

Labor Law

Thailand has no consolidated code of labor law. The Civil and Commercial Code contains certain provisions that apply to labor law. The most important single Act in this area is the Labor Protection Act. However, there are several other important acts and regulations, including the Labor Courts Act, the Labor Relations Act, regulations issued under the Factory Act, the Social Security Acts, the Workmen's Compensation Act, the Provident Fund Acts and other laws and regulations.

The Labor Protection Act (Edition #7) 2562 B.C. The Act was passed and came into force on May 5, 2019.

Who is an 'employer'? The Act does not apply to central or local Government entities or state enterprises, and thus civil servants are denied the protection of the Act. Employees in certain other categories, including those in agriculture, fisheries, the conveying or loading of goods for seagoing vessels, home workers and those in other categories as prescribed by regulations, are subject to other forms of employment protection outside the Act. The Act applies to all other employees, as defined.

A business is also deemed to be an employer, if it sub-contracts the provision of work and payment of wages to another entity. Such an 'employer' must also provide the employees (of the contractual employer) with the same protection measures as the employees' contractual employer.

Hours of work Normal working hours must not exceed those imposed by regulations. In any event, they must not exceed 8 hours a day, or 48 hours per week. For work that may endanger the life or health of employees, the normal hours must not exceed seven hours per day and the weekly hours must not exceed 42. An employee is entitled to a break of one hour but not more than two hours, after five hours of work, unless otherwise agreed.

Overtime An employer may not compel an employee to work overtime, and an employee's consent to work overtime is required. Overtime hours must not exceed the number stipulated by the Ministry of Labor. Certain categories of employee are not entitled to overtime pay. Employees who work in administration, management, trade, services, manufacturing and related fields are not entitled to overtime wages if they work more than 8 hours per day, provided that the total hours worked do not exceed 48 hours per week.

Work during holidays An employer cannot compel an employee to work on a holiday; except where: the nature or description of the work requires that it is continuous and a stoppage would damage the work, or the work is of an emergency nature. In such cases, the employer may instruct the employees to work during a holiday to the extent that it is necessary.

Rest periods Employees are entitled to one hour's rest after five hours of work.

Weekly holiday Employees are entitled to one day's holiday per week, and the interval between holidays must not exceed six days.

Traditional holidays An employee is entitled to a minimum of thirteen traditional holidays per year, including National Labour Day.

Annual leave An employee who works continuously for one year is entitled to six days' annual leave. Annual leave can be postponed or accumulated.

Sick leave An employee is entitled to take sick leave for so long as the illness lasts. A medical certificate can be required after three days absence. The employer is obliged to pay wages during sick leave for up to 30 days sick leave per year. Where absence is due to work related sickness or injury or maternity leave, this does not count as absence through illness.

Work stoppages Where a work stoppage occurs affecting the whole or part of a business, an employer is bound to pay 75% of the wages that the employee would have earned, had the stoppage not occurred.

Deductions from wages An employer is not entitled to make any deductions from wages, overtime pay, holiday pay or overtime holiday pay, except on the following grounds;

- (1) for income tax and other deductions required by law
- (2) trade union dues
- (3) payments of debts due to a savings cooperative or debts in the nature of welfare benefits beneficial to the employee, and with his consent
- (4) as security for his work, or as security against loss whilst working, or monies required to make good any losses to the employer caused by the employee's internal acts or gross negligence, with the employee's consent
- (5) agreed contributions to provident or pension funds.

The deductions made under each of (2) (3) (4) and (5) must not exceed 10%, and in aggregate must not exceed 20% of the wages due for that period, without the employee's consent.

Sex discrimination. harassment. maternity rights. child labor The Act imposes various special duties in relation to sex discrimination, harassment, maternity and child labor:

. An employer must treat male and female employees equally in employment, unless the nature or description of the work prevents equal treatment.

. No employee supervisor or inspector may sexually harass female or juvenile employees.

. Women are disqualified from working in mining, in construction work underground, or working on scaffolding higher than 10 meters above the ground, or in the production or transportation of explosive or inflammable materials.

. Women carrying out executive, technical, administrative, financial or accounting work are exempted from the restrictions on overtime work.

. Pregnant employees may not be compelled to work between 10 pm and 6 am, work overtime, work with machinery or vibrating machinery, drive a vehicle or be on a vehicle, carry objects weighing more than 15 kilos, work on boats, or engage in other work, as prescribed by regulations.

. Pregnant employees are entitled to exceed 98 days maternity leave with full pay. They may also request a change of their duties on medical grounds. Pregnancy is not a legitimate reason for dismissal.

. A child under 15 years may not be employed under any circumstances. The employment of children aged 15 to 18 must be reported to the Labor Inspection Officer, and records must be kept of their conditions of employment. They must not work from 10 pm to 6 am without ministerial authority. They may not work in a list of specified hazardous employments.

Reasons for dismissal Where an employer dismisses an employee for a permitted statutory reason, that is a reason that exempts the employer from paying a severance payment, then the reasons for such dismissal must be stated in the dismissal notice. If the reasons are not so stated, then the employer will be estopped from raising them as a defence in any proceedings subsequently brought by the employee.

Notice period No notice need be given where a fixed term contract terminates on its expiry. For a periodical contract, notice must be given on or before the wages payment date, to expire upon the next payment date. Payment may be given in lieu of notice. No notice need be given where dismissal is for permitted cause.

Dismissal for cause The Act sets out the grounds on which an employer may dismiss an employee without notice and without having to make a severance payment:

. Dishonesty in the course of performing duties or intentionally committing criminal offences against the employer

. Intentionally causing the employer to suffer loss

. Acting negligently causing the employer to suffer loss

. Violating the work rules and regulations or violating the fair and lawful rules of the employer, having been warned by the employer in writing save for serious violations, where a warning is not necessary. A written warning is valid for a period of no more than one year from the date the misconduct is committed.

. Being absent from duties for three consecutive days without reasonable justification and with or without holidays in between.

. Being sentenced to imprisonment by a final court judgment except for offences of negligence or petty offences.

Liability for severance pay Where an employee is dismissed without permitted statutory cause as above, then the employee is entitled to severance pay at specified rates, as follows:

Period of Employment	Severance Pay Due
Exceeding 120 days but less than 1 year	30 days' pay
Exceeding 1 year but less than 3 years	90 days' pay

Exceeding 3 years but less than 6 years	180 days' pay
Exceeding 6 years but less than 10 years	240 days' pay
10 years employment but less than 20 years	300 days' pay
20 years employment or more	400 days' pay

No liability for severance pay No severance pay is due:

. Where the employment is for a fixed duration and employment expires at the end of the contract period. The employment must be for a particular project that is not in the normal course of business of the employer.

. Where the work is periodic in nature and with a fixed term or ending on its completion or seasonal work and the employment is performed during that season.

. In both the above cases, the employment was for a fixed period of not more than two years, and agreed to in writing by both parties when the contract was made.

Unfair dismissal Under the Labor Courts Act, if in the opinion of the Labor Court the dismissal was unfair, it has power to order the reinstatement of the employee, at the same wage rate that previously applied. If the court decides that the parties cannot work together, then the court will assess the employee's losses taking into account his age, length of service, hardship at the time of dismissal, the reasons for the dismissal and the compensation that the employee is entitled to receive.

In trying a case of dismissal or other labor case, the Labor Court must take into account the conditions of work, the cost of living, the hardship of the employee, wages rates or the rights or benefits of employees working in the same type of business, the status of the business and general economic and social conditions, in order to be fair to both parties.

Appeals from the judgments of the Labor Court are made direct to the Supreme Court.

Dismissal due to restructuring or modernisation If dismissal occurs due to restructuring of the business or change in the machinery or technology, then 60 days advance notice of dismissal must be given to the employees and to the Labor Inspection Office. If not, then 60 days special compensation is payable to an employee. In addition, dismissed employees with over six years service are entitled to special compensation of 15 days pay for each year of service, subject to a maximum payment of 360 days pay.

Date for payment Any wages, overtime pay, holiday pay and overtime holiday pay due, must be paid to the employee within three days of dismissal.

Payment for unused annual leave Where the employer and employee have agreed to accumulate and postpone annual leave that has accrued in one year to any subsequent years, then the employer must pay money for the accumulated leave to laid off employees, and also pay an amount in respect of pro-rated annual leave for the unused leave not taken at the date of termination.

Welfare provisions The Act also contains a number of provisions relating to the welfare of employees:

Welfare committee All employers with a workforce exceeding 50 employees must establish a Welfare Committee. The Welfare Committee must be composed of at least five elected members, and the employer must meet the Committee at least once every three months, or whenever at least 50% of the Committee or a trade union requests a meeting. The duties of the Committee will be to discuss the provisions or management of the employees' welfare with the employer, and to make proposals on welfare to the Committee on Labor Welfare (a Government organisation).

Work rules All employers with ten or more employees must prepare, display at the workplace, and file at the Ministry of Labor, its Work Rules. These Rules must set out the terms and conditions of employment, including any complaints procedure, and other matters.

Employees' register All employers with more than ten employees must maintain an Employees' Register, containing prescribed information including the employees' names, position held, wages paid, and other information, and such Register must be retained for two years after the termination of employment of any employee.

Provident fund Any business which employs at least ten employees and which does not yet have a registered provident fund or pension or retirement fund, must now join the compulsory provident fund which will be set up by the Ministry of Labor. This fund will provide benefits to employees on their retirement at the end of employment, upon death during employment, or in other cases to be set out in regulations. Employers and employees will be obliged to make equal contributions to the Fund, in accordance with a scale of contributions to be fixed by the Ministry (not exceeding 5% of wages). An employee (or his estate upon death) will be entitled to receive the total of the employer's contributions, the employee's contributions, and the benefits accrued from those contributions.

Priority of debts in insolvency or otherwise Under the general law, a preferential creditor has rights against the property of his debtor in priority to ordinary or deferred creditors. Under the Act, an employee or the Department of Labor is granted the status of a preferential creditor over all the property of the employer, if the debt owed arises from failure to pay wages, overtime pay, holiday pay, overtime holiday pay, severance pay, special compensation, employees' contributions, employers' contributions or surcharge. An employee's status as a creditor will be the same as that of the Revenue Department or relevant Government department for unpaid taxes.

Transfer of employment Where employees are transferred, whether on the sale or transfer of a business or otherwise, the new employer is obliged to accept all the rights and obligations of the former employer, in relation to the transferred employees. The employees' existing rights against the former employer will survive.

Change of location of employer Where there is a change of location of the workplace, which affects the normal life of an employee or his family, then the employer must give 30 days' advance notice of such change of location to its employees, or pay special compensation in lieu of such notice. An employee who does not wish to work at the new location may terminate his contract of employment, and claim special compensation at a rate which is not less than 50% of the statutory severance payment due.

Enforcement To enforce obligations under the Act, an employee may bring a complaint to the Labor Inspection Office, alleging that an employer has not complied with any provision of the Act. A Labour Department Inspector will investigate the complaint, and issue a ruling within 60 days of the complaint being made. Either the employee or the employer may appeal to the Labor Court, if he is dissatisfied with the decision of the Inspector. Alternatively, a employee may issue proceedings in the Labor Court, claiming a severance payment, damages for unfair dismissal, unpaid holiday pay, etc. There is also a scale of fines or imprisonment for violations of certain sections of the Act. Non-compliance with an order made by an Inspector is also an offence.

Workman's compensation Employees who are injured or become ill or die during the normal course of their employment are entitled to medical, disability and/or death benefits in accordance with a compensation schedule. The amount of compensation is usually small when compared to that paid industrialised nations. Employers with twenty or more employees in most parts of the country must pay a percentage of their workers salaries into a compensation fund, which in turn pays benefits in appropriate cases.

Health and safety The Labor Protection Act contains a provision whereby the Ministry of Labor is granted delegated powers to formulate and issue regulations for the health and safety of employees. Many such regulations have been issued, usually applicable to only one particular industry or type of employment.

Social security All employers are now liable to participate in the social security scheme, regardless of the number of employees. Employers, employees and the government itself contribute to a social welfare fund. This fund will pay benefits to workers and their families in cases of death, injury disability or maternity leave.

Labor relations The Labor Relations Act (1975) sets out a comprehensive framework for employees and employers to negotiate labor disputes. The Act also provides for the registration of labor unions, labor federations, employers associations and employers federations. Workers who engage in union activities may not be disciplined or terminated for these activities. Generally speaking, labor unions are not now very active.