

Disciplinary action in Thailand: what employers need to know

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When an employee commits an offence against an employer or violates company work rules, the HR department usually plays a central role in advising management on how to proceed or take disciplinary action. However, sometimes HR may be unaware of, or may overlook, significant points that could affect a claim by the employee after the employer takes disciplinary action. This article will examine some common issues related to disciplinary actions that are often litigated in court.

The Labour Protection Act (LPA) outlines several grounds in Section 119 (1)-(6) allowing an employer to terminate an employee without severance. A terminated employee may feel aggrieved and file a lawsuit for wrongful termination, and the court will always consider the grounds for termination on a case-by-case basis. But if an employer has justifiable grounds, the termination will generally be considered fair.

However, the LPA and other Thai labour laws do not specify any processes governing the disciplinary procedures to be taken before termination. These procedures therefore depend on each company's work rules, policies and special agreements between employers and employees.

For example, a company's work rules may state that an employer must appoint an investigation panel to probe the facts of a case, and may also stipulate a termination penalty when an employee commits a serious offence. In this case, the employer cannot skip the process contained in its work rules and is required to appoint an investigation panel before taking any action.

In addition, if the work rules contain provisions for punishing an employee who commits an offence, the employer cannot take more serious disciplinary action than the penalty stated in the work rules.

If, for example, the work rules list three successive steps for punishing an employee who commits an offence, the employer cannot skip one of the steps and immediately impose the final penalty against the employee.

In this example, a company's work rules may provide the following penalties for employee absenteeism:

First offence: warning letter.

Second offence: second warning letter.

Third offence: termination without severance.

If an employee is absent from work twice, the company can punish the employee using its first and second warning letters. It cannot immediately terminate the employee without severance, even though Section 119 (4) of the LPA states that an employer can terminate an employee who repeatedly violates the employer's work rules, regulations or orders that are legal and fair, where the employer has already given a written warning.

As Thai courts generally consider that if an employer's work rules benefit employees more than the law does, the court will tend to apply the work rules favourably towards the employee (Supreme Court Precedents 5679/1987 and 1159/1988).

If a company and its employees or a labour union have entered into a collective bargaining agreement (CBA) that requires certain procedures before termination of an employee, the company cannot skip those requirements. To illustrate, a CBA may state that if an employee commits a serious offence that carries a penalty of termination without severance, the company must appoint an investigation committee that includes a labour union representative to consider and determine the facts and penalty.

If the company skips this process or fails to appoint an investigation committee with a union representative, and terminates the employee without severance, it would be considered unfair termination (Supreme Court Precedent 404/1987).

Another important consideration is that an employer cannot punish an employee twice for a single offence. For instance, a company's work rules may state four penalties, such as a verbal warning, two successive warning letters and, finally, termination.

The company may take disciplinary action against an employee who commits an offence by issuing a warning letter, but it cannot later impose a second penalty, such as termination, on the employee based on the same offence.

If a company appoints a panel to investigate an offence, the panel should interview all concerned persons, including the employee accused of the offence, in order to give the employee a chance to defend himself or herself.

The investigation panel is also entitled to investigate and interview an employee who is a member of an employee committee under the Labour Relations Act. However, the employer must first request permission from the court before taking disciplinary action against an employee committee member.

Otherwise, the employer or management involved could face criminal charges, which carry penalties of up to one month in jail and/or a fine of up to 1,000 baht.

These examples illustrate how failing to adhere to the law when it comes to disciplinary action can cause an employer to face criminal charges. This is a position that no employer wants to be in.

This article was prepared by Chusert Supasitthumrong, a partner in the Dispute Resolution Department at Tilleke & Gibbins. Please send any comments or questions about the content of this article to Andrew Stoutley at andrew.s@tilleke.com

About the author

Writer: Tilleke & Gibbins