Termination of employment legislation digest

Country profile – Thailand

*Updated in 2007 by Angelika Muller, ILO.*

**Sources of regulation**

The Thai legal sources are various laws, announcements, directives and orders of the Ministry of Labour and Social Welfare (prior to 1993, it was a Department of Labour within the Ministry of Interior).

Legal provisions governing termination of contracts of employment are mainly laid down in:

- The Civil and Commercial Code (CCC) (secs. 575-586);
- The Labour Relations Act, BE 2518, 1975 (LRA);
- The Labour Protection Act, 1998 (LPA).

Severance pay is primarily governed by the Notification of the Ministry of Interior Re: Labour Protection, 16 March BE 2515, 1972 (NMI), as most recently amended by the Notification of Ministry of Labour of Social Welfare Re: Labour Protection, BE 2537, 1994 (NML).

The Act on the establishment of Labour Courts and Labour Court Procedure BE 2522, 1979 (ALC), governs the judicial settlement of disputes related to termination of employment.

**Scope of legislation**

The CCC defines a “hire of services” as a contract whereby a person, called the employee, agrees to render services to another person, called the employer, who agrees to pay remuneration for the duration of the services (sec. 575, CCC).

The LRA does not apply to the central administration, the provincial administration, the local administration (including the Bangkok Metropolitan and Pattaya City Administration), State enterprises (sec. 4, LRA).

---

1 All Thai legislation is officially dated “BE”. BE stands for Buddhist Era, an era which began in 543 BC. Thus the year LRA 1975 is the equivalent of BE 2518.
The LPA excludes from its scope public servants, State enterprise employees, agricultural and home-based workers.

The NMI does not apply to central, provincial and local administrations, and to domestic workers (secs. 1 and 2, NMI).

Public servants and State employees are covered by the State Enterprise Labour Relations Act of 2000.

**Contracts of employment**

The CCC distinguishes between contracts concluded for a definite period and indefinite contracts.

Every establishment employing at least 20 employees must have an agreement on conditions of employment, negotiated between the employer or his or her representative and a maximum of seven elected representatives of the employees. This agreement must contain particulars on, *inter alia*, conditions of work or employment and termination of employment (sec. 11, LRA), which will be binding on the employer and the employees who have given their signatures or who have participated in the election of representatives to conduct the negotiations (sec. 19, LRA). An agreement on conditions of employment can only be negotiated following a request to be notified by the employer or the employees to the other party following the procedure set out in sec. 13, LRA.

**Termination of employment**

If upon expiry of a contract concluded for a definite period, the employee continues to render services with the knowledge of the employer, then the parties are presumed to have made a new contract of hire on the same terms. Both employer and employee can, however, terminate the new contract under the same conditions as a contract concluded for an indefinite period (sec. 581, CCC).

**Dismissal**

An employer may dismiss an employee who wilfully disobeys or habitually neglects the lawful commands of his or her employer; absents himself or herself from service; is guilty of gross misconduct; or otherwise acts in a manner incompatible with the due and faithful discharge of his or her duties (sec. 583, CCC).

The NMI introduced specific provisions governing the retrenchment of workers due to the restructuring of the work unit, the production process, or the distribution or provision of services, resulting from the introduction or change of machinery or technology (sec. 46bis and ter, NMI).

The employer cannot, except with the approval of the Labour Court, terminate employment of, or reduce the wages of, or punish a member of an employees’ committee (sec. 52, LRA). Such committees are set up by employees in establishments employing at least 50 employees (sec. 45, LRA). An employer must meet at least once every three months with such a committee to discuss matters such as employees’ welfare, employees’ petitions, pending disputes in the workplace and work rules (sec. 50, LRA).

It is generally unlawful for an employer to terminate the employment or transfer the duties of the employees, their representatives, the committee members, subcommittee members, or members of
the labour union, or committee members or subcommittee members of the labour federation, who are involved in the presentation, negotiation or reconciliation of a request to renegotiate an agreement on conditions of employment. Termination or transfer is, however, lawful if the persons concerned dishonestly perform their duties or wilfully commit a criminal offence against the employer; wilfully cause damage to the employer; neglect work for three consecutive working days without a suitable reason; or violate the rules, regulations or lawful orders of the employer, provided the employer has issued a warning in writing. The written warning is not required in severe cases (sec. 31, LRA). The same protection applies to the same employees while an agreement on conditions of employment or equivalent award is in effect, with one additional category of permitted dismissal (i.e. when the employee commits any act of instigation, encouragement or persuasion to violate the agreement on conditions of employment or equivalent arbitration award) (sec. 123(5), LRA).

The LRA prohibits as an unfair practice the termination of employment by the employer:

- on the ground that the employee is a member of the trade union;
- of certain persons (listed below) carrying out functions of the labour relations machinery for certain acts related to the fulfilment of their duties; and
- on the ground that the employees or the labour union are about to undertake such acts (sec. 121, LRA).

The persons specifically referred to are employees, employees’ representatives, committee members of the labour union or of the labour federation. The specified acts are calling a rally, filing a petition, submitting a claim, filing a lawsuit or negotiating it, appearing as a witness before or producing evidence to competent officials under the law on labour protection, the Registrar, labour dispute conciliators, labour dispute arbitrators, labour relations committee members, or the labour court.

**Notice and prior procedural safeguards**

Both employer and employee can terminate a contract concluded for an indefinite period by giving notice at, or before, any time remuneration is paid. The termination will normally take effect at the following time remuneration is paid, but parties are under no obligation to give more than three months’ notice (sec. 582(1), CCC). If the employer terminates the contract, he or she has the option of paying the employee his or her remuneration up to the expiry of the notice instead of having the employee serve the notice period (sec. 582(2), CCC).

An employee dismissed for misconduct as outlined in the previous section is not entitled to notice or compensation (sec. 585, CCC).

The employee is entitled to a certificate stating the length and nature of his or her services. If the employer has borne the costs of the journey of an employee originating from a place other than the place of work, the employee can also claim the costs of return upon termination of the contract, subject to three conditions:

- the applicable contract does not provide otherwise;
- the contract has not been terminated due to an act or fault of the employee; and
• the employee returns within a reasonable time to the place from where he or she was transported (sec. 586, CCC).

In the event of retrenchment due to restructuring, the employer must, at least 60 days in advance of the date of termination of employment, inform the labour inspection services and the employees of the grounds for termination and the names of employees affected (sec. 46bis, NMI).

**Severance pay**

The employer must pay compensation to the employee when terminating the contract of employment, or when the employer commits any act to prevent the employee from continuing to work or discontinues payment of wages to this end. This compensation is also due when the termination is the result of the employer’s inability to continue business operations. The compensation is not due upon termination of a contract concluded for a definite period (sec. 46, NMI), or when the employee:

• has been dishonest on duty;
• has deliberately committed a criminal offence against the employer;
• has intentionally caused damage to the employer;
• has violated working rules or lawful orders from the employer;
• has been absent for three consecutive working days without justification;
• has caused serious damage to the employer due to negligence; or
• has been sentenced to imprisonment (sec. 47, NMI).

The provisions on compensation apply to fixed-term employment up to a maximum of two years on a temporary project or seasonal work which is not part of the employer’s core business, provided that the employment relationship has been put in writing from the beginning (sec. 46, NMI).

The amount of compensation depends on the length of service. For an uninterrupted period of service between 120 days and one year the compensation for time-rate and piece-rate work alike amounts to the last 30 days’ wages. For a period of service between one and three years, compensation equals the last 90 days’ wages. For a period of service of over three years the amount of compensation corresponds to the last 180 days’ wages. The period of service includes holidays, leave days and days that the employee has been exempted from work for the convenience of the employer. Discontinuity of the employee’s service intended by the employer to deprive the worker of his or her rights is disregarded, regardless of the assignment of the employee and the length of the gap between assignments (sec. 75, NMI).

In the event of retrenchment following restructuring, an employer who does not give notice or gives notice less than 60 days in advance must pay compensation in lieu of notice, equal to the last 60 days’ wages (sec. 46bis, NMI). This compensation substitutes for the normal compensation in lieu of notice provided for in the CCC. If the employee has been employed for at least six years, however, the employer must pay additional compensation equal to 15 days’ wages for every year of employment, with a maximum amount equal to 360 days’ wages. With respect to this additional compensation, a period of work of more than 180 days constitutes a year (sec. 46ter, NMI).
Avenues for redress

An employee whose employment has been terminated following an unfair practice by the employer may file a complaint with the Labour Relations Committee within 60 days of the violation (sec. 124, LRA). This Committee will issue an award and an order within a further 90 days, unless the Minister has decided to extend the period for decision (sec. 125, LRA). The employee can also file a criminal complaint against the employer, but only after the Labour Relations Committee has passed an arbitration award and the employer has failed to comply with the Committee’s order (sec. 127, LRA).

Disputes regarding termination of employment must be brought before a labour court. This can be the Central Labour Court if the place of work is Bangkok Metropolis or its surrounding provinces, a regional or provincial labour court if one has been established in the region or province of the place of work, or a Court of First Instance if the place of work is not situated within the territorial jurisdiction of any labour court (secs. 5, 6, 7 and 9, ALC). Administrative remedies provided under the NMI and LRA must be exhausted, however, before a lawsuit may be filed with a labour court (sec. 8, ALC).

Employers and employees may give power of attorney to the employers’ association or the labour union of which they are members, or to the competent officer empowered to take legal action under the NMI or LRA, to proceed on their behalf (sec. 36, ALC).

If the labour court considers that an employee has been unfairly dismissed, the court may order reinstatement at the level of remuneration applying at the time of dismissal (sec. 49, ALC). If a labour court considers that the cooperation between employer and employee has been disrupted beyond repair, the court may fix an amount of damages as compensation to be paid by the employer by taking into consideration the age of the employee, the length of service, the hardship of the employee at the time of dismissal, the cause of the dismissal and the compensation the employee is entitled to receive (sec. 49, ALC).

Any judgement or order is binding only upon the parties in the proceedings, unless the court prescribes that the judgement be also binding upon other employers and employees having a joint interest in the case (sec. 53, ALC). A judgement or order can be appealed to the Supreme Court within 15 days of its pronouncement, but only on points of law (sec. 54, ALC).

Further information

- ILO NATLEX Thailand

---

2 The Labour Relations Committee is established within the Ministry of Labour and Social Welfare (sec. 8, LRA) to settle particular labour disputes with an award (see Ch. 2, LRA). It is composed of between eight and 14 members, three of whom must be employers’ representatives and three employees’ representatives (sec. 37, LRA).