

Work Permits

The Foreign Employment Act (2008) is the principal Act that regulates the employment of foreigners in Thailand. The Act prohibits foreigners from engaging in work in Thailand, whether paid or unpaid, unless a work permit is first granted. It prescribes that all foreigners (except for certain exempted categories) must apply for a work permit in order to work, even for unpaid employment. Regulations issued under the Act list certain occupations that are prohibited to foreigners and impose qualifications that work permit applicants must meet. If it is desired to change the scope of employment or to change the locality or place of work, application for a variation must be made in advance. The Director General is granted regulatory powers and breach of the Act by foreigners or employers is subject to fines or imprisonment.

The terms of the law are very strict and except for foreigners working in a diplomatic or related field, there are, at least in terms of the Act, few exceptions.

Foreign Employment Act 2008

Work permit always required, Under the Act, a work permit is always required when a foreigner undertakes any form of work, whether the work is paid or unpaid.

Exempted employment, The Act does not apply to foreigners who are:

- . Members of a diplomatic or consular mission.
- . Representatives of member countries and officials of the United Nations and specialized institutions.
- . Personal servants coming from foreign countries to work for the above persons.
- . Persons who perform duties or missions under an agreement concluded between the Government of Thailand and foreign governments or international organizations.
- . Persons who perform duties or missions for the benefit of education, culture, art, sports or other activities as may be prescribed by decree.
- . Persons permitted by the Government of Thailand to enter and perform any duty or mission.

Urgent and essential work, A foreigner may engage in any work that is not prohibited to foreigners, only upon the issue of a work permit. This does not apply to a foreigner who has been temporarily permitted to enter Thailand in order to engage in work that is necessary and urgent, for a period not exceeding 15 days, but he may engage in such work only after he has notified the Director-General in the prescribed form.

Employer may submit a work permit application, Any person wishing to employ a foreigner in his business in Thailand may submit an application on behalf of the foreigner to the Director-General. The Director-General may issue the permit only after the entry into Thailand of such foreigner.

Work permit can include conditions, In granting a permit to a foreigner, the Director-General may prescribe any condition therein for the foreigner to comply therewith. In such case, the foreigner is required to give assurances that he will comply with such conditions.

Businesses subject to investment promotion, A foreigner who has been permitted entry to work in Thailand under the Investment Promotion Act may apply for a permit within 30 days from the date

of entry but if such foreigner is already in Thailand the period of 30 days shall begin from the day he is aware that he has been granted permission to work under the law on investment promotion or other laws. Pending the issue of a permit, the applicant is allowed to engage in such work.

Criteria for work permit applicant, A foreigner who may apply for a permit must possess the following qualifications:

- . Has a place of residence in Thailand or has been permitted to enter Thailand temporarily, except as tourist or in transit;
- . Is not disqualified or prohibited under ministerial regulations.

Period of validity of permits, Work permits are generally valid for one year from issue. For foreigners working in promoted businesses, it may be issued for a period of up to two years.

Application for renewal, If the holder of a permit wishes to continue working, he must apply for renewal prior to expiry. In such case, the applicant for renewal may continue working until an application for renewal is refused. Renewal will usually be for one year.

Appeals, Where a work permit is refused not renewed or permission to change the work or place of work is refused, the applicant has a right of appeal. Such appeal must be submitted in writing within 30 days from the date of knowledge of the refusal. Appeals must be considered within 15 days and the Minister must complete his consideration of the appeal within 30 days. The decision of the Minister is final. Right to continue working pending appeal In the case of an appeal against an order refusing the renewal of a permit, the appellant may continue working pending the appeal decision.

Permit must be made available for inspection, A holder of permit must keep the permit on his person or at the place of work during working hours, in order that it may be readily shown to a competent official.

Permit lost or damaged, If a permit is materially damaged or lost the holder of the permit must apply for a substitute within 15 days from the date of knowledge of such damage or loss.

Termination of employment, Where employment terminates, the work permit must be returned to the Registrar of the district where the place of work is situated, within seven days from the date of termination.

Not to engage in unauthorized work or change locality or place of work without prior permission, A holder of a permit may not engage in work, other than that which is specified in the permit, or change the locality or place of work, unless prior permission is obtained from the Registrar.

Employer must notify employment, transfer or termination, Any person who employs a foreigner, transfers a foreigner to work in a locality other than that which is specified in the permit or has a foreigner who resigns from his employment, must notify the Registrar within 15 days from the date of employment, transfer or resignation.

Fines and imprisonment, Fines and imprisonment are imposed for breaches of various of the sections of the Act.

Prohibited occupations, Foreigners may not work in any of the following occupations:

1. Laboring except for laboring in fisheries under (2)
2. Agriculture, animal husbandry forestry, fisheries, except for work requiring special expertise, farm supervision or labour in fisheries especially marines fisheries
3. Bricklaying, carpentry and other construction work
4. Woodcarving
5. Driving vehicles or vehicles that do not use machinery or mechanical devices (excluding piloting aircraft internationally)
6. Shop salesman
7. Auctioneer
8. Supervising auditing, or accountancy except for occasional internal examination
9. Cutting and polishing of precious or semi precious gemstones
10. Hairdresser or beauty salon
11. Weaving cloth by hand
12. Weaving mats or making utensils from reed, rattan, jute, hay or bamboo
13. Making rice paper by hand
14. Making lacquer ware
15. Making Thai musical instruments
16. Making niello ware
17. Silversmith goldsmith or making products from alloys of gold and copper alloy
18. Masonry
19. Making Thai dolls
20. Making mattresses and quilts
21. Making alms bowls
22. Making silk products by hand
23. Making of Buddha images
24. Making knives
25. Making paper or cloth umbrellas
26. Making footwear
27. Making hats
28. Brokerage or agency, except for agency in international trading
29. Engineering in civil engineering concerning design and calculation systemization analysis, planning, testing, construction supervision or consulting services, excluding work requiring specialized techniques.
30. Architecture concerning designing, making drawings, cost estimation or consulting services
31. Making dresses
32. Making pottery
33. Making cigarettes by hand
34. Tourist guide
35. Hawking of goods
36. Thai language typesetting by hand
37. Unwinding and twisting silk by hand
38. Clerical or secretarial work
39. Lawyer

Application for a work permit, The following documents should be submitted with the work permit application

. Passport or document used in lieu of passport, foreigner's personal identification papers or residence papers under the law on immigration;

. Documents certifying educational qualifications or certificates of the employers for whom the applicant used to work, specifying details of characteristics and period of the work that the applicant used to perform:

. The potential employer's certificate of employment of the applicant together with supporting evidence for not employing a person of Thai nationality to work:

. Certificate of a medical practitioner certifying that the applicant is not suffering from diseases prescribed under regulations;

. Certificate of the relevant government agency showing that the business of the potential employer for whom the applicant is going to work has been duly and lawfully registered or licensed to be established and operated and also showing the category of the business: and

. Three photos, half-body, facing front, without hat, size 5 x 6 centimetre, having been taken within the previous six month-s.

A person who is granted a work permit must report in person to collect it.

Application for renewal of a work permit, An application for a work permit renewal must be submitted with documentation as follows:

. Passport or document used in lieu of a passport, foreigners personal identification papers or residence permit;

. Existing work permit;

. Documents certifying the educational qualifications or certificates of the employers for whom the applicant used to work, specifying details of characteristics and period of the work the applicant used to perform, in the case of an application for permission to change work;

. Certificate of employment of the potential employer engaging the applicant to work, in the case of application for permission to change work or place of work, together with supporting evidence giving reasons for not employing a person of Thai nationality to work;

. Certificate of the relevant government agency showing that the business of the potential employer for whom the applicant is going to work has been duly and lawfully registered or licensed to be established and operated and also showing the category of the business, in the case of application for permission to change work or place of work; and

. Three photos, half-body, facing front, without hat, size 5 x 6 centimetre having been taken within a period not exceeding six months before.

A person who is granted permission to change work or locality or place of work must report in person to collect the work permit.

General criteria for approval of a work permit, The criteria for approval of the issue of a work permit were revised in 2002. The following criteria will now be applied. Firstly, an applicant may bring himself within the normal circumstances. If he cannot, then his application can still be considered if he brings himself within the exceptional circumstances:

Normal circumstances, In order to employ a foreigner, a company must satisfy one of the following conditions:

. Sufficient capital, A company needs to have paid-up capital of at least Baht 2 million. The number of foreigners who can be employed depends on the amount of the capital. One foreigner can be employed for every Baht 2 million contributed as paid up capital, but the maximum number of foreigners that can be employed by relying on this condition is 10. The company affidavit, shareholders list, and statement showing the balance of the company's bank account together with the financial statements of the company for the previous year (if applicable) must be submitted.

. Corporate income tax payments made, If a company has been incorporated for at least three years, and has paid annual corporate income tax of at least Baht 5 million during the last three years, a company may employ one foreigner for each Baht 5 million of tax paid. For companies that have been incorporated for less than three years this requirement will not be strictly applied. Copies of annual corporate income tax returns for the previous three years together with receipts for tax paid must be submitted.

. Employment of Thai employees, The applicant company must employ at least 50 Thai employees. One foreigner may be employed for each group of 50 Thai employees, but the maximum number who may be employed on this ground is five foreigners. Documents showing contributions to the Social Security Fund must be submitted.

. Export income, If the applicant company is in the export business, in addition to the above conditions, it must have brought more than the equivalent of Baht 3 million in foreign exchange into Thailand over the previous year. One foreigner may be employed for each Baht 3 million of export earnings, but the maximum number who may be employed on this ground is three foreigners. Bills of lading or any other export shipping documents filed with the Customs Department must be submitted.

Provided the application can be brought within one of the above categories, the work permit may be issued within approximately 10-15 working days.

Exceptional circumstances, If the applicant company fails to satisfy any of the above conditions, the Director General of the Department of Employment has discretion to grant a work permit, provided the foreigner comes into one of the following categories:

He is a representative of an international trade business. A license granted under the Foreign Business Act (1999) must be submitted;

. He is working on a temporary basis as a consultant in investment, administration, technology or internal audit. The agreement to employ the foreigner as a consultant must be submitted;

. He is working in tourism. A tourism business license issued by the Tourism Authority of Thailand must be submitted;

. He is working for an international financial institution certified by the Bank of Thailand;

. He is working for a business operating in the areas of entertainment, religion, social welfare, culture or sport which employs staff on a temporary basis and does not seek to make a profit or to generate income. Non-profit organisation receiving assistance from foreign private organisation will be required to obtain the relevant Thai regulatory approvals for their operations;

. He is working on a project in the public sector or in a state enterprise. A supporting letter issued by the relevant authority in the project specifying the number, names and titles of foreigners must be submitted;

. He is carrying on a business that Uses mostly local raw materials or that which reduces reliance on imported raw materials;

. He is carrying on a business that supports the export of Thai products;

. He is carrying on a business which transfers technology to Thai people;

. He is working in an area where there is a shortage of workers;

. He is residing in Thailand with a residence permit or a foreign identity card; or

. He is a spouse of a Thai national and the marriage is legally registered.

A decision to grant a work permit in any of the above circumstances will be made by the Director General. In such cases, the investigating officer must pass the matter to the Director-General for his consideration.

One Stop Service Center, For those who qualify, a work permit and visa extension may be issued at the One Stop Service Center. This fast track procedure is available to an applicant who complies with one of the following:

.Is employed by a company with BOI promotion.

. Personally invests 2 million in a business, where it is shown that the 2 million Baht was brought into Thailand officially in the applicant's own name.

.Is employed by a company with 30 million Baht in registered capital or who has 30 million Baht in working capital

Applicants in the above categories may qualify for a one or two year work permit, issued within three hours of application. Those who do not qualify for the One Stop Service Center must apply in the traditional way, which will often involve a longer period.

Tax liability, During the period a foreigner is waiting for his work permit to be issued, he is not permitted to work. The Revenue Department, however, will normally assess taxes from the foreigner for the non-working period, since it is permissible to be paid salary whilst waiting for the work permit to be issued.