

## Termination for Serious Fraud: Tamping Out Smouldering Embers

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Fraud, which is both a civil and criminal wrong, involves a deliberate deception to secure an unfair or unlawful gain. Employees commit fraud of varying degrees for many reasons including financial, peer pressure and patronage obligations. In Thailand, most employee fraud is viewed as minor and goes unpunished even if detected. Serious fraud is another matter.

When an employer uncovers serious acts of fraud, termination often results. But it is important to understand that regardless of the seriousness of the employee's conduct, the employer must still follow the provisions of the Labour Protection Act, the employer's own internal procedures and other laws to reduce the risk of the employee suing the company.

Terminating an employee for fraud involves investigation, termination and follow-up.

### Investigation

An investigation is used to gather facts to prove the employee engaged in fraudulent conduct. From the court's perspective, the most reliable evidence to prove fraud is an unbroken chain of documents showing each step of the fraud. This evidence should be supported by statements of other employees or involved persons.

To conduct a proper investigation without interference from the suspected fraudster, the company may wish to remove him or her by using a suspension, which is authorised under the Labour Protection Act and usable if it appears in the company's work rules.

The employee must be given written notice of the suspension, and the nature of the wrongdoings must be stated. The suspension should not be more than seven days, and the company must pay the employee at least half wages during the period. If the suspension does not result in a termination or other disciplinary action, the employer must pay the unpaid wages with interest. Another alternative is to suspend the employee indefinitely with full pay.

### Termination

If the investigation results in clear and convincing evidence concluding the employee has committed fraud, the next step is termination. The two most important aspects of termination are the notice of termination and payment to the employee upon termination.

The notice of termination should always be in writing and clearly and specifically state the conduct of the employee that provided the basis for termination. Employers should never terminate the employee verbally or accept a verbal resignation from an employee under investigation for fraud.

The second aspect of termination is payment. Termination for serious cause under Section 119 of the Labour Protection Act is often misunderstood by employers to mean they do not have to pay anything to the employee upon termination. In actuality, the employer is only exempted from statutory severance pay and payment in lieu of advance notice. This means the employer may still be required to pay the employee for accrued and unused annual leave or other obligations. Failure to make such payments at termination may result in civil or criminal liability.

Of course, the employer must follow not only the law but also the company's own internal procedures and work rules.

### Follow-up

The final phase of a termination is follow-up. This may involve filing police reports, seeking the return of company property and updating human resource (HR) records. A debriefing of involved staff members and affected employees is also helpful to keep morale up and otherwise bring closure to the situation.

Uncovering fraud can result in snap decisions and terminations, and the employer's natural inclination is to remove the employee from any access to company property to prevent further damage.

The most basic rule for making a decision on termination is that a decision should not be made by any one individual but rather be reviewed by the employee's direct supervisor, department head and HR manager.

The best way to prevent a rash decision being made is to prepare a basic checklist in advance that multiple persons must sign off on:

The employee's full name, biographical information, position, job description, performance, training and prior discipline.

A confirmation of the employee's knowledge of the standard of conduct or policy that was violated.

The assignment of an investigation team to conduct an unbiased investigation including interviewing witnesses.

A confirmation that the employee has had an opportunity to present his or her view.

The treatment of other employees who engaged in similar conduct in the same way.

The specific considerations and grounds for termination.

A list of all internal procedures to be followed.

While no amount of preparation and paperwork can guarantee an employee will not sue the company, employers can significantly reduce this risk by following procedures in a pre-prepared checklist and paying close attention to detail.