequent year.

Instant Dismissal

An employer may instantly terminate an employee, without notice or severance pay, if the employee dishonestly performs his/her duty or intentionally commits a criminal act against the employer; intentionally causes the employer to suffer losses; performs an act of gross negligence which causes the employer to suffer severe losses; violates the lawful and just work rules or regulations or orders of an employer after having received written warning within one year (for serious situations, a warning is not required); is absent from work without a justifiable reason for three consecutive working days, regardless of whether there is holiday in between; or is imprisoned by a final judgment (if it is an offense committed through negligence or a petty offense, it must be one that caused the employer to suffer damages).

In other cases, if the employer requires the employee to leave his/her job immediately, the employer will be required to pay wages in lieu of the advance notice required.





Employee's Resignation

The law is written to require the employee to give at least one pay period advance notice, prior to resignation, and contracts are sometimes drafted to provide for longer notice periods (up to three months). However, from a practical standpoint, an employee may resign at any time, given the difficulty of proving damages in connection with insufficient notice.

Termination On Notice

In case an employment agreement between an employer and an employee is indefinite, the employer is required to serve a notice of termination to the employee of at least one full payment cycle in advance of the effective date of termination, unless the period for serving such notice is stated to be longer in the employment agreement, or payment of wages in lieu thereof is made. For more information, please also see the third paragraph of item 4 above: "Firing The Employee." There are certain circumstances where employment may be terminated on notice with immediate effect (see "Instant Dismissal," above).

Termination By Reason Of The Employee's Age

As mentioned above, Thai law does not provide a maximum age of employment in the private sector. In the private sector, retirement age depends on the employer's policy. Even if the retirement age and policy are "fair", termination by reason of the employee's age would be considered termination without cause, thereby entitling the employee to the usual severance and other payments, as well as notice requirements, etc.

Automatic Termination In Cases Of Force Majeure

If situations arise that make it impossible for an employment contract to be performed, the parties may be excused from performance. If an agreement provides that the employment shall terminate in a case of force majeure, the employer would still have to fulfill statutory obligations toward the employee, as described herein, such as payment of severance, etc.

Termination By Parties' Agreement

The parties are free to agree to terminate the employment agreement. However, the parties cannot contract out of the minimum requirements set forth under Thai law, such as the employer's obligations with respect to severance, notice of termination, payment for annual vacation from the current year and past years, etc.

Directors Or Other Senior Officers

If a director is an employee, the normal requirements of the Labor Protection Act would apply, such as severance and notice of termination, with respect to the termination of employment of such person. We would offer the same comment with respect to "Senior Officers". In addition, there are specific requirements applicable to removing and appointing directors and the procedures associated therewith, as contained the Civil and Commercial Code, other related laws, and the company's Articles of Association.



Special Rules For Categories Of Employee

There are special requirements applicable to the employment of women, pregnant women, and children, some examples of which are described elsewhere in this document.

Specific Rules For Companies in Financial Difficulties

The Labor Protection Act provides no specific rules for companies facing financial difficulties.

Restricting Future Activities

Generally, non-competition provisions are enforceable under Thai law, so long as they are not contrary to public order and good morals and are not unfair pursuant to the Unfair Contract Terms Act and the Labor Protection Act. In analyzing the fairness of the clause, the court is to take into account the length of time and geographic scope of the restriction; the remaining opportunity and ability of the employee to practice his/her occupation; and the lawful interests of the parties.

Severance Payments

Statutory severance pay ranges from 30 days (1 month) to 300 days (10 months), depending on the length of the employee's service with the employer, as follows:

Length of service	Severance payment
120 days but less than 1 year	30 days at the last wage rate or the last 30 days' wages for the work unit performed
1 year but less than 3 years	90 days at the last wage rate or the last 90 days' wages for the work unit performed
3 years but less than 6 years	180 days at the last wage rate or the last 180 days' wages for the work unit performed
6 years but less than 10 years	240 days at the last wage rate or the last 240 days' wages for the work unit performed
10 or more years	300 days at the last wage rate or the last 300 days' wages for the work unit performed

An employer need not pay severance if an employee has been terminated for cause, as described above. In such cases, the employer should indicate a reason supporting such termination for cause, in the termination notice.

If an employee's employment agreement or applicable work rules and regulations provide better severance than that provided in law, the law will give effect to such superior terms. Moreover, depending on how such terms are written, it is possible that they may provide for the employee to receive statutory severance plus additional termination benefits.



Special Tax Provisions And Severance Payments

Subject to certain conditions, a severance payment to a terminated employee is exempt from tax up to THB 300,000. In addition, for employees who have been employed at least five years, the Revenue Code provides for special tax computation.

Allowances Payable To Employees After Termination

The Labor Protection Act does not require employers to pay any allowances to employees after termination, unless otherwise provided in the employment agreement or applicable work rules.

Time Limits For Claims Following Termination

An employee's claim for wages or other remuneration, including disbursements, or an employer's claim for advances must be issued within two years following termination. The statute of limitations on claims for severance and unfair termination is ten years.

05.

General

Specific Matters Which Are Important Or Unique To This Jurisdiction

The Unfair Contract Terms Act empowers courts to rule on whether particular terms contained in contracts are "unfair" as defined under said Act. We have mentioned the application of this law to specific aspects of employment agreements elsewhere in this chapter. However, we should point out the general applicability of this law, given that employment agreements are typically form contracts. Thus, an employee, as the weaker party, can challenge virtually any terms of an employment agreement by alleging that they are unfair. For this reason, it would be expected that a court would interpret the terms of an employment agreement in favor of the employee and against the employer. It is also important to note that the Labor Protection Act takes a similar approach; if a court finds that an employment agreement, work rules, regulations, and/or orders give an employer improper advantage over an employee, the court would be empowered to order that such shall be applicable only to the extent they are fair and appropriate in the circumstances.

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