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Fixed-Term Employment Contracts in Thailand

Employers often believe that fixed-term employment contracts provide advantages over indefinite-term agreements because of the complexity of terminating workers under Thai law. But in reality, fixed-term contracts are subject to a variety of restrictions under Thai law which can lead to significant, and often unexpected, legal pitfalls for employers. This article highlights some of the key issues to help managers understand the law when entering into fixed-term employment contracts.

Key Features

The Labor Protection Act (LPA) is the primary statute governing fixed-term employment contracts. Under the LPA, a fixed-term employment contract must be in writing when the employment period starts. Fixed-term contracts must also explicitly state that they are “fixed” by stipulating a predetermined period of employment. In other words, the contract must state when the work period starts and when it will end.

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Another important feature of fixed-term contracts is termination. The work period in such agreements cannot exceed two years. In addition, there must be a clear indication that employment will terminate at the end of the period. And importantly, the contract cannot contain a clause allowing either party to extend the period of employment. Otherwise, the contract will not be considered to be a fixed-term employment contract, as decided by the Thai Supreme Court.

Use of Fixed-Term Employment Contracts

Fixed-term employment contracts can only be used for certain types of work, such as:

- ▶ a special project which is not normal for the business or trade of the employer, and where the schedule for commencement and completion of work is fixed;
- ▶ work of a temporary nature which has a fixed schedule for its commencement and completion; or
- ▶ seasonal work where employment is only for a particular season.

In addition, the work must be a type that can be completed within two years, so as to align with the maximum length for fixed-term employment contracts. The employer is required to terminate the contract within the specified fixed period. Any extension will preclude the contract from being considered a fixed-term employment contract.

Severance

An important benefit for managers is that severance does not have to be paid when a fixed-term employment contract is terminated. Of course, the contract must be deemed to be a “fixed-term” contract for the severance exception to apply. If the Labor Court considers that an employment contract does not meet the requirements that categorize fixed-term contracts, the employer will be required to pay severance. As such, employers should take care when drafting and using fixed-term employment contracts to avoid liability with regard to severance and remuneration payments.

Supreme Court Precedents

To evaluate the qualifications for fixed-term employment contracts, it is helpful to look at Supreme Court precedent cases. The Supreme Court has ruled that an employer is obligated to pay severance to an employee in the following cases:

- ▶ Where a supposedly fixed-term contract contains a clause allowing the employer to terminate the contract prior to the designated termination date if the employer has no work to assign to the employee. The Supreme Court ruled that such a contract was not a fixed-term employment contract. (Supreme Court Precedent 888/1984)
- ▶ Where a supposedly fixed-term contract contains a clause entitling either party to terminate the employment contract prior to its termination date. The Supreme Court held that such a contract was not a fixed-term employment contract. (Supreme Court Precedent 5180/1999)
- ▶ Where a supposedly fixed-term contract was for a period of employment longer than two years. (Supreme Court Precedent 2403-2430/2000)
- ▶ Where the employer’s business is in the construction field and the employee has been hired to work as a construction worker. Because the employee was employed in the normal business or trade of the employer, the Supreme Court determined that the employee could not be employed on a fixed-term contract. (Supreme Court Precedent 114/1997)
- ▶ Where a three-month probation contract contains clauses stating that the employer is only obliged to hire the employee permanently if the worker passes probation and granting the employer the right to terminate or extend the probation period at will. The Supreme Court ruled that such a contract was not a fixed-term employment contract. (Supreme Court Precedent 8800/2004) (The LPA was revised in 2008 to state that probationary employment should not be considered as a fixed period.)

Supreme Court precedents are not binding law in Thailand (unlike in common law jurisdictions). However, they have strong influence on lower courts. And while lower courts are not obligated to follow the precedents, they are highly likely to do so.

As a result, employers should carefully consider their employment objectives when using fixed-term employment contracts. A wrong move can result in litigation and costly payouts to workers. ⚖️