

## Getting Old Gracefully: New retirement regime for Thai private sector employees

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As Thailand gradually transforms into an ageing society, the potential economic and social burden of retiring workers is one issue that is likely to be on the minds of many employees, employers, and policymakers.

New amendments to Thailand's Labour Protection Act have addressed this issue by introducing a retirement regime for Thai private sector employees, placing severance obligations on employers, enhancing protection for employees, and creating a more effective framework for enforcement of labour laws.

The new Labour Protection Act (No. 6), B.E. 2560 (2017) was published in the Government Gazette on August 31, 2017, and came into effect on September 1, 2017, amending the previous Act. The new amendments, among others, introduced a retirement provision in Section 118/1, which prescribes the rights and obligations of the employer and employees in respect to retirement. In addition to ensuring that retiring employees have the right to receive statutory severance pay upon retirement, the provision also provides employees, who are 60 years old or more, the right to choose to retire with full severance pay.

Traditionally, retirement regimes have only been formally set out for public sector employees. For example, the Government Pension Act, B.E. 2494 (1951) stipulates that 60 is the retirement age for civil servants, although extensions are permitted under certain conditions. Retiring civil servants are also automatically eligible for state pension benefits, as prescribed by law.

In contrast, the previous Labour Protection Act, B.E. 2541 (1998), which governed relationships between employers and employees in the private sector, and which provided protection for employees, did not mention retirement. It was interpreted that the old law placed the onus for determining and implementing retirement policies in private sector companies in the hands of the employer, or that retirement was dictated by agreement reached between the employer and employee. Therefore, if retirement policies were not implemented by the employer, employees could potentially work for life, unless and until they voluntarily resigned or were terminated.

Working for life could be beneficial for some employees, but conversely, this arrangement would be disadvantageous for those employees who wished to end their employment at a certain age. Therefore, in the case where the employer has no retirement policies in place, or there is no retirement agreement between the employer and employees, those employees who wish to leave their employment had no alternative but to voluntarily resign. Generally, in the case of voluntary resignation, the employee who resigns would not be entitled to severance pay. Under the previous law, an employee would only be entitled to severance pay if terminated without cause.

Prior to the enactment of the new Labour Protection Act (No.6), B.E. 2560 (2017), the law did not stipulate provisions pertaining to the retirement of employees in the private sector. Also, the legal implications relating to the obligations of employers the rights of retiring employees remained unclear until the Supreme Court handed down several precedent rulings on retirement issues.

### Supreme Court rulings on retirement

Several Supreme Court judgments have treated retirement – whether stipulated in the employers' work rules or in employment agreements – to be termination of employment without cause. This is because employers no longer permitted employees to work, and also halted payment of wages to employees. As a result, the retiring employees were entitled to statutory severance pay. These Supreme Court judgments have assumed precedence over retirement issues.

### New Retirement regime for private sector employees

Section 118/1 of the new Labour Protection Act (No. 6), B.E. 2560 (2017) seems to be a codification of the Supreme Court's judgements and states the following:

*"Retirement, according to the agreement between the employer and the employee, or as pre-determined by the employer, shall be deemed as a termination of employment, in accordance with Section 118, paragraph 2.*

*In cases where the retirement age has not been stipulated, or it has been stipulated so that it exceeds 60 years of age, the employee, who is 60 years old, may express their intention to retire to the employer. Such retirement shall be effective within 30 days from the date of such expression, and the employer shall pay severance to the employee in accordance with Section 118."*

### Section 118/1 can be summarised as follows:

Retirement is deemed to be termination of employment, and the retiring employees are entitled to severance pay under Section 118. If the employer has a retirement policy, or the employer agrees with the employee on retirement and the age of retirement, both parties are required to comply with such policy or agreement. However, the law does not prohibit both parties from agreeing otherwise, such as an extension for retirement, or a renewal of employment.

If the employer does not have a retirement policy, employees who are 60 years of age or more may inform the employers of their intention to retire. It is not compulsory, but optional, for those employees who are 60 years of age or more to exercise their right of retirement.

Similar to no. 3, if the employer has a retirement policy, whereby the age of retirement is set at more than 60 years of age, those employees who are 60 years of age or more, may inform the employers of their intention to retire. It is not compulsory, but optional, for those employees who are 60 years of age or more to exercise this right of retirement.

The intention of the employee to retire will become effective 30 days after the date on which the employee informs their employer.

Under Section 118/1, employers still have the freedom to unilaterally determine and implement their retirement policies, or alternatively, to negotiate and mutually agree on retirement with their employees. Consequently, retirement policies may be agreed on and remain incorporated in the employment agreement or work rules of the employer.

In addition to codifying the court judgments, the new amendments to the retirement regime provide substantial benefits for employees in terms of the right to retirement, and the right to severance pay upon retirement. Significantly, employees are no longer faced with the possibility that they may need to work for life without the right to severance pay, as under the new amendments, they are entitled to conclude their professional lives, with the comfort of knowing that they have the right to severance pay simply by exercising their right to retire under the employers' retirement policies, and in accordance with the law.

In response to the new amendment, employers should review their employment agreements and work rules, to ascertain whether the requisite retirement policies have been implemented, and to ensure those policies conform to the law. Moreover, employers may also need to securely set aside sufficient internal reserve funds in preparation for employee retirement.

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