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GUIDE TO RESTRUCTURING A CROSS-BORDER WORKFORCE

THAILAND

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Reduction in workforce

01. Is there a concept of redundancy - based on a shortage of work or other economic reasons - as a justified reason to dismiss employees in your jurisdiction? If so, how is it defined?

Under Thai law, termination may either be: (i) with cause; or (ii) without cause. Termination due to redundancy will be regarded as termination without cause. In such cases, the employer would be obligated to provide advance notice of termination, statutory severance pay, and other payments due upon termination.

02. In brief, what is the required process for making someone redundant?

Termination due to redundancy is regarded as termination without cause. When an employer terminates an employee without cause, the employer is obligated to:

- give advance notice of termination, or make payment of wages in lieu thereof;
- pay statutory severance;
- pay wages, overtime pay, holiday pay, and holiday overtime pay, through the last day of employment;
- pay wages in respect of unused annual leave from the current year, as well as any unused accrued annual vacation carried forward from past years;
- return the security deposit, if any;
- make all other payments due under the employment agreements and any other applicable terms of employment; and
- issue a certificate of employment.

03. Does this process change where there is a "collective redundancy"? If so, what is the employee number threshold that triggers a collective redundancy?

No. There is no concept of "collective redundancy" under Thai law.

04. Do employers need to consult with unions or employee representatives at any stage of the redundancy process? If there is a requirement to consult, does agreement need to be reached with the union/employee representatives at the end of the consultation?

If the employer has employment contracts or agreements, work rules, or a collective bargaining agreement (CBA) with a labour union or the employee representatives regarding ending the employment relationship, then the employer must abide by the procedures stated in such documents. For example, if the employer has any agreement or CBA stating that prior consultation is required before making an employee redundant, the employer would be obligated to abide by the consultation procedures. An agreement should be reached to facilitate a smooth redundancy process. However, as a general matter, if the agreement cannot be reached and the employee representatives or the union are unsatisfied with the employer's action, they may file a claim with the Labour Relations Committee for unfair labour practice, or the Labour Court, depending on the type and details of the claim.

05. If agreement is not reached, can the restructure be delayed or prevented? If so, by whom?

Yes, the restructuring can be delayed or prevented by the affected employees, who may delay the process by filing a claim with the Labour Relations Committee, labour officer, or Labour Court, depending on the type and details of the claim.

06. What does any required consultation process involve (i.e. when should it commence, how long should it last, what needs to be covered)? If an employer fails to comply with its consultation obligations, what remedies are available?

The consultation process will depend on the terms and conditions agreed in the CBA or any other relevant agreements. If the employer fails to comply with the consultation obligations, the employees may take action against the employer, and may claim for damages or file a claim with the Labour Court.

07. Do employers need to present an economic business rationale as part of the consultation with unions/employee representatives? If so, can this be challenged and how would such a challenge normally be made?

There are no legal requirements for the employer to present an economic business rationale as part of the consultation with the unions or employee representatives. However, as a general matter, the employer should consider presenting the rationale as part of the consultation to show it has justifiable grounds.

08. Is there a requirement or is it best practice to consult employees individually (whether or not the employer is also legally required to collectively consult employees)?

There are no specific requirements to consult with employees individually unless this is specified in the agreements or CBA. However, as a general matter, best practice would be that all employees are informed of the termination and the reasons for it.

09. Are there rules on the selection of individual employees for redundancy?

As a general matter, the employer has the freedom to determine the selection criteria. Nonetheless, to protect itself from unfair termination claims, the employer must be able to prove to the satisfaction of the court that the terminated employees have been selected fairly. The employer must do its utmost to select the employees who will be terminated based on factors that are fair, such as their performance and competence.

10. Are there any specific categories of employees who an employer is prohibited from making redundant?

Yes, an employer must not terminate an employee who is a member of the Employee Committee, unless permission is obtained from the Labour Court.

11. Are there categories of employees with enhanced protection (e.g., union officials, employees on sick leave or maternity/parental leave, etc)?

Yes, an employer must not terminate an employee who is a member of the Employee Committee, unless permission is obtained from the Labour Court.

12. What payments are employees entitled to when made redundant? Do these payments need to be made within a specified period? Are there any other requirements, such as giving contractual notice, payments into a central fund, etc.

Redundant employees are entitled to:

- payment in lieu of notice, if the employer fails to provide the requisite notice period;
- statutory severance pay;
- wages, overtime pay, holiday pay, and holiday overtime pay, through the last day of employment;
- wages in respect of unused annual leave from the current year, as well as any unused accrued annual leave carried forward from past years; and
- all other payments due under the employment agreements and any other applicable terms of employment.

The employer must pay the following within three days of the termination of employment:

- salary or wages;
- overtime pay;
- holiday pay;
- holiday overtime pay; and
- any other money that it is obligated to pay to the employees under the Labour Protection Act (eg, payment for unused annual leave).

Under the law, payment in lieu of notice is due and payable on the effective date of termination. Pursuant to a Supreme Court decision, statutory severance pay is due and payable in a lump sum on the effective date of termination.

13. If employees are entitled to redundancy/severance payments, are there eligibility criteria and how is the payment calculated?

Statutory severance pay ranges from 30 days to 400 days, depending on the length of the employee's service with the employer, as follows:

- 120 days, but less than one year – 30 days;
- one year, but less than three years – 90 days;
- three years, but less than six years – 180 days;
- six years, but less than ten years – 240 days;
- ten years, but less than 20 years – 300 days; and
- 20 years or more – 400 days.

Statutory severance pay is calculated based on the employee's last wage rate with the employer.

14. Do employers need to notify local/regional/national government and/or regulators before making redundancies? If so, by when and what information needs to be provided?

The employer must notify the labour inspector if it terminates an employee by reason of reorganising work units, the production process, distribution, or services, as a result of utilising machinery, a change in machinery, or changes in technology. The employer is required to send a notification regarding the date of termination of employment, reasons for termination, and the names of the affected employees to the labour inspector at least 60 days prior to the date of termination.

15. Is there any obligation on employers to consider alternatives to redundancy, including suitable alternative employment?

It is not a legal requirement per se. However, if the employer can demonstrate that it considered alternatives to redundancy, such as suitable alternative employment, this may help defend its position against a potential unfair termination claim.

16. Do employers need to notify local/regional/national government and/or regulators after making redundancies, e.g. immigration department, labour department, pension authority, inland revenue, social security department? If so, by when and what information needs to be provided?

For a non-Thai employee with a work permit, the employer would have to cancel the employee's work permit with the Department of Employment within 15 days of the employment ending.

After the termination, the employer must submit a notification for the cessation of the employee's employment to the Social Security Office by the end of the 15th day of the month after the termination.

17. If an employee is not satisfied with the decision to make them redundant, do they have any potential claims against the employer? If so, what are they and in what forum should they be brought, e.g. tribunal, arbitration, court? Could a union or employee representative bring a claim on behalf of an employee/employees and if so, what claim/s and where should they be brought?

Yes. Under Thai law, if an employer terminates employees without sufficient and justifiable reason and evidence, the employer may be subject to claims for unfair termination.

Even if the employer makes payment in lieu of notice, pays statutory severance, and makes all payments due upon termination to the employees, the terminated employees could still bring a claim against the employer for unfair termination at the Labour Court.

The statute of limitation for an unfair termination claim is ten years from the effective date of termination.
The union or employee representative can bring claims on behalf of employees who are members of the labour union, and the labour union must comply with its regulations and legal requirements.

Thereafter, the labour union can submit a claim to the Labour Relations Committee, a labour officer, and/or the Labour Court, depending on the type and details of the claim.

18. Is it common to use settlement agreements when making employees redundant?

Yes.

19. In your experience, how long does it normally take to complete an individual or collective redundancy process?

It should take around one to three months.

20. Are there any limitations on operating a business for a period following a redundancy, like a prohibition on hiring or priority for re-hire being given to previous employees?

There are no restrictions per se. However, if the employer was to rehire another employee to replace an employee who has recently been made redundant, this may help a terminated employee pursue an unfair termination claim to prove to the court that their termination was unfair.

21. Is employee consultation or consent required for major transactions (such as business transfer, mergers, acquisitions, disposals or joint ventures)?

Employees' consent is required when there will be a change of employer or transfer of employer (eg, business transfer or asset sale). Employees' consent is not required where there is no change of employer (e.g. share sale).

If the employer has employment contracts or agreements, work rules, or a CBA with a labour union or the employees regarding any such transactions, then the employer must abide by the procedures stated in these documents. For example, if the employer has any agreement or CBA stating that consultation is required prior to the implementation of the transactions, the employer would be obligated to abide by the consultation procedures.

22. What are the remedies that are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

The employees could bring a claim for a breach of contract or a violation of the CBA to the Labour Relations Committee, a labour officer, and/or the Labour Court, depending on the type and details of the claim.

23. Is there any statutory protection of employees on a business transfer? Are employees automatically transferred with the business? Are employees protected against dismissal (before or after the transfer of employment)?

Under Thai law, the employer can transfer employees to a new employer (NewCo) only with the employees' consent. Additionally, the transfer must be on the condition that the NewCo respects the existing rights, wages or salaries, benefits and welfare, and years of service of the transferred employees. In these circumstances, there is no severance to be paid to the transferred employees, as there is no termination of employment, but simply a transfer of employment. The rights and obligations of the employer to the transferred employees will cease, and the NewCo will assume all the rights and obligations of the transferred employees that the original employer had.

24. What is the procedure for a transfer of employment (upon a business transfer or within group companies)?

The employer must inform the employees about the transfer of employment and the circumstances in which the transfer arises. The employer and the NewCo should provide the affected employees with a letter of consent for the transfer of employment. This letter of consent is a tripartite agreement between the employees to be transferred, the employer, and the NewCo. The affected employees' consent to the transfer of employment should be obtained prior to the effective transfer date.

The NewCo must then notify the Social Security Office of its new employees within 30 days of the transfer.

The employer must also notify the Social Security Office of the cessation of the employees' employment by the end of the 15th day of the month after the transfer.

25. Are there any statutory rules on harmonising the transferring employees' terms of employment with the existing employees' terms of employment?

Yes. The transfer must be on the condition that the NewCo respects the transferred employees' existing rights, wages or salaries, benefits and welfare, and years of service. The NewCo can modify the transferred employees' existing rights, salary or wages, benefits, and welfare, only if the transferring employees consent to the modifications.

26. Can an employer reduce the hours, pay and/or benefits of an employee?

Under Thai law, an employer cannot unilaterally change employees' conditions of employment, unless the change is more favourable to the employees, or the employees expressly consent to the change.

As a general matter, conditions of employment include, among others, working conditions, working days, working hours, wages, roles and responsibilities, work location, employment benefits and welfare, termination of employment, and other benefits of the employee concerning employment or work.

Therefore, almost any change to the terms of employment requires the consent of the affected employees. The exception would be when the change to the conditions of employment is unambiguously more beneficial to the employees.

27. Can an employer rely on an express contractual provision to vary an employment term?

If the change to the employment term is unambiguously more beneficial to the employees, yes.

If the change to the employment term is not more beneficial to the employees, no.

As mentioned in question 26, under Thai law, an employer cannot unilaterally change employees' conditions of employment unless the change is more favourable to the employees or the employees expressly consent to the change.

28. Can an employment term be varied by implied conduct?

While implied acceptance (i.e. by not contesting the changes and working according to the changes for a certain period of time) is acceptable, obtaining the employees' explicit and written consent provides greater protection against the possibility of employees later bringing a claim against the employer for breach of conditions of employment.

29. If agreement is required to vary an employment term, what are the company's options if employees refuse to agree to the proposed change?

The company cannot force employees to agree to the proposed change, as agreement and consent must be freely given. One option the company can consider is incentivising the employees to agree to the proposed change, such as by offering a one-time bonus.

30. What are the potential legal consequences if an employer varies an employment term unilaterally?

If the employer was to make a detrimental variation without consent, and the employee does not agree to the change, as a general matter, the employee may file a complaint with the Labour Relations Committee, a labour officer, and/or the Labour Court depending on the type and details of the claim, such as claiming that the employer imposed a unilateral and unfavourable change without obtaining the employee's consent. This may result in an investigation by the authorities and further inquiry into the matter. Ultimately, the labour official, at their discretion, may make a decision on this matter, and may void the change.

In addition, a violation of the CBA arising from the submission of labour demands in accordance with the procedures prescribed under the Labour Relations Act B.E. 2518 (1975), while it remains in force, may subject the employer to imprisonment for up to one month, a fine of up to THB 1,000, or both.

Areas to Watch

Not applicable.