



# Rajah & Tann

## The Recovery Brief: *Legal Strategies Post-Crisis for Businesses & Communities*

EMPLOYMENT

22 APRIL 2025

Welcome to **The Recovery Brief: Legal Strategies Post-Crisis for Businesses & Communities** ("**The Recovery Brief**"), a dedicated resource from Rajah & Tann (Thailand) created in response to the 28 March 2025 earthquake that has significantly impacted Thailand and beyond. The Recovery Brief series aims to provide a set of practical Q&A-based responses addressing key issues arising from the 28 March 2025 earthquake.

In the aftermath of natural disasters, navigating the legal landscape can be overwhelming for the business community and individuals alike. In response to numerous questions that we have received about a wide range of topics, we have prepared this Update titled "**Employment Implications Following Thailand's Earthquake: Guidance for Employers**", the second instalment of The Recovery Brief series.

We hope that you find our Update of interest and assistance to you.

# Employment Implications Following Thailand's Earthquake: Guidance for Employers

## Background

The 28 March 2025 earthquake has impacted certain businesses throughout Thailand. Physical infrastructure damage and economic downturns may force employers to consider difficult options such as temporary business suspensions or permanent closures. These decisions carry substantial legal implications under Thai labour law. This article examines the key employment law considerations arising from this natural disaster, specifically focusing on the legal requirements for temporary business suspensions and employee terminations when operations must cease.

## Temporary Business Suspension under Section 75 of the Labor Protection Act

When employers need to temporarily suspend operations due to earthquake damage, they must comply with section 75 of the Labour Protection Act B.E. 2541 (1998) (as amended) ("**LPA**"). This provision requires employers to demonstrate a "necessary cause" (which is not *force majeure*) that renders them unable to operate their business as usual.

The LPA does not explicitly define "necessary cause" in section 75 of the LPA, leaving courts to determine whether specific circumstances qualify as necessary causes on a case-by-case basis. Previous Supreme Court decisions indicate that factors such as customer cancellations or decreased orders can constitute necessary causes for temporary business suspension. To suspend business under section 75 of the LPA, employers must provide written notice to both employees and the Labour Inspector at least three working days before the suspension date. During the suspension period, employers are obligated to pay employees at least 75% of their wages (based on the wage per working day received by the employee before the suspension of business).

## Necessary Cause vs. *Force Majeure*

It is important to note that "necessary cause" under section 75 of the LPA specifically excludes *force majeure* events. According to section 8 of the Thai Civil and Commercial Code ("**CCC**"), *force majeure* is defined as any event, whether it occurs or results in disaster, that is unpreventable even if the affected person has taken reasonable precautions expected of someone in his/her position and circumstances.

The distinction between these concepts is also illustrated in the decision of the Court of Appeal for Specialized Case no. 435/2564, which involved hotel closures during the COVID-19 pandemic. The case can be summarised as follows:

1. The Governor of Phuket issued an order which completely prevented a hotel from operating during the period of 4 April 2020 to 31 May 2020 ("**covered period**"). The Court reasoned that during the

covered period, the closure of the employer's hotel and the ban on inter-provincial travel were events that the employer could not have prevented. This situation entirely hindered the hotel's ability to operate. Therefore, the Court concluded that the employer's temporary business suspension during this period constituted "*force majeure*" under section 8 of the CCC, exempting the employer from the obligation to pay wages to the employees during this period.

2. Once the Governor of Phuket issued an order allowing hotels to reopen and permitting inter-provincial travel starting from 1 June 2020, the employer's continued temporary suspension of business from 1 June 2020, was no longer considered an unpreventable event or *force majeure*. Nevertheless, the employer's temporary business suspension during such period due to the lack of international tourists could still be considered as having "necessary cause" for temporary suspension of business under section 75 of the LPA. Therefore, the employer was obligated to pay the employees 75% of their wages during the suspension period from 1 June 2020, pursuant to section 75 of the LPA.

## Application to Earthquake Circumstances

Whether business disruptions caused by the earthquake qualify as *force majeure* or necessary cause under section 75 of the LPA requires assessment on a case-by-case basis, considering factors such as the business type and the extent of damage. For example:

1. If government orders mandate closure of business premises where on-site work is essential, employers may argue this constitutes *force majeure* due to the unpreventable nature of the closure. In such cases, employers would be relieved from the obligation to pay wages to the employees during the occurrence of *force majeure*.
2. Conversely, if earthquake damage affects the operations of the employer but there is no unpreventable factor which completely prohibits business activities (such as mandatory government closures), *force majeure* may not apply. However, the situation may still fall under "necessary cause", as per section 75 of the LPA, if the earthquake damage prevents the employer from carrying out its normal business operation. Consequently, the employer would be required to pay 75% wages to the affected employees during business suspension.

## Employee Termination Due to Business Cessation

If circumstances require permanent closure of business and employee termination, employers must:

1. Provide proper termination notice to affected employees (or payment in lieu of notice):
  - **Minimum notice period:** at least one actual pay period; and
  - **Maximum required notice:** three months (even if the pay period exceeds this timeframe).
2. Make all required financial payments, such as:
  - Statutory severance pay based on length of service of the terminated employee;
  - Outstanding salary;
  - Compensation for unused holidays; and
  - Any additional benefits specified in employment agreements or work regulations.

## Concluding Words

By understanding the above legal requirements, employers can navigate the difficult employment decisions that they have to make as a result of the earthquake, while maintaining compliance with Thai labour law.

If you have any queries or need clarifications on the above, please contact our team.

The first instalment of The Recovery Series, titled "Nine Critical Construction and Insurance Queries Arising from the Recent Earthquake", can be accessed [here](#).

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