

Safeguarding Women's Welfare: Legal entitlements of female employees in Thailand

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Women are very well represented in the Thai labour force, and benefit from certain protective measures, under Thai law. It is imperative to ensure that female employees in Thailand are aware of their legal rights, and privileges to enable them to address any issues of concern that may arise in the workplace.

Therefore, employers must also familiarise themselves with Thai labour laws, and ensure that they meet their required legal obligations to female employees. Not only are the laws written in the best interest of those to whom it grants rights, but failing to comply may result in penalties.

A brief summary of several key Thai labour laws is provided below to highlight some of the legal entitlements that female employees have in Thailand.

General Legal Framework

Thailand's Constitution affords guaranteed rights to all genders regardless of sex, race and social standing. Employment-related issues are generally governed by the Labour Protection Act B.E. 2541 of 1998, (the LPA) and the Thai Civil and Commercial Code (the CCC). It is important for employers to be aware of the following special provisions of the LPA which specifically focus on female employment:

LPA provision promoting workplace equality between men and women

Section 15 of the LPA states that, "An employer shall treat male and female employees equally in their employment, unless the nature or conditions of the work do not allow the employer to do so".

Accordingly, there is also a provision under the LPA that protects women from working in ostensibly dangerous and high-risk work environments. Section 38 of the LPA states that, "An employer shall not allow a female employee to perform any of the following work:

Mining or construction which must be performed underground, underwater, in a cave, in a tunnel, or in a passage in a mountain, unless the conditions of work are not hazardous to the employee's health or body;
Working on scaffolding which is 10 metres or more above the ground;
Producing or transporting explosives or inflammable materials, unless the conditions of work are not hazardous to the employee's health or body; and
Other work prescribed by ministerial regulations."

The law also requires female employees to receive equal pay to their male counterparts, and they must also be treated equally in respect of their employment, unless the nature or conditions of the work prevents the employer from fulfilling this requirement.

Working hours for female employees under the LPA

It is generally understood that in cases where female employees are required to work between midnight and dawn (i.e., 6 a.m.), labour inspection officials are empowered to order employers to change the working hours for specific female employees, if they consider that the work may be harmful to the health and safety of these employees. The relevant section of the LPA reads as follows:

"Section 40 – If an employer requires a female employee to work between 12 am to 6 am, and a labour inspection official considers that such work may be harmful to the health and safety of that female employee, the labour inspection official shall submit a report to the Director-General or his designee for consideration and issuance of an order to the employer to change the working time, or reduce the working hours, as deemed appropriate, and the employer shall be required to comply with that order."

Maternity protection

Female employees in Thailand receive protection from termination of employment due to pregnancy. Pregnant women are legally entitled to maternity leave of up to 90 days, inclusive of holidays. However, under the LPA, they are only entitled to receive payment for 45 of those 90 days. Nonetheless, they are entitled to receive maternity benefits under the Social Security Fund, if they are insured and they meet the requirements of the Social Security Act.

Furthermore, pregnant employees who are no longer able to perform their existing duties, either during their pregnancy, or after childbirth, may request that the employer temporarily change their duties, provided they produce a valid medical certificate which has been issued by a doctor, and the employer shall duly consider changing their duties to ensure they are suitable for such employees.

The LPA also states that no pregnant employees can be asked to work between 10 pm and 6 am, perform overtime work, or work on a holiday. However, as an exception, pregnant employees in certain positions (including executives, professional work, administrative work, or work related to finance or accounting) may be asked to work during these hours, provided that doing so does not affect their health, and prior consent is sought from the employees from time to time.

Other measures aimed at protecting pregnant employees include limitations on the type of work that may be carried out by pregnant employees. Under Section 39 of the LPA, it is expressly prohibited for employers to allow pregnant employees to perform the following work:

Work concerning vibrating machinery or engines;
Driving, moving, or travelling on vehicles;
Lifting, carrying, or bearing on the shoulders or head, or pulling or pushing, loads that weigh more than fifteen kilogrammes;
Working on waterborne vessels; and
Other work prescribed by the ministerial regulations.

Penalties

Employers must proceed with caution in order to avoid any contravention of female employee rights under the LPA, as failing to do so may result in imprisonment for a term not exceeding six months, or a fine not exceeding THB 100,000, or both. Furthermore, an employer may face up to one year imprisonment, or a fine not exceeding THB 200,000, or both, if the breach of the LPA causes the employees to sustain an injury to body or mind, or leads to the death of the employee.

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