

## Employers beware:

# The Labour Protection Act gets serious

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Thailand's labour laws have long been known for the strength of protections afforded to employees. Continuing this trend, a slew of new amendments to the Labour Protection Act (LPA), passed on December 13, 2018, will further enhance worker protection, improve working conditions, and impose sanctions on employers who fail to uphold them.

The updates to Thailand's labour law will come into effect 30 days after its publication in the Government Gazette, which is expected to be in early 2019. The key changes are summarised below:

### • New category of statutory severance pay

A new category of entitlement for statutory severance pay has been added for employees who have worked for an uninterrupted period of 20 years or more. Statutory severance pay is currently capped at the equivalent of 300 days' wages for employees who have worked for an uninterrupted period of 10 years or more. However, those who have been employed for 20 years or more at the time of termination will now be entitled to the equivalent of 400 days at their most recent rate of pay—a massive increase of 33%.

### • Increased maternity Leave

Employers must grant pregnant employees 98 days of maternity leave—an increase of eight (8) days from the previous law. This is inclusive of days the employee's scheduled weekly holidays, public holidays, and annual holidays. In addition, maternity leave is now defined to also include leave which is taken for pre-natal examinations before the delivery. The employer must pay up to 45 days' wages during the maternity leave period.

### • Paid necessary business leave

Necessary business leave (that is, leave to carry out necessary business) is recognised under the current Labour Protection Act, and is at the discretion of employers to stipulate the criteria for such leave in its work rules. Nonetheless, the Act is silent on many key details including the number of necessary business leave days an employee is entitled to, and whether the leave will be with or without pay. The new law rectifies this, stating that employers must now grant employees a minimum of three (3) days of paid necessary business leave per year. However, "necessary business" itself remains undefined, leaving scope for further ambiguity. While some circumstances may qualify—notably when an employee's physical attendance somewhere is required by the government—there are others that may be unclear and the interpretation in such cases will remain at the discretion of employers and its policies.

### • Workplace relocation notification

If an employer relocates an employee's current workplace to a new establishment, or to another of its existing work locations, the employer has a duty to post a conspicuous announcement at the current workplace, for a continuous period of at least 30 days, in advance of the relocation. The announcement must clearly state which employees will be relocated, and the scheduled date of the relocation. If an employee thinks that the relocation will significantly affect his or her ordinary way of living, or that of his or her family, and therefore does not wish to relocate to the new place of business, such employee must inform the employer in writing within 30 days of the date of the announcement,

or the date of relocation. In this case, the employee is entitled to severance pay calculated at the normal rate.

### • Consent required for change of employer

Where there is a change of employer, including where an employer changes as a result of a transfer of functions or staff from one juristic person to another, and where a registered merger between the employer and another juristic person results in a new entity, the employer must obtain consent from the employees who will be transferred. The new employer will assume all the rights and responsibilities owed to the transferred employees by the previous employer.

### • 75% wages payable during suspension of business

Where it is necessary for an employer to temporarily suspend business, in part or in whole, for any reason other than force majeure, the employer must pay the employee at least 75 percent of his or her usually daily wages throughout the suspension period. Such payment shall be made at the place of work of the employee. If the payment is to be made elsewhere, or by other means, consent of the employee must be obtained.

### • Interest on statutory payments

If an employer defaults on payments owed to employees for wages in lieu of advance notice, wages during temporary cessation of the employer's operations, or other payments due to an employee under the Labour Protection Act, they must pay interest on the default amount at 15% per annum.

### • Payment in lieu of notice required on date of termination

Under Thai labour law, an employer may terminate an indefinite term employment contract immediately, without notifying the employee at least one payment cycle in advance, by paying wages in lieu of advance notice. The amendment clarifies a previous ambiguity in this requirement, by stating the payment must be paid to the employee on the termination date.

### • Gender equality

Employers must pay wages, overtime payments, payments for working on holidays, and payments for working overtime on holidays, at the same rate for both male and female employees who undertake work of the same nature, quality, and quantity, or work of the same value, at an equal rate.

### • Sanctions

Several penalties for employers that fail to comply with the provisions in the Labour Protection Act have also been amended to extend them to cover the new amendments.

These new amendments range from the procedural, such as notification requirements for changing employment circumstances, to the financially substantial, such as the dramatic increase to severance pay for long-serving staff. However, both categories are designed with employee protection firmly in mind, and the burden to comply is firmly on employers. Failure to comply could result in severe penalties, and it is therefore vital for employers to thoroughly review their employment agreements and work rules to ensure that they comply with the new rules when they come into effect.

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