



# Employment & Labour Law

# 2018

**Sixth Edition**

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# Thailand

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## General labour market and litigation trends

Thailand has experienced a period of economic slowdown as a result of the continuing disruption in the world's major economies. The unemployment rate in Thailand is generally low, but it rose to 1.2% in the first quarter of 2017 from 0.97% on a year-over-year basis. In absolute terms, in the first quarter of 2017, 460,000 persons were reported to be unemployed. Private sector investment has seen a slight decline of 0.06% since last year.

In recent years, the manufacturing and services sectors have seen high levels of recruitment. There is a high demand for skilled professionals, particularly in the areas of science, technology, engineering and mathematics (STEM) as the world becomes more digital and increasingly interconnected.

Demographically speaking, Thailand is transitioning into an ageing society. By 2024, one-fifth of the population will be over 60 years old. While studies have indicated that more people continue to be employed well past the age of 60, such employment is typically associated with unfavourable working conditions, insecure income and limited social protection. Furthermore, the employment incomes reported by the elderly are generally much lower than the population at large. These demographic changes are likely to have a significant impact on the country's productivity and socio-economic development.

The presence and management of illegal foreign workers (who are mainly low and unskilled workers from neighbouring countries) continues to pose a challenge for Thailand. The role of migration policies toward foreign workers in Thailand has, therefore, become essential. The Thai Government has issued the Emergency Decree on the Management of Foreign Workers B.E. 2560 (2017) (please see the sub-section entitled "**Management of Foreign Workers**" under section 9 for more information) in order to control the number of foreign workers and to address issues arising from the presence of illegal foreign workers in Thailand. The penalties under the Emergency Decree for certain foreign worker-related offences are now more severe and this may have the effect of reducing the influx of foreign workers, particularly low-skilled and unskilled workers. In the longer term, this could potentially result in a labour shortage in industries reliant on this type of labour. In the months following the issue of the Emergency Decree, numerous employers dismissed illegal foreign workers and a substantial number of foreign workers returned to their country of origin. The Thai Government has also decided to suspend penalties for certain offences under the Emergency Decree until 2018, and this is likely to have been aimed at reducing labour shortage and economic impact on employers.

The number of labour dispute cases increased by almost 60% from 10,000 cases in 2015 to almost 16,000 cases in 2016. Most cases related to disputes on the obligation to pay statutory severance pay, payment *in lieu* of advance notice, claims for reinstatement or damages due

to unfair termination, and working condition employment issues. This dramatic increase indicates that employees nowadays are increasingly aware of their rights and have shown a greater willingness to initiate court proceedings to enforce them. Possibly in response to this, the Thai Labour Court has been increasingly encouraging employers and employees to settle their disputes out of court. Some confirmation of this trend can be found in court statistics, which show that the number of labour cases which were successfully settled (whether in-court or out-of-court) or by the plaintiff's withdrawal of the cases are almost double that of the cases which went to trial. Additionally, as the provisions of the Emergency Decree are fully enforced in the next few years, this may lead to increased litigation as legal foreign workers become more familiar with their rights under Thai laws and resort to litigation to seek protection.

## **Redundancies, business transfers and reorganisations**

### Redundancy/Reorganisation

Generally, Thai employment law allows an employer to terminate employment at its discretion and does not impose specific legal requirements on employers terminating employees as part of a redundancy or reorganisation. Similarly, such termination does not exempt employers from their obligations to pay statutory entitlements (e.g. statutory severance payments under the Labour Protection Act B.E. 2541 (2008), the “LPA”) or contractual entitlements (e.g. payment *in lieu* of notice or for unused annual leave) and due regard must be had to all statutory protection and procedures regarding termination.<sup>1</sup>

The key concern will be for termination to be structured such that it is not considered as being an unfair termination.<sup>2</sup> Generally, an employer will have to establish, to the satisfaction of the Thai Labour Court, that the termination was necessary and that the selection procedure was fair to avoid a finding of unfair termination and a consequent award of damages.

- *Necessary termination*

A termination can be deemed to be “necessary” if it can be shown that such termination was to reduce the labour costs of a loss-making enterprise in financial difficulties and that such termination was necessary to ensure the maintenance and survival of its business in Thailand. A “necessary” termination may also be established if there has been a loss of market share or reduction in orders. Generally, the employer would be required to show that there is no other option to decrease costs or reduce losses in the employer's business in Thailand for the purposes of maintaining the employer's business.

- *Fair selection procedure*

To avoid a finding by the Thai Labour Court that the selection procedures were unfair, employers should implement and adopt certain definite criteria or the same criteria among other employees whose employment would also be terminated, such as years of service, annual evaluation grading, or skills and experience.

In any event, the negotiations between an employer and employees to reach a mutual separation arrangement would be a good solution to avoid the risk of an unfair termination claim subsequently being brought by the employee.

### Business transfer

- *No automatic transfer of employees*

Under Thai law, there is no procedure for an automatic transfer of employees from one employer to a new employer following a business transfer. The transferring employer is not entitled unilaterally to transfer an employee without consent from the employee.

The new employer must accept both the rights and duties of the transferring employer in all respects, and the new employer must continue to provide the employee with the same rights which he/she had against the transferring employer (e.g. the new employer must recognize the employee's years of service with the transferring employer and grant the same benefits).

Where the employee does not consent to the transfer of employment, the transferring employer has the option to continue to employ the employee or terminate employment (with payment of the necessary statutory and contractual compensation).

- *Protection against termination arising from business transfer*

Thai law does not provide specific protection in respect of or specific procedures to deal with a termination of employment that results from the transfer of a business. However, an employee who considers that the termination was made without reasonable grounds or was unfair would be entitled to file a claim against the transferring employer at the Thai Labour Court for damages for unfair termination.<sup>3</sup>

In terminating employment, the transferring employer is required to pay the relevant statutory severance pay and other contractual entitlements to the employee as required by law, and due regard must be had to all statutory protection and procedures regarding termination.<sup>4</sup>

- *Harmonisation of employment terms*

The general rule is that upon transfer of employment, the transferee of the business (i.e., the new employer) must continue to provide the employee with the same rights which the employee had against the existing employer. Any changes to the terms of employment may be negotiated among the employee, the transferring employer and the new employer, and where the new terms and conditions will give fewer benefits to the employee than the employee had previously enjoyed, the employee's consent would be required in order for the new conditions to be effective.

## **Business protection and restrictive covenants**

### Confidentiality

Under Thai law and guidance from Thai Supreme Court judgments, there is generally an implied duty imposed on employees to protect the confidentiality of the employer in respect of the employer's business and know-how.

It is also common for employment agreements to include an express contractual obligation of confidentiality.

Certain statutory obligations may also be applicable, depending on the circumstances:

- Section 323 of the Criminal Code of Thailand protects against the disclosure of any secret, but only if disclosed by a competent official or members of certain professions (namely medical practitioners, pharmacists, druggists, midwives, nursing assistants, priests, advocates, lawyers, auditors, and assistants in any of the aforementioned professions).
- Section 324 of the Criminal Code of Thailand protects against the disclosure or use of secrets relating to industry, discovery or scientific inventions.
- The Trade Secrets Act B.E. 2545 (2002) protects "Trade Secrets" (defined as trade information not yet publicly known or not yet accessible by persons who are normally connected with the information, the commercial values of which derive from its secrecy, and that the controller of the trade secrets has taken appropriate measures to maintain

the secrecy) and potential remedies include damages (both compensatory and punitive), interim injunctions, permanent injunctions and orders for the destruction of infringing materials. In certain circumstances, the disclosure of a Trade Secret can be a criminal offence (e.g. where a Trade Secret was disclosed with malicious intent to cause damage to the business of the controller of the Trade Secret).

### Duties of honesty

Under Thai law and court precedents, there is generally an implied duty imposed on employees to perform their duties honestly.

Although not expressly phrased as a duty, Section 119 of the LPA provides that employees may be dismissed without notice or compensation in certain situations, such as where the employee performs his duties dishonestly or causes serious damage to the employer as a result of his negligence.<sup>5</sup>

### Restrictive covenants

Thai law does not prohibit an employer from restricting an employee's activities during and after termination of employment.

For example, it is possible for an employer to prohibit an employee from working or operating a business that is the same as or in competition with the employer's business. It is also possible to prohibit an employee from soliciting former or existing employees or clients of the employer after termination.

Guidance from the Thai Supreme Court indicates that non-competition and non-solicitation clauses are considered to be reciprocal agreements aiming to protect commercial rights and benefits of the parties (mainly, in this case, the employer who may suffer loss if the employee breaches the restrictive covenant) to the contract, provided that the restriction:

1. must not entirely prohibit or obstruct the employee from making a living; and
2. is enforced on specific restricted businesses and/or for a restricted time period which is considered as being fair.

A restriction can be either geographical (by prohibiting the carrying-out of the restricted business in a certain area) and/or for a specified time, provided that the geographical area and time specified is deemed to be fair.

In any event, the court has the power to reduce the restrictions at its discretion (i.e. the court is not obliged to find an unreasonable restriction wholly unenforceable) if the court takes the view, under the terms of the Unfair Contract Terms Act, B.E. 2540 (1997), that the restriction imposes too much of a burden on the employee.

## **Discrimination protection**

### Protection from discrimination

- *Constitution*

Under the Constitution, discrimination based on nationality, age, gender, language, physical or social status, religion, education and political affiliation is restricted.

- *LPA*

Under the LPA, gender discrimination is specifically prohibited. The LPA requires that an employer 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.

For example, in one case, where an employer set out different retirement ages for

employees, the Supreme Court of Thailand ruled that, in respect of work with the same job description and nature, differentiation of retirement ages based on gender is a violation of the LPA and is not enforceable. However, if the retirement ages are varied based on positions, and not on the basis of gender, such differentiation would generally be permitted.

### Protection from harassment

- *LPA*

The LPA provides that it is prohibited for an employer or a person who is a chief, supervisor or inspector to perform an act of sexual harassment against an employee. The LPA is silent on sexual harassment in other situations.

- *Criminal Code*

Sexual harassment can also be a criminal offence under the Criminal Code of Thailand, provided that all elements of the offence are satisfied. Criminal penalties for sexual offences under the Criminal Code of Thailand vary depending on the severity of the offence.

- *Civil and Commercial Code*

An employee who was sexually harassed could claim compensation for any damage caused by the wrongful act (i.e. unlawful injuring the body and liberty of other persons) under Section 420 of the Civil and Commercial Code of Thailand.

### **Protection against dismissal**

#### Unfair termination

Although an employer may terminate the employment of an employee whose employment term is not specified (either (i) by giving advance notice and paying severance pay under Section 118 of the LPA or (ii) without notice and/or severance pay pursuant to Section 119 of the LPA, as discussed below), the employer must consider whether or not such termination of employment would be considered as being “unfair” under Section 49 of the Act Establishing the Labour Courts and Labour Procedure Act B.E. 2522 (1979) (“**LCLPA**”).

Pursuant to Section 49 of the LCLPA, the Thai Labour Court has the discretion to grant a remedy if it considers that the termination of employment was ‘unfair’. There is no exhaustive definition of the meaning of ‘unfair’ – some examples of circumstances that the Thai Labour Court has considered to amount to unfair termination include:

- Termination without reason.
- Termination without any fault on the part of the employee.
- Termination as disciplinary action, in circumstances where the penalty imposed was not in accordance with the employer’s work rules.
- Termination where the employer cannot produce witnesses or evidence to prove default by the employee.
- Discrimination.

If the Thai Labour Court finds that the termination is unfair, it has a power to order reinstatement of the employee on the same terms and conditions of employment (i.e., at the same salary and position prior to termination). However, if the Thai Labour Court decides that the parties are no longer able to work together, then the Thai Labour Court may order payment of compensation for unfair termination. The amount of compensation ordered is

at the sole discretion of the Thai Labour Court, and in exercising its discretion, the Thai Labour Court takes into consideration the age of the employee, the length of employment, the hardship of the employee resulting from the termination, the reasons for the termination and the compensation that the employee is entitled to receive.

#### Procedural requirements for dismissal

A termination notice is not required to be in writing; an oral notification by the employer or authorised person of the employer is considered as a valid notice of termination. Additionally, there is no requirement to state the reason for termination within the notice.

However, if an employer needs to rely upon one of the grounds under Section 119 of the LPA to terminate employment without paying any statutory severance pay and/or notice under Section 118 of the LPA or to protect an employer from a claim for unfair termination, it is highly recommended that a written notice be issued, which specifies clear and sufficient reasons for termination in the termination notice.

Upon termination of employment, an employer is required to notify the Social Security Office of the termination and in the case of foreign workers, the employer has an additional duty to return the employee's work permit to the Department of Labour Protection and Welfare.

#### Employee's entitlement upon termination of employment

Upon termination of employment, an employee is entitled to receive the following payments:

- Statutory severance pay under Section 118 of the LPA.
- Payment *in lieu* of advance notice (where the employer did not give advance notice, unless the termination was pursuant to Section 119 of the LPA).
- Payment *in lieu* of unused holidays entitled in the year of termination and accumulated unused holidays from the previous year.
- Any entitlements to which the employee is contractually entitled pursuant to the employment agreement.
- Any outstanding salary or other expenses.

#### *Severance payments under Section 118 of the LPA*

Subject to the exceptions below, an employer is required to make payment of statutory severance pay to the employee upon termination. The amount of statutory severance pay to which an employee becomes entitled is calculated according to the employee's length of service, as set out in the following scale:

<b>Years of Service</b>	<b>Severance Pay</b>
120 days but less than 1 year	30 days' of the latest wages
1 year but less than 3 years	90 days' of the latest wages
3 years but less than 6 years	180 days' of the latest wages
6 years but less than 10 years	240 days' of the latest wages
10 years and more	300 days' of the latest wages

#### *Exceptions for Severance pay (Section 118 of the LPA)*

An employer is not required to pay statutory severance pay to an employee in one of the following cases:

- Termination of employment where the employee has been employed for a continuous period of less than 120 days.
- Where the employment is considered to be a fixed-term contract (as defined under the

relevant law and according to Thai Supreme Court guidance) and the termination of employment occurs on the expiry date of the contract.

- Where the termination of employment is on or more of the grounds under Section 119 of the LPA (mentioned in the section below).

#### Special severance pay

Separately, the LPA also provides that an employer is required to make payment of Special Severance Pay to an employee if the termination of employment is made for one of the following reasons.

- *Relocation of the employer's place of business*

Where an employer wishes to relocate its place of business which may affect the ordinary course of living of its employees or their families, the employer is required to notify the employee at least 30 days in advance of the relocation. If the employee does not agree to work at the new location, the employee is entitled to terminate the employment contract within 30 days from the date of the employer's notice or relocation date (as the case may be), and would still be entitled to receive special severance pay of an amount not less than the rate of statutory severance pay under Section 118 of the LPA.

If the employer fails to give advance notice as specified in the preceding paragraph, the employer must also pay special severance pay *in lieu* of the advance notice in an amount equal to 30 days' wages (calculated at the employee's latest wage rate).

- *Replacement of machinery or technology advancement*

If the termination of employment occurs as a result of an improvement in the department, production process, distribution or service arising from the use of machinery or the change in machinery or advancement in technology and results in the reduction of employees, the employer is required to give 60 days' advance notice of termination to the employee and to the Labour Inspection Office.

If the employer fails to give the required 60 days' advance notice, the employer is required to pay 60 days' special severance pay (calculated based on the latest wage rate of the employee) in addition to the statutory severance pay under Section 118 of the LPA.

In addition, where the employee whose employment is terminated has over six years of service with the employer, the employee would be entitled to receive an additional 'special compensation' of 15 days' wages for each year of service, up to a maximum payment of 360 days' wages (once again based on the latest salary rate of, or rate per piece produced by, the employee).

#### Other contractual entitlements

Subject to the terms of the employment contract, work rules or handbook relating to employee benefits announced by the employer, the employer would also be required to make available and pay any benefit or specific arrangement agreed between the employer and the employee in addition to the statutory entitlements mentioned above (for example, compensation under the terms of any undertaking, contractual retirement scheme and employer provident fund contributions).

#### Retirement

Please see the sub-section entitled "**Statutory Retirement**" under Section 9 for more information on the proposed imposition of a statutory retirement age and protection for retiring employees.

## Statutory employment protection rights

### Notice periods

When an employment contract for a fixed-term period has expired, the employment will end without the requirement to give notice, provided that such fixed-term contract does not contain provisions allowing parties to the contract to extend the employment terms from those earlier agreed.

In the case where the employment contract does not specify the period of employment, Thai law considers that such employment contract has no expiry date and either the employer or employee may terminate the employment contract by giving prior notice to the other party. The minimum statutory notice period is at least one actual prospective pay period for the employee concerned, but no more than three months' notice needs to be given (if the actual pay period is more than three months). For the avoidance of doubt, an agreement providing for a notice period in excess of three months is enforceable.

A termination notice is therefore usually issued on or before the agreed or usual salary payment date, to expire or take effect on the next due date for payment of the employee's salary.

In the case where an employer would like the employment to be terminated with immediate effect, the employer is entitled to make payment *in lieu* of advance notice.

Under the LPA, advance notice of termination is not required if the employment is terminated under one of the following grounds in Section 119 of the LPA, as follows:

1. The employee performs his duties dishonestly or intentionally commits a criminal offence against the employer.
2. The employee intentionally causes the employer to suffer losses.
3. The employee commits an act of negligence, which causes the employer to suffer serious losses.
4. The employee violates the employer's work rules, regulations or orders which are legal and fair, and the employer has issued a written warning to the employee (save for a serious violation, in which case the employer would not be required to issue a written warning). (Note that a warning is effective for one year from the date of the violation.)
5. The employee neglects his duties for a consecutive period of three days without a reasonable cause, regardless of whether or not there is a holiday in the intervening period.
6. The employee is subject to imprisonment by a final court judgment.

### Protected classes of employees

The LPA and the Labour Relations Act B.E. 2543 (2000) ("**LRA**") protect certain categories of employees from dismissal. These include:

- A pregnant employee by a reason of pregnancy (Section 43 of the LPA).
- An employee who is a member of an employee's committee, unless permission is obtained from the Thai Labour Court (Section 52 of the LRA).
- Any employees, representatives of employees, committee or sub-committee members of a labour union or labour federation involved in a demand for an agreement relating to conditions of employment or an amendment of such agreement, during the period in which the demand submitted to the employer is being considered. Employment can, however, be terminated in certain exceptional circumstances (e.g., where the employee performs his duties dishonestly or intentionally commits a criminal act against the employer (Section 31 of the LRA)).

## **Worker consultation, trade union and industrial action**

### Worker consultation

Thai employment law has no consultation requirement imposed on an employer when deciding to proceed with a redundancy programme. However, where an employer or employee (including an employee's association and labour union) wishes to establish or amend an agreement on conditions of employment, a written request for negotiations must be submitted by that party. Where the request is submitted by an employee's association or labour union, the agreement will be considered as being binding on the employer and: (i) any employee who participates in the request; (ii) all employees who are members of the labour union (provided that more than two-thirds of the members participated in the request); and (iii) all employees who work in the same function (provided that more than two-thirds of total employees who work in the same function participated in the request).

### Industrial action

Industrial action may take many forms, such as a strike by employees or a lock-out by the employer. Section 34 of the LRA provides that in the case that negotiation on the employment conditions cannot be reached, the party wishing to exercise the right to lock-out or strike must give notice to the Conciliation Officer of the relevant Labour Protection Department and notify the other party at least 24 hours before the commencement of such action.

## **Employee privacy**

### Employees' data protection rights

While the Constitution generally recognizes that individuals enjoy the right of privacy, Thailand does not currently have in force a general personal data protection law. As such, employees do not have specific rights on data protection, except where such data is specifically protected by other laws, such as the Criminal Code of Thailand and the Computer Crimes Act B.E. 2550 (2007) ("Computer Crimes Act").

More generally, where injury arises from the infringement of a right of privacy of an employee amounting to a "wrongful act" within the scope of Section 420 of the Civil and Commercial Code of Thailand, the employee may be entitled to compensation. In particular, if any disclosure or use of personal data of the employee is made without the consent or approval of the employee and there is damage to the employee's liberty, property or right, such conduct could be considered as a "wrongful act", and the owner of the personal data may be entitled to claim for compensation of actual damage incurred.

### Employers' data protection obligations

There is no specific provision regarding the obligations of the employer to protect the personal data of employees, unless it is provided for in the employment contract. Apart from provisions in the employment contract, the employer is also subject to the general provisions of law on certain protected classes of information, for example:

- Section 322 of the Criminal Code of Thailand prohibits breaking open or making away with any document belonging to another person in order to ascertain or disclose its contents in a manner likely to cause injury to any person.
- Section 7 of the Computer Crimes Act prohibits the undue access of computer data, which has specific preventive procedures against access and is not available to such person. Furthermore, Section 8 of the Computer Crimes Act prohibits any undue act

by electronic means in order to intercept another person's computer data while being transmitted through a computer system.

## **Other recent developments in the field of employment and labour law**

### Increased penalties for child labour offences

On 23 January 2017, the LPA was amended by Labour Protection Act (No. 5) B.E. 2560 (2017) to increase penalties for certain offences relating to child labour.

Employing a person under the age of 15 (or such other age as may be prescribed) is now punishable by up to two years' imprisonment and/or a fine of between 400,000 to 800,000 Baht per employee (increased from a one-year imprisonment term and/or a fine of up to 200,000 Baht).

Ordering an employee under the age of 18 to engage in prohibited jobs or work in prohibited locations is now punishable by:

- up to two years' imprisonment and/or a fine of between 400,000 to 800,000 Baht per employee (an increase from six months' imprisonment and/or a fine of up to 100,000 Baht); or
- if the offence causes the employee to suffer physical or mental harm or death, up to four years' imprisonment and/or a fine of between 800,000 to 2,000,000 Baht per employee (increased from a one-year imprisonment term and/or a fine of up to 200,000 Baht).

These amendments came into force on 23 February 2017.

### Statutory retirement

On 1 September 2017, the Labour Protection Act (No.6) B.E. 2560 (2017), which made certain amendments to the LPA ("**LPA Amendments**"), came into force.

The LPA Amendments provide statutory confirmation of the view of the Thai Labour Court that retiring employees are entitled to specified severance pay and other termination payments (i.e. retirement is not considered to be voluntary resignation).

They also provide for a statutory retirement age of 60 (an employer's work rules or an employee's employment agreement may contractually provide for a higher or lower retirement age) and that on reaching such age (notwithstanding any retirement age that may be provided for in the employer's work rules or employment agreement), employees will have the right to retire (with 30 days' notice) and be entitled to be paid severance pay in accordance with the LPA.

The failure to make payment of severance pay to a retired employee will be an offence punishable with a term of imprisonment of not more than six months and/or a fine not exceeding 100,000 Baht.

### Work rules

On 4 April 2017, the National Council for Peace and Order issued Order No. 21/2560 ("**NCPO LPA Order**") pursuant to Section 44 of the 2014 Constitution. The NCPO LPA Order amended the LPA to remove the requirement that a copy of an employer's work rules be submitted to the Director-General of the Department of Labour Protection and Welfare (or his delegate) within seven days of the announcement of such work rules. Further, there is no longer an express provision authorising the Director-General (or his delegate) to order employers to amend work rules that are inconsistent with the law. Employers are still required to issue work rules once they employ 10 or more persons, and to disseminate and conspicuously post such work rules in an accessible manner in the workplace.

## Minimum wage

- *Differential Rate proposals*

As currently drafted, the LPA provides for the constitution of a Wages Committee with the power to determine minimum wage rates, and the Wages Committee is entitled to specify different rates for different types of business, work or occupation, or localities.

The LPA Amendments provide that the Wages Committee will now be permitted to specify different rates for specific classes of employees, in addition to the other factors currently prescribed under the LPA (e.g. different rates can be specified for the differently abled, senior citizens and minors).

- *Changes in Minimum Wage Rates*

From 1 January 2017, the Notification on the Minimum Wage Rate No. 8 (“**Wages Notification 8**”) issued by the Wages Committee specifies increases of between 5 to 10 Baht per day in the daily minimum wage rates in most provinces. Wages Notification 8 did not change the daily wage rate of 300 Baht for the provinces of Chumphon, Trang, Nakhon Si Thammarat, Narathiwat, Pattani, Yala, Ranong and Singburi.

Separately, from 24 April 2017, the Notification on Wage Rates According to Skills Standards No. 6 (“**Skilled Wages Notification 6**”) entitles skilled workers from certain professions as set out in the Skilled Wages Notification No. 6 to higher minimum wages, with the new minimum wages ranging from 370 to 600 Baht per day, depending on the profession and skill level of the worker.

## Management of foreign workers

On 17 June 2017, an Emergency Decree on the Management of Foreign Workers B.E. 2560 (2017) (“**2017 Emergency Decree**”) was issued. The 2017 Emergency Decree took effect on 23 June 2017 and repealed the Emergency Decree on the Sourcing Foreign Workers to Work With Employers in Thailand B.E. 2559 (2016) and the Aliens’ Working Act B.E. 2551 (2008) (collectively, the “**Preceding Legislation**”).

The 2017 Emergency Decree largely adopts the provisions of the Preceding Legislation. Some of the key changes are set out below:

- substantial increases in penalties for employers and foreign workers for certain foreign worker offences under the 2017 Emergency Decree, some of which have been temporarily suspended (as set out in the table below);
- the Minister of Labour is now authorised to issue notifications setting out types of work as being work that is prohibited to be carried out by foreign workers; and
- a new offence of seizing a work permit or identification document of a foreign worker.

### *Increased penalties under the 2017 Emergency Decree*

Employer Offences				
S/N	Offence	Penalty	References	Notes
1	Employing a foreign worker to engage in prohibited work	Fine of 400,000 to 800,000 Baht per foreign worker	S9 read with S102 and S72 read with S122	Suspended until 1 January 2018 – see note below
2	Employing a foreign worker who does not have a valid work permit			
3	Employing a foreign worker who holds a work permit of another employer			

4	Employing a foreign worker to do work and provide services different from those described in his/her work permit	Fine not exceeding 400,000 Baht per foreign worker	S73 read with S123	
5	Failure to notify the Registrar within seven days of the effective termination date of the termination of employment of a foreign worker	Fine not exceeding 100,000 Baht per foreign worker	S74 read with S124	
6	Seizure of a foreign worker's work permit or identification documents	Fine not exceeding 100,000 Baht, up to six months' imprisonment, or both	S131	
7	Where an offence is committed by a juristic person, if the commission of the offence by the juristic person results from the direction or act of any person, or omission to direct or omission to act (which is part of the duty of the director, manager or any person responsible in the operations of such juristic person), such person would also be subject to the penalty provided for such offence	n/a	S132	
<b>Foreign Worker Offences</b>				
8	Working without a valid work permit or engaging in prohibited work	Fine of between 2,000 to 100,000 Baht, up to five years' imprisonment, or both	S8 read with S101	Suspended until 1 January 2018 – see note below
9	Working or providing services different from those described in his work permit	Fine not exceeding 100,000 Baht	S70 read with S121	
10	Working or providing services on an urgent or necessary basis without notifying the Labour Authority	Fine of between 2,000 to 100,000 Baht	S59 read with S119	Suspended until 1 January 2018 – see note below

Note: On 4 July 2017, the National Council for Peace and Order issued Order No. 33/2560 (“**NCPO Foreign Worker Order**”) which provides that four offences under the 2017 Emergency Decree (as set out in Sections 101, 102, 119 and 122 of the 2017 Emergency Decree) would only come into effect on 1 January 2018.

\* \* \*

## Endnotes

1. Please see sections, ‘Protection against dismissal’ and ‘Statutory employment protection rights’ for more information on these statutory protections and procedures.
2. Please see section, ‘Protection against dismissal’ for more information on unfair termination and its consequences under Thai employment law generally.
3. Please see section, ‘Protection against dismissal’ for more information on unfair termination and its consequences under Thai employment law generally.
4. Please see sections, ‘Protection against dismissal’ and ‘Statutory employment protection rights’ for more information on these statutory protection and procedures.
5. Please see section, ‘Statutory employment protection rights’ for more information on termination pursuant to Section 119 of the LPA.

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