

**Labor Protection Act, B.E. 2541 (1998)**

Translation

Bhumibhol Adulyadej, Rex.

Given on the 12<sup>th</sup> day of February B.E. 2541 (1998)

Being the 53<sup>rd</sup> year of the Present Reign

His Majesty King Bhumibhol Adulyadej is graciously pleased to proclaim that:

Whereas it is deemed appropriate to revise the law governing labor protection,

Be it, therefore, enacted by His Majesty the King, by and with the advice and consent of the parliament, as follows:

**Section 1**

This Act shall be called the "Labor Protection Act, B.E. 2541 (1998)".

**Section 2**

This Act shall come into force after one hundred and eighty days from the date of its promulgation in the Government Gazette.

**Section 3**

The following shall be repealed:

- (1) Announcement No. 103 of the Revolutionary Party, dated 16 March B.E. 2515 (1972);
- (2) The Act Amending the Announcement No. 103 of the Revolutionary Party, dated March 16, B.E. 2515 (1972) (No. 1), B.E. 2533 (1990).

All laws, rules, and other regulations insofar as they contradict the provisions hereof shall be replaced by this Act.

**Section 4**

This Act shall not apply to:

- (1) The Central, Regional and Local Government Administrations;
- (2) State Enterprises under the law governing "State Enterprise Labor Relations".

Apart from the previous sub-sections, Ministerial Regulations may be issued to any category of employer whatsoever and exclude the provisions of this Act, either in whole or in part.

**Section 5**

In this Act:

"Employer" means a person who employs an employee for monetary remuneration and shall also include:

- (1) a person designated by an employer to act on his behalf;
- (2) where the employer is a juristic entity, the term also includes a person authorized to act on behalf of that juristic entity, and a person designated to act on behalf of the person so authorized of that juristic entity;
- (3) where the operator of a business enters into an employment contract under which payment is to be made by way of a lump sum and the business operator has assigned a person to supervise the work and be responsible for payment of

remuneration to the employees, or has assigned a person to procure staff and the business operated by the assignee is not that of recruitment, and the work to be performed forms a part or is the whole of the production process or an activity within the scope of the responsibility of the business operator, the business operator shall also be deemed to be an employer of that employee.

"Employee" means a person who is employed by an employer for remuneration, regardless of the title that he is given.

"Hirer" means a person who agrees to hire another to do work, wholly or partly, for his own benefit and who pays remuneration in return for the performance of that work.

"Primary contractor" means a person who agrees to perform an assignment, wholly or partly, for the benefit of the hirer.

"Subcontractor" means a person who contracts with a primary contractor to do work, wholly or partly, within the responsibility of the primary contractor for the benefit of the hirer, and also includes any person who contracts with a subcontractor to do work within the responsibility of the subcontractor, regardless of the extent of sub-contractual subordination.

"Employment contract" means a contract, whether made orally or in writing, that specifies expressly or implied that a person, called the employee, agrees to work for another person, called the employer, who agrees to pay remuneration throughout the period of employment.

"Working day" means a day upon which an employee is required to normally work.

"Holiday" means a day fixed and upon which an employee enjoys a weekly or traditional holiday or his annual vacation.

"Leave" means a day upon which an employee takes sick leave, leave for sterilization, necessary leave to attend to personal business, leave for military service, leave for training or developing his knowledge and ability, or maternity leave.

"Basic Pay" means the money which the employer and the employee mutually agree is to be paid in return for work done in accordance with the employment contract during normal working hours on an hourly, daily, weekly, monthly, or other periodic basis or to be paid upon the basis of output of the employee during normal working hours, and also includes money which the employer pays whilst the employee is on holiday or taking other leave and during which time the employee did not work but nevertheless is such in respect of which he is entitled to receive payment under this Act.

"Basic pay for working day" means remuneration, which is paid in respect of work done during normal working hours.

"Minimum rate of basic pay" means the wage rate prescribed by the Remuneration Committee under this Act.

"Base minimum rate of basic pay" means the rate of basic pay prescribed by the Remuneration Committee as a basis for determining minimum basic pay.

"Overtime work" means work agreed to by the employer and the employee under Section 23 and which is performed on a working day or holiday, as the case may be, in excess of or beyond the normal working time or working hours in a day.

"Overtime pay" means the money which an employer pays to an employee in return for overtime work performed on a working day.

"Holiday pay" means the money, which an employer pays to an employee in return for work performed on a holiday.

"Holiday overtime pay" means the money that an employer pays to an employee in return for overtime work on a holiday.

"Severance pay" means the money, which an employer pays to an employee upon the termination of employment, in addition to other monies, which the employer agrees to pay the employee.

"Special severance pay" means the money, which an employer pays to an employee upon the termination of an employment contract due to special circumstances as specified in this Act.

"Employee contribution" means the money, which an employee pays into an Employee Welfare Fund.

"Employer contribution" means the money, which an employer pays into an Employee Welfare Fund and which is supplementary to the monies paid in by the employee.

"Labor inspector" means a person(s) appointed by the Minister for the purposes of the execution of this Act.

"Director-General" means the Director-General of the Department of Labor Protection and Welfare.

"Minister" means the Minister in charge and control of this Act.

## **Section 6**

The Minister of Labor and Social Welfare shall be in charge of enforcement of this Act and shall have the power to appoint labor inspectors and issue Ministerial Regulations and notifications for the purposes of the implementation of this Act.

Upon the appointment of a labor inspector, the scope of his powers, duties and limitations thereon for the purpose of carrying out his duties may also be prescribed.

Ministerial Regulations and notifications shall come into force upon their publication in the Government Gazette.

## **Chapter 1 General Provisions**

### **Section 7**

Any claim or acquisition of rights or benefits under this Act shall not limit the rights or benefits of an employee under any other law.

### **Section 8**

The Minister shall have power to appoint competent officials, who shall at least possess a bachelor's degree in law, to file or defend a labor lawsuit on behalf of an employee or a statutory heir of a deceased employee, and upon the notification of the Ministry of Labor and Social Welfare to the Court, to proceed therewith until final judgment is obtained.

### **Section 9**

When an employer fails to return guarantee money pursuant to Section 10 Paragraph 2 or does not pay basic pay, overtime, holiday and holiday overtime pay within the time specified by Section 70; or severance pay pursuant to Section 118; special severance pay pursuant to Section 120, Section 121 and Section 122, the employer shall pay the employee interest during the period of default at the rate of fifteen percent per annum.

Where an employer willfully refuses to return or pay the monies specified in the previous paragraph without reasonable cause, at the expiration of seven days from the due date, he shall be liable to pay the employee an additional amount equal to 15 percent of the amount payable for every seven day period.

Where the employer is prepared to return or pay the monies referred to in Paragraphs 1 and 2 and has delivered the monies to the Director-General or his designate for the

purpose of making payment to the employee, the employer will not be liable for payment of the interest or additional money as from the date of delivery of the monies.

#### **Section 10**

Subject to Section 51 Paragraph 2, an employer is prohibited from demanding of or receiving from an employee a performance guarantee or guarantee money in respect of any damage that may be occasioned in the performance of his work, except where the nature or type of work requires that the employee be responsible for money or property belonging to the employer and which may cause the employer to suffer loss. In this regard, the nature or type of work in respect of which a performance guarantee may be demanded or received from an employee as well as the amount of money and means of custody thereof, shall accord with regulations and procedures prescribed by the Minister.

Where an employer demands or receives guarantee money or enters into a guarantee agreement with an employee in respect of compensation for any damage that may be caused by the employee, upon termination of employment by the employer, or resignation of the employee, or expiration of the guarantee agreement, the employer shall return the guarantee money with interest, if any, to the employee within seven days from the date of termination of employment by the employer, or the date of resignation of the employee, or the expiration date of the guarantee agreement, as the case may be.

#### **Section 11**

Debts arising from non-payment of basic pay, overtime pay, holiday overtime pay, severance pay, special severance pay, employee and employer contributions, or additional payments to the employee or the Department of Labor Protection and Welfare, as the case may be, shall rank in preference to all other assets of an employer who is unable to pay his debts, in the same manner and to the same extent as taxes and duties under the Civil and Commercial Code.

#### **Section 12**

Where an employer is a subcontractor, all superior subcontractors, if any, and the primary contractor shall be jointly liable with the subcontractor who is the employer for the purposes of payment of basic pay, overtime pay, holiday pay, holiday overtime pay, severance pay, special severance pay, employee and employer contributions, or additional payments.

The primary contractor or the subcontractors referred to in the previous paragraph shall have a right of recourse against the subcontractor who is the actual employer for the purposes of refund of payments already made pursuant to the previous paragraph.

#### **Section 13**

Where there has been a change of employer due to a transfer, receipt of an inheritance or any other means, or where the employer is a juristic entity and there is a change of registration, transfer or merger with another juristic entity, employees shall continue to have all the rights which they had against the previous employer, and the new employer shall assume the rights and duties in connection with those employees in all respects.

#### **Section 14**

Unless otherwise provided for by this Act, an employer, with respect to its employee, shall abide by the rights and duties provided for by the Civil and Commercial Code.

#### **Section 15**

An employer shall treat male and female employees equally in their employment, except where the nature or conditions of the work does or do not allow the employer to so do.

#### **Section 16**

It is forbidden for an employer or a person who is in overall charge of staff, a supervisor, or an inspector to sexually harass employees who are women or children.

### **Section 17**

An employment contract shall expire when the specified period in the employment contract expires without any requirement for advance notice.

Where no specific term is set out in the employment contract, the employer or the employee may terminate the employment contract by giving advance notice thereof at or before any time of payment, to take effect as of the following time of payment. However, not more than three months' advance notice need be given.

In the event that an employer gives a notice of termination of the contract of employment, if the employer does not specify a reason therefore in the notice of termination, the employer is thereafter stopped from relying on that reason under Section 119.

In terminating an employment contract under Paragraph 2, an employer may pay basic pay in lieu of the requisite notice and dismiss the employee immediately, and it shall be deemed that such payment of basic pay to the employee under this paragraph is payment to the employee of remuneration in accordance with Section 582 of the Civil and Commercial Code.

Advance notice under this Section shall not apply to a termination of employment pursuant to either Section 119 of this Act or Section 583 of the Civil and Commercial Code.

### **Section 18**

Where this Act requires an employer to notify a labor inspector of any matter, the employer shall give such notification in person, by post or by facsimile, as the case may be, at a place specified by the Director-General.

### **Section 19**

In calculating the period of employment of an employee for the purposes of this Act, holidays, days when the employee is on leave, days upon which the employer has released the employee from work in the interest of the employee, and days upon which the employer has ordered the employee not to work in the interest of the employer, shall also be included within the period of employment of the employee.

### **Section 20**

Where an employee has not worked for a continuous period because the employer has the intention of depriving the employee of his rights under this Act, regardless of whether the employer has assigned the employee to any particular position and regardless of the length of the periods between employment, all periods of employment shall be added together so that the employee shall not be deprived of his rights.

### **Section 21**

Where this Act requires an employer to do any act, which involves expenses, the employer shall pay the expenses incurred in the performance of that act.

### **Section 22**

Provisions different from those set out herein and which concern labor protection may be imposed by Ministerial Regulations with regard to agricultural work, marine fishing, the loading or unloading of goods on and from maritime vessels, work to be performed at home, transportation and such other work as is prescribed by Royal Decree.

## **Chapter 2**

### **Employment of Labor in General**

### **Section 23**

An employer shall inform an employee of his normal working hours by specifying the starting and finishing times for each working day. The working day shall not exceed the

number of working hours prescribed for each category of work as laid down by Ministerial Regulations, provided that the number of working hours in one day shall not exceed eight and the total number of working hours in one week shall not exceed 48 hours, except where the work may be harmful to the health or safety of the employee as prescribed by Ministerial Regulations in which case the normal number of working hours in one day shall not exceed seven and the total number of working hours in one week shall not exceed 42 hours.

When the employer cannot specify the starting and finishing time for a working day due to the nature or type of work, the employer and the employee shall agree to fix the number of working hours for each day so as not to exceed eight hours, and the total number of working hours in one week so as not to exceed 48 hours.

#### **Section 24**

An employer is prohibited from requiring an employee to work overtime on a normal working day, except where he has received the prior consent of the employee.

Where the nature or type of work necessitates continuous performance failing which damage would be caused or where the work is of an urgent nature or other work as is prescribed by Ministerial Regulations, the employer may require an employee to work overtime as necessary.

#### **Section 25**

An employer is prohibited from requiring an employee to work on a holiday, except where the nature or type of work necessitates continuous performance failing which damage would be caused or where the work is of an urgent nature, then the employer may require an employee to work on a holiday as necessary.

An employer may require an employee to work on holidays if his business is that of a hotel, theater, transport, restaurant, cafe, club, society, medical establishment, or such other business as is prescribed by Ministerial Regulations.

In the interests of production, distribution or the provision of a service an employer may require an employee to work on a holiday as may be necessary in addition to those hours described in Paragraphs 1 and 2, with the prior consent of the employee.

#### **Section 26**

Overtime referred to in Section 24 Paragraph 1 and holiday working hours referred to in Section 25 Paragraphs 2 and 3 shall not, in total, exceed the limits prescribed by Ministerial Regulations.

#### **Section 27**

During a working day an employer shall allow an employee a rest period of at least one hour once the employee has worked on that day for five consecutive hours. The employer and employee may agree in advance to there being a rest period of less than one hour whilst the total rest period for the day shall not be less than one hour.

Where an employer and employee agree that a rest period referred to in the previous paragraph is to be otherwise, that agreement shall be effective only if it is beneficial to the employee.

A rest period during working hours shall not be counted as working time except where the accumulated rest periods in one day exceed two hours in which case any excess over two hours shall be counted as normal working hours.

Where overtime work lasts for not less than two hours beyond normal working hours, an employer shall let an employee have a rest period of not less than 20 minutes before the employee starts to work overtime.

The provisions of Paragraphs 1 and 4 shall apply neither to work which is of a continuous nature or type and which the employee consents to perform nor to emergency work.

### **Section 28**

An employer shall let an employee have at least one day off per week as a weekly holiday and the interval between each weekly holiday shall be no longer than six days. An employer and employee may agree in advance to fix which day shall be the weekly holiday.

As to hotel, transport and forestry work or work performed in isolated areas or other work prescribed by Ministerial Regulations, an employer and employee may agree in advance that weekly holidays be accumulated and be taken at a later time, but nevertheless during the period of four consecutive weeks when the entitlement to leave accumulated.

### **Section 29**

An employer shall inform an employee in advance of at least 13 annual traditional holidays as prescribed by the Minister, which shall include National Labor Day.

An employer shall consider fixing the traditional holidays in accordance with annual government, religious or local customary holidays.

Where a traditional holiday falls on a weekly holiday, the employee shall be granted an additional holiday on the following working day.

Where an employer does not allow an employee to take his traditional holiday because of the nature or type of work performed by the employee or as prescribed by Ministerial Regulations, the employer shall agree with the employee that another day be taken as a holiday in substitution for the traditional holiday, or the employer may pay holiday pay instead.

### **Section 30**

An employee who has worked continuously for one full year shall be entitled to an annual holiday of not less than six working days which shall be fixed in advance by the employer or set out in an agreement made between the employer and the employee.

In subsequent years, the employer may fix the annual vacation at more than six working days for an employee.

An employer and employee may agree in advance that the annual vacation be cumulative and postponed and taken together with that of the following year.

For an employee who has worked for less than one year, the employer may grant the employee an annual vacation on a pro-rata basis.

### **Section 31**

An employer is prohibited from requiring an employee to work overtime or work on holidays where the work may be harmful to the health or safety of the employee as provided for in Section 23 Paragraph 1.

### **Section 32**

An employee is entitled to sick leave on those days that he is actually ill. If sick leave is taken for three or more working days, the employer may require that the employee acquire a medical certificate from a first class medical practitioner or from a government clinic. If the employee fails to acquire a medical certificate from a first class medical practitioner or from a government clinic, the employee shall provide the employer with an explanation.

Where a physician has been provided by the employer, the physician shall issue the medical certificate, except where the employee is unable to be examined by that physician.

Days upon which an employee is unable to work owing to work related injury or illness or maternity leave as provided for in Section 41 shall not be deemed sick leave for the purposes of this Section.

### **Section 33**

An employee is entitled to take leave for the purposes of sterilization and shall have the right to take leave as a result of the sterilization for such time as a first class medical practitioner shall prescribe and in respect of which he issues a certificate.

### **Section 34**

An employee is entitled to take leave to attend to his personal business as necessary in accordance with work regulations.

### **Section 35**

An employee is entitled to take leave for military service when the government makes a call for personnel inspection, for military training, or for testing of combat readiness, in accordance with the laws governing military service.

### **Section 36**

An employee is entitled to take leave for training or development of his knowledge and skills in accordance with the rules and procedures prescribed by Ministerial Regulations.

### **Section 37**

An employer is prohibited from requiring an employee to lift, carry or bear on his head or shoulders, or pull or push loads that exceed the weights prescribed by Ministerial Regulations.

## **Chapter 3**

### **Employment of Female Labor**

### **Section 38**

An employer is prohibited from requiring a female employee to perform any of the following work:

- (1) Mining or construction work which must be performed underground, underwater, in a cavern, in a tunnel or in a crater of a mountain, except where the conditions of work are not hazardous to the employee's health or body;
- (2) Work on scaffolding which is 10 meters or more above the ground;
- (3) Production or transportation of explosives or inflammable materials;
- (4) Such other work as is prescribed by Ministerial Regulations.

### **Section 39**

An employer is prohibited from causing a pregnant female employee to work between 22:00 hours and 06:00 hours, or to work overtime, work on holidays, or perform any of the following:

- (1) Work on plant or equipment that vibrates;
- (2) Operate or go along with a mechanically propelled vehicle;
- (3) Lift, carry or bear on her head or shoulders, or pull or push loads that weigh more than 15 kilograms;
- (4) Work on water-going vessels;
- (5) Such other work as is prescribed by Ministerial Regulations.

### **Section 40**

Where an employer employs a female employee to work between 24:00 hours and 06:00 hours, and a labor inspector considers that the employment may be harmful to the health



and safety of the female employee, the labor inspector shall submit a report to the Director-General or his designate for consideration and the issuance of a direction to the employer to change or reduce the working hours as deemed appropriate, and the employer shall be required to comply with this direction.

#### **Section 41**

A pregnant female employee is entitled to maternity leave of not more than 90 days for each pregnancy.

The days of maternity leave referred to in the previous paragraph shall also include holidays that occur during the period of leave.

#### **Section 42**

Where a pregnant female employee is in possession of a certificate issued by a first class medical practitioner, stating that she is no longer able to perform her original duties, the employee shall be entitled to request her employer to change her work temporarily either before or after childbirth, and the employer shall consider changing her duties to such as are suitable for the employee.

**Section 43** An employer is prohibited from terminating a female employee because of her pregnancy

### **Chapter 4**

#### **Employment of Child Labor**

#### **Section 44**

No employer shall employ as an employee a child less than 15 years of age.

#### **Section 45**

Where a child under the age of 18 years is employed, the employer shall:

- (1) Notify the labor inspector of the employment of the child employee within 15 days from the date when the child commences his work;
- (2) Prepare a new record of the terms of employment if there has been a change from those already in existence and keep it at the place of business or office of the employer for inspection by a labor inspector during working hours;
- (3) Notify the labor inspector of the termination of employment of the child employee within seven days from the date when the child ceases to be employed.

Any notification or record referred to in the first paragraph shall be in the form prescribed by the Director-General.

#### **Section 46**

An employer shall arrange for a child employee to have an uninterrupted rest period each day of not less than one hour for every four hours that the employee has worked. However the child employee is entitled to such rest period as is prescribed by the employer during the said four hours.

#### **Section 47**

An employer is prohibited from causing a child employee under the age of 18 to work between 22:00 hours and 06:00 hours, except where written permission has been granted by the Director-General or his designate.

An employer may have a child employee aged under 18 work as an actor in a motion picture, play, or the like, during the said period, however, the employer shall arrange for that child employee to have such rest periods as are appropriate.

### **Section 48**

An employer is prohibited from causing a child employee aged under 18 to work overtime or on holidays.

### **Section 49**

An employer is prohibited from causing a child employee aged fewer than 18 years old to perform any of the following work:

- (1) Smelting, blowing, casting, or rolling metal;
- (2) Stamping metal;
- (3) Work involving conditions of heat, cold, vibration, sound and abnormal lighting which may be dangerous as prescribed by Ministerial Regulations;
- (4) Work involving hazardous chemicals as prescribed by Ministerial Regulations;
- (5) Work involving poisonous microorganisms, which include virus, bacteria, fungus, or other microorganisms as prescribed by Ministerial Regulations;
- (6) Work involving toxic materials, explosives, or inflammable materials, except work in fuel oil service stations as prescribed by Ministerial Regulations;
- (7) Driving or controlling hoists or cranes as prescribed by Ministerial Regulations;
- (8) Work involving an electrically or mechanically operated saw;
- (9) Work which must be performed underground, underwater, in a cavern, tunnel, or in a crater of a mountain;
- (10) Work involving radioactivity as prescribed by Ministerial Regulations;
- (11) Cleaning machinery or engines while the machinery or engine is in operation;
- (12) Work on scaffolding which is 10 meters or more above the ground;
- (13) Such other work as is prescribed by Ministerial Regulations.

### **Section 50**

An employer is prohibited from causing a child employee aged fewer than 18 years old to perform work in any of the following establishments:

- (1) Slaughterhouses;
- (2) Gambling houses;
- (3) Dance halls, Thai or Malaysian style dancing;
- (4) Establishments where food, liquor, tea, or other beverages are served, and where the services of prostitutes, sleeping facilities, or massage are offered;
- (5) Other establishments as are prescribed by Ministerial Regulations.

### **Section 51**

An employer is prohibited from paying remuneration of a child employee to a person other than the employee.

An employer is prohibited from demanding or receiving a guarantee money for any reason whatsoever, from the child employee.

Where the employer, the child employee, parents or a guardian of the child employee, pays or receives any payment or any benefit in advance of the employment or at the commencement of the employment or before payment of basic pay to the child employee becomes due in any period, it shall not be regarded as payment or receipt of basic pay by the child employee. The employer shall not deduct the aforesaid payment or benefit from the basic pay payable to the child employee at the due date.

## **Section 52**

For the purpose of the development and promotion of quality of life and work of children, child employees aged under 18 shall have the right to take leave to attend meetings, seminars, training sessions, or take leave for other reasons, which are held by educational institutes or a government or private agency approved by the Director-General. The child employee shall clearly inform the employer of the reason for the leave in advance and show the relevant documents, if any, and the employer shall pay the basic pay to the child employee in respect of leave of absence at his normal rate of basic pay for up to 30 days per annum.

## **Chapter 5**

### **Basic Pay, Overtime Pay, Holiday Pay and Holiday Overtime Pay**

## **Section 53**

Where the work to be performed is of the same nature, quality and quantity, the basic pay, overtime pay, holiday pay and holiday overtime pay shall be fixed *pari passu* by the employer regardless of whether the employee is male or female.

## **Section 54**

All monies paid by an employer as basic pay, overtime pay, holiday pay, holiday overtime pay, and other benefits payable in cash shall be in Thai currency, except where the employee consents to be paid by cheque or in a foreign currency.

## **Section 55**

An employer shall pay the basic pay, overtime pay, holiday pay, holiday overtime pay, and other benefits to the employee at the employee's work place. If payment is to be made elsewhere or by other methods, the employee must give his consent to the same.

## **Section 56**

An employer shall pay an employee his basic pay equal to a working day's basic pay in respect of the following holidays:

- (1) A weekly holiday, except for employees who receive a daily wage, an hourly wage or a wage calculated on output;
- (2) A traditional holiday;
- (3) Annual vacation.

## **Section 57**

An employer shall pay an employee his basic pay in respect of a day of sick leave referred to in Section 32 at a rate equal to the basic pay for a normal working day for the entire time taken as sick leave for up to 30 working days per annum.

Where the employee takes leave for the purposes of sterilization referred to in Section 33, the employer shall make payment of the basic pay to the employee in respect of the leave so taken.

## **Section 58**

An employer shall pay the basic pay of an employee who takes leave for military service pursuant to Section 35 at a rate equal to the basic pay for a normal working day for the entire leave taken for up to 60 days per annum.

## **Section 59**

An employer shall pay the basic pay of an employee on maternity leave, at a rate equal to the basic pay for a normal working day, for the entire leave taken for up to 45 days.

### **Section 60**

For the purposes of payment of basic pay under Section 56, Section 57, Section 58, Section 59, Section 71 and Section 72, where an employee receives his basic pay on the basis of output, the employer shall pay basic pay in respect of a holiday or day of leave in an amount equivalent to the average daily basic pay rate that the employee receives during the payment period immediately prior to his taking a holiday or day of leave.

### **Section 61**

Where the employer requires an employee to work overtime on a working day, the employer shall pay overtime at the rate of not less than one and a half times the rate of the hourly basic pay earned in normal working hours for the hours of overtime, or not less than one and a half times the rate for each unit of output on a working day for employees who receive basic pay based upon output.

### **Section 62**

Where an employer requires an employee to work on a holiday specified by Section 28, Section 29 or Section 30, the employer shall pay the employee holiday pay at the following rates:

- (1) In respect of an employee who is entitled to receive basic pay on holidays, an additional amount of not less than one multiple of the hourly basic pay rate earned per hour on a normal working day, or not less than one multiple of the rate of basic pay per unit of output earned per unit on a normal working day for an employee who is paid on the basis of output;
- (2) In respect of an employee who is not entitled to receive basic pay for holidays, he shall be paid an amount of not less than double the hourly basic pay rate earned per hour on a normal working day, or not less than double the rate per unit of output earned per unit on a normal working day for work done by an employee who is paid on the basis of output.

### **Section 63**

Where an employer requires an employee to work overtime on a holiday, the employer shall pay holiday overtime pay on holidays to the employee at not less than treble the hourly basic pay rate earned per hour on a normal working day, or not less than treble the basic pay rate earned per unit on a normal working day per unit of output for an employee who is paid on the basis of output.

### **Section 64**

Where an employer fails to provide an employee with holidays or to provide holidays less than those specified in Section 28, Section 29 and Section 30, the employer shall pay holiday pay and holiday overtime pay to the employee at the rates prescribed in Section 62 and Section 63 as if the employer had required the employee to work on a holiday.

### **Section 65**

An employee endowed with the authority or who is assigned by the employer to perform any of the following work shall not be entitled to overtime pay under Section 61 and holiday overtime pay under Section 63, but an employee who is assigned by the employer to perform work referred to in (2) (3) (4) (5) (6) (7) or (8) shall be entitled to receive an amount equal to the hourly rate of basic pay payable for working days on the basis of the actual hours worked:

- (1) An employee who has the authority and duty to act on behalf of the employer in relation to the terms of employment, the grant of gratuities, a reduction in basic pay or termination of employment;
- (2) Work on the railways that comprises work performed on trains and work to facilitate the passage of trains;
- (3) Opening and closing water gates or drainage water gates;

- (4) Recording water levels and measuring of water volumes;
- (5) Fire fighting or work concerning the prevention of public hazards;
- (6) Work whose nature or type requires performance away from the work place, and because of its nature or type cannot fix definite working hours;
- (7) Taking turn of guarding or care taking premises or property, which is not within the normal scope of work and duties of the employee;
- (8) Such other work as is prescribed by Ministerial Regulations.

An employer may however agree to pay overtime or holiday overtime pay to an employee.

#### **Section 66**

An employee referred to in Section 65 (1) shall not be entitled to holiday pay under Section 62, except where the employer agrees to pay holiday pay to the employee.

#### **Section 67**

Where an employer terminates the employment and the employee has not committed any offense under Section 119, the employer shall pay to the employee basic pay in respect of his annual vacation for the year in which employment was terminated, in proportion to the number of days of annual vacation to which the employee is entitled, including accumulated annual vacation pursuant to Section 30.

#### **Section 68**

For the purpose of calculating overtime pay, holiday pay, and holiday overtime pay, where the employee is paid his basic pay on a monthly basis, the hourly wage rate on a working day shall mean the monthly wage divided by a multiple of thirty and the average number of working hours on a working day.

#### **Section 69**

For the purpose of calculating the hours of overtime where the employer fixes the normal working hours on a weekly basis, traditional holidays, annual vacation and leave shall be counted as working days.

#### **Section 70**

An employer shall correctly and precisely pay basic pay, overtime pay, holiday pay and holiday overtime pay at the following times:

- (1) Where basic pay calculated on a monthly, daily, hourly basis or at other duration of no longer than one month or on the basis of output, payment shall be made at least once a month, unless otherwise agreed upon by the employer and employee in the best interests of the employee;
- (2) Where basic pay calculated by methods other than those prescribed in (1), payment shall be made at the time agreed upon by the employer and employee;
- (3) Payment of overtime pay, holiday pay and holiday overtime pay shall be made at least once a month.

Where the employer terminates the employment of an employee, the employer shall pay basic pay, overtime pay, holiday pay and holiday overtime pay to an employee entitled to receive such pay, within three days from the date of termination of the employment.

#### **Section 71**

Where an employer requires an employee to work in an area other than his usual place of work on a holiday, the employer shall pay basic pay equal to the amount of basic pay for a normal working day to an employee who is not entitled to receive basic pay on holidays by virtue of Section 56 (1) in respect of such travel.

## **Section 72**

Where an employer requires an employee to work in an area other than that which is his usual place of work, the employee shall not be entitled to receive overtime pay pursuant to Section 61 and holiday overtime pay pursuant to Section 63 during the time he spends traveling. Except for travel on holidays, payment equal to the basic pay in respect of a normal working day shall be made to an employee who is not entitled to receive basic pay on a holiday pursuant to Section 56 (1), except where the employer agrees to pay such overtime pay or holiday overtime pay.

## **Section 73**

An employer shall pay traveling expenses pursuant to Section 71 and Section 72.

## **Section 74**

Where an employer agrees to pay overtime pay, holiday pay and holiday overtime pay at a rate higher than that prescribed by Section 61, Section 62 and Section 63, payment shall be made in accordance with that agreement.

## **Section 75**

Where it is necessary for an employer to temporarily halt its operation wholly or partly for any cause other than one which is beyond its control, the employer shall pay its employees at least 50 percent of the normal basic pay for a working day that the employee was receiving prior to the cessation of operation and shall continue to so pay for the entire period during which the employer does not require the employee to work.

The employer shall give advance notice to its employee and a labor inspector prior to halting operation as referred to in the previous paragraph.

## **Section 76**

An employer is prohibited from making any deduction from basic pay, overtime pay, holiday pay, holiday overtime pay, except for:

- (1) Payment of income tax in an amount which the employee is obliged to pay, or other payments as specified by law;
- (2) Payment of contributions to a labor union in accordance with the regulations of the labor union;
- (3) Payment of debts to a savings or other co-operative of the same nature as a savings co-operative, or debts which have been incurred for the purpose of the welfare for the sole benefit of the employee, with the prior consent of the employee;
- (4) Guarantee money as referred to in Section 10 or compensation paid to an employer due to a willful act or the gross negligence of the employee, provided that the employee consents;
- (5) An employee contribution under an agreement respecting the Employee Welfare Fund.

Deductions made pursuant to (2), (3), (4) and (5) shall not in each case exceed 10 percent and shall, in the aggregate, not exceed one-fifth of the money which the employee is entitled to receive at the time of payment specified in Section 70, unless the employee otherwise consents.

## **Section 77**

Where an employer is required to obtain an employee's consent, or there is an agreement with the employee concerning payments under Section 54 and Section 55 or deductions under Section 76, the employer shall prepare a written document and have the employee sign the same as evidence of the granting of consent, or there shall be an explicit agreement in respect thereof.

## **Chapter 6**

### **Remuneration Committee**

#### **Section 78**

There shall be a Remuneration Committee consisting of the Permanent Secretary of the Ministry of Labor and Social Welfare as Chairman, four representatives of the government, five representatives each of employers and employees, who are appointed as Directors by the Cabinet and an official of the Ministry of Labor and Social Welfare appointed by the Minister as Secretary.

Rules and procedures relating to the selection of employer and employee representatives referred to in the previous paragraph shall be in accordance with regulations prescribed by the Minister.

#### **Section 79**

The Remuneration Committee shall have the following powers and duties:

- (1) Submission of opinions to the Cabinet concerning policies relating to remuneration;
- (2) Submission of opinions to the Cabinet so that it may advise the private sector on the determination of the rate of remuneration and annual adjustments thereto;
- (3) Determination of minimum basic pay rates;
- (4) Determination of minimum basic pay rates that employees should receive as appropriate according to the economic and social situation;
- (5) Submission of opinions to the Cabinet in order to develop the remuneration system;
- (6) The giving of technical advice and guidelines relating to the coordination of benefits to various organizations in the private sector;
- (7) Submission of a report to the Minister at least once a year concerning the state of remuneration and trends therein as well as the measures, which should be taken;
- (8) Carrying out any other act in accordance with this Act or any other law prescribes as being within the power and duty of the Remuneration Committee or as delegated by the Cabinet or the Minister.

In submission of an opinion to the Cabinet, the Remuneration Committee may also add its comments on the development of the revenue system of the country.

#### **Section 80**

Remuneration Committee Directors appointed by the Cabinet shall hold office for a term of two years. A director of the Remuneration Committee whose term of office has expired is eligible for reappointment.

Where a Remuneration Committee director appointed by the Cabinet vacates office before the expiration of his term of office, the Cabinet shall appoint a director with similar qualifications to fill the vacancy. The person so appointed shall hold office for the remaining term of the director that he replaces, except where the remaining term of the director is less than 180 days, a replacement need not be appointed.

Where a member of the Remuneration Committee appointed by the Cabinet retires at the expiration of his term of office but the appointment of a new member is yet to be made, the retiring member shall continue to perform his duties until a new member is appointed to fill his office. The appointment shall be made within 90 days as from the date when the previous member retires from office.

### **Section 81**

Apart from retirement at the expiration of his term of office under Section 80, a member of the Remuneration Committee appointed by the Minister shall vacate his office upon -

- (1) Death;
- (2) Resignation;
- (3) Termination by the Cabinet because of his absence from meetings on three consecutive occasions without reasonable cause;
- (4) Becoming bankrupt;
- (5) Being adjudged incompetent or quasi-incompetent person;
- (6) Being imprisoned pursuant to a final judgment, except for offenses arising out of negligence or for petty offenses.

### **Section 82**

At every meeting of the Remuneration Committee, there must be in attendance not less than one-half of the total number of its members and at least one person from the employer's side and one person from the employee's side in order for a quorum to be constituted.

At a meeting convened to consider and fix the base minimum rate of basic pay or minimum rate of basic pay as provided for by Section 79, there must be in attendance at least two-thirds of the total number of members of the committee inclusive of at least two persons from the employer's side and two persons from the employee's side in order for a quorum to be constituted. A resolution must be passed by at least two-thirds of the members present at the meeting.

At any meeting to determine minimum rates of basic pay, if a quorum is not constituted as required by Paragraph 2, another meeting shall be convened within 15 days from the date scheduled as the first meeting. At the subsequent meeting, even though no member appointed by the employer or the employee is present thereat, a quorum shall be constituted if at least two-thirds of all members are present at the meeting and a resolution may be passed by at least two-thirds of the members present at the meeting.

### **Section 83**

At any meeting if the chairman of the committee is absent from a meeting or is unable to perform his duty, the members present shall select one from among their number to preside over the meeting.

A final decision of the meeting shall be passed by a majority of votes. Each member shall have one vote. In the event of a tie, the chairman of the meeting shall have a casting vote.

### **Section 84**

The Remuneration Committee shall be empowered to appoint the following sub-committees to consider or act on behalf of the committee:

- (1) A minimum rate of basic pay sub-committee;
- (2) A provincial minimum rate of basic pay sub-committee;
- (3) Such other sub-committees as it deems appropriate.

The Remuneration Committee shall determine the quorum for a meeting of and the procedure to be followed by the sub-committee, as it deems appropriate.

### **Section 85**

In carrying out its duties, the Remuneration Committee or a Sub-committee or a person assigned by the Remuneration Committee or a Sub-committee shall have the power:



- (1) To summon any person to provide a statement or furnish any document or item as is deemed necessary;
- (2) To request any organization or person to cooperate in an inspection of any business which may impact the economy;
- (3) To enter a place of business or the office of an employer during working hours in order to study, survey, research, inspect, or make inquiries so as to obtain information for consideration of those matters referred to in Section 79. In this connection, the employer or person concerned shall render all assistance, furnish or present documents, or provide facts and not obstruct that body or person in the execution of its or his duty.

#### **Section 86**

In carrying out the duties prescribed by Section 85, the Remuneration Committee, Sub-committee, or a person designated by the Remuneration Committee or Sub-committee shall present an identity card or letter of designation, as the case may be, to the person concerned.

The identity card of the Remuneration Committee and Sub-committee referred to in the previous paragraph shall be in the form prescribed by the Minister.

#### **Section 87**

In fixing the minimum rate of basic pay and base minimum rate of basic pay, the Remuneration Committee must study and consider all factors affecting the remuneration received by an employee including other facts, especially the cost of living index, the rate of inflation, the standard of living, cost of production, the price of goods, business competitiveness, labor productivity, gross national product and economic and social conditions.

The minimum rate of basic pay may be determined specifically for any or all types of business in any locality.

The minimum rate of basic pay to be determined shall not be lower than the base minimum rate of basic pay as prescribed by the Remuneration Committee.

If no minimum rate of basic pay has been determined in any locality, the base minimum rate of basic pay shall be deemed the minimum rate of basic pay in that locality.

#### **Section 88**

After having studied the information and matters specified in Section 87, the Remuneration Committee shall determine the minimum rate of basic pay and such other matters in detail, as it deems appropriate and submit the same to the Minister for publication in the Government Gazette.

#### **Section 89**

Notification of the minimum rate of basic pay pursuant to Section 88 shall bind both employer and employee, regardless of the nationality, religion or gender of an employer and employee.

#### **Section 90**

When notification of the minimum rate of basic pay comes into force, an employer shall not pay an employee a rate of basic pay, which is lower than the minimum rate of basic pay.

An employer bound by the notification relating to the minimum rate of basic pay shall post notification of the same in a conspicuous place for the information of employees at their work place during such time as that notification remains in effect.

#### **Section 91**

The Office of the Remuneration Committee shall be established in the Ministry of Labor and Social Welfare. It shall have the following duties and powers:

- (1) Preparation of a work plan to be submitted to the Remuneration Committee and Sub-committee;
- (2) Co-ordination of the plan and operation of the Remuneration Committee and Sub-committee as well as related organizations;
- (3) The collection, study, research, analysis and evaluation of the situation relating to the economy, labor, living conditions, expansion of the labor market, labor productivity, investment, relocation of domicile and related information, as information for the consideration of the Remuneration Committee and Sub-committee;
- (4) Making recommendations arising out of its studies and the consideration of technical information and other supplementary measures to the Ministry of Labor and Social Welfare and related organizations for the purpose of the development of a remuneration and income system;
- (5) Following up and evaluating the result of work carried out pursuant to a resolution of the Remuneration Committee;
- (6) The carrying out of such other act as is assigned to it by the Remuneration Committee or Sub-committee.

## **Chapter 7**

### **Welfare**

#### **Section 92**

There shall be a Labor Welfare Committee consisting of the Permanent Secretary of the Ministry of Labor and Social Welfare as Chairman, four directors who are representatives of the government, five directors who are representatives of employers and five directors who are representatives of employees and appointed by the Minister as well as an official of the Department of Labor Protection and Social Welfare appointed by the Minister as Secretary.

#### **Section 93**

The Labor Welfare Committee shall have the following powers and duties:

1. Presentation of opinions to the Minister on policies, guidelines and measures concerning labor welfare;
2. Presentation of opinions to the Minister as to the issuance of Ministerial Regulations, notifications, or regulations concerning the management of welfare in business establishments;
3. Provision of advice relating to the provision of labor welfare for business establishments of all categories;
4. Following up, evaluating and reporting to the Minister the results of its work performance;
5. Carrying out any other act as this Act or other law prescribes as being within the powers and duties of the Labor Welfare Committee, or as delegated by the Minister.

#### **Section 94**

Section 78 Paragraph 2, Section 80, Section 81, Section 82 Paragraph 1, Sections 83 and Section 84 shall apply to the Labor Welfare Committee *mutatis mutandis*.

#### **Section 95**

The Minister shall have power to issue Ministerial Regulations requiring an employer to provide welfare in any matter, or imposing standards for the provision of welfare.

### **Section 96**

In a business establishment where there are 50 employees or more, an employer shall arrange to have a welfare committee at its business establishment and which shall consist of at least five employee representatives.

The directors of the welfare committee at this business establishment shall be elected in accordance with the rules and procedures prescribed by the Director-General.

Where a committee of employees under the law governing labor relations already exists at a place of business of an employer, the committee of employees shall perform the duty of the welfare committee under this Act at the business establishment.

### **Section 97**

The welfare committee at a business establishment shall have the following powers and duties:

- (1) Joint discussions with an employer in relation to the provision of welfare to employees;
- (2) The provision of advice and recommendations to an employer regarding the provision of welfare to employees;
- (3) The inspection, control, and overseeing of the provision of welfare which an employer provides for employees;
- (4) The provision of opinions and guidelines to the Labor Welfare Committee as to the provision of welfare for the benefit of employees.

### **Section 98**

An employer shall meet with the welfare committee at its business establishment at least once every three months, or, when requested by more than one half of the total members of the welfare committee, or, when requested by the labor union with appropriate reasons.

### **Section 99**

For the information of employees, an employer shall post in a conspicuous place at the place of work of an employee notifications relating to the provision of welfare as set out in Ministerial Regulations pursuant to Section 95 or pursuant to an agreement with employees.

## **Chapter 8**

### **Safety, Occupational Sanitation and Working Environment**

#### **Section 100**

There shall be a Committee for Safety, Occupational Sanitation and the Working Environment which shall consist of the Permanent Secretary of the Ministry of Labor and Social Welfare as Chairman; the Director-General of the Department of Labor Protection and Welfare, a representative from the Department of Health, a representative from the Department of Industrial Works, a representative from the Public Works Department, and a representative from the Pollution Control Department as Directors; and seven representatives of employers and seven representatives of employees, who shall be appointed as Directors by the Minister, and an official of the Department of Labor Protection and Welfare will be appointed by the Minister as Director and Secretary.

#### **Section 101**

The Committee for Safety, Occupational Sanitation and the Working Environment shall have the following powers and duties:

- (1) Presentation of opinions to the Minister concerning policy, a work scheme, or measures concerning safety, occupational sanitation, and development of the working environment of employees;
- (2) Presentation of opinions to the Minister on the issuance of Ministerial Regulations, notifications or regulations for implementation of this Act;
- (3) Presentation of opinions to government agencies concerning the promotion of employee safety, occupational sanitation and the working environment;
- (4) Execution of any other act as this Act or other law prescribes as being within the powers and duties of the Committee for Safety, Occupational Sanitation and the Working Environment, or as delegated by the Minister.

#### **Section 102**

Section 78 Paragraph 2, Section 80 and Section 81, Section 82 Paragraph 1, and Section 83 and Section 84 shall apply to the Committee for Safety, Occupational Sanitation, and the Working Environment mutatis mutandis.

#### **Section 103**

The Minister shall have power to issue Ministerial Regulations determining standards for implementation by employers of the management and arrangement of safety, occupational sanitation and the working environment.

Where Ministerial Regulations made under the previous paragraph requires documents, evidence or reports to be certified or examined by any person in accordance with prescribed rules and procedures, such Ministerial Regulations may also prescribe the rules and procedures for registration and cancellation of registration, registration fees not exceeding those attached hereto, and the maximum rate of fees that may be collected.

#### **Section 104**

When a labor inspector finds that an employer has violated or has failed to comply with Ministerial Regulations issued pursuant to Section 103, the labor inspector shall have power to issue a written order requiring the employer to improve the working environment, building, premises, or correctly or properly prepare or modify machinery or equipment used by an employee in the performance of his work or which is related thereto within a prescribed period of time.

#### **Section 105**

When a labor inspector finds that the working environment, building, premises, machinery or equipment used by employees, create hazardous conditions for those employees, or that an employer has failed to comply with an order of the labor inspector made under Section 104, the labor inspector, with the approval of the Director-General or a person delegated by the Director-General, shall have power to order the employer to temporarily cease to operate all or part of the aforesaid machinery or equipment.

When an employer is required to cease to operate machinery or equipment by order of a labor inspector made under the previous paragraph, the employer shall pay the employee an amount equivalent to his basic pay for those working days when the employee is not allowed to work up until such time as the employer has fully complied with the order of the labor inspector.

#### **Section 106**

Orders of a labor inspector made under Section 104 or Section 105 may be appealed to the Committee for Safety, Occupational Sanitation and the Working Environment within 30 days from the date when the order was made known. The decision of the Committee shall be final.

An appeal under the previous paragraph shall not release the employer from compliance with the order of a labor inspector, except where otherwise ordered by the Committee for Safety, Occupational Sanitation and the Working Environment.

### **Section 107**

An employer shall arrange for the medical examination of its employees and shall submit the results thereof to a labor inspector in accordance with the rules and procedures prescribed in Ministerial Regulations.

## **Chapter 9**

### **Administrative Requirements of the Employer**

### **Section 108**

An employer who employs ten or more employees shall have work rules in the Thai language. These rules shall, as a minimum, contain particulars of the following:

- (1) Working days, regular working hours and rest periods;
- (2) Holidays, and rules for taking holidays;
- (3) Rules concerning overtime work and work on holidays;
- (4) Date and place of payment of basic pay, overtime pay, holiday pay and holiday overtime pay;
- (5) Leave and rules for taking leave;
- (6) Discipline and punishment;
- (7) Submission of complaints;
- (8) Termination of employment, severance pay and special severance pay.

An employer shall announce the applicability of the work rules within 15 days from the date upon which the workforce of the employer reaches a total of 10 or more employees. The employer shall, at all times, keep a copy of these rules at its place of business operations or in the employer's office. The employer shall submit a copy of the rules to the Director-General or his designate within seven days from the date when the rules become effective.

The Director-General or his designate shall be empowered to order the employer to amend, within a specified period, those work rules which contravene the law.

An employer shall distribute and post the work rules in a conspicuous position at the work place, for the information of and being seen by employees at their convenience.

### **Section 109**

A complaint submitted pursuant to Section 108 (7) shall at least contain the following details:

- (1) Scope and essence of the complaint;
- (2) Methods and procedure for the submission of complaints;
- (3) Investigation and consideration of complaints;
- (4) Procedure for the settlement of complaints;
- (5) Protection of the person submitting the complaint and other persons involved.

### **Section 110**

Where there is an amendment to work rules, the employer shall post up the amended rules within seven days from the date of notification of the date when the amendment is to become effective and Section 108 Paragraphs 2, 3 and 4 shall apply *mutatis mutandis*.

### **Section 111**

When an employer announces work rules made pursuant to Section 108, the employer has the duty thenceforth to comply with Section 108 and Section 110, regardless of whether or not the employer subsequently employs less than 10 employees.

### **Section 112**

An employer with 10 or more employees shall keep and maintain in the Thai language a register of employees and keep it at the place of business operations or at the office of the employer so that a labor inspector may readily inspect it during working hours.

The employer shall make up the register of employees mentioned in the previous paragraph within 15 days from the date of an employee commencing work.

### **Section 113**

A register of employees shall contain the following minimum particulars:

- (1) Name and family name;
- (2) Gender;
- (3) Nationality;
- (4) Date of birth or age;
- (5) Present address;
- (6) Date of commencement of employment;
- (7) Position or duties;
- (8) Basic pay or other remuneration which an employer agrees to pay an employee;
- (9) Date of termination of employment.

If it is necessary to make a change in any of the particulars in the register of employees, the employer shall amend the register within 15 days from the date of such change or within 15 days from the date when an employee informs the employer of any change.

### **Section 114**

An employer having 10 employees or more shall prepare documents concerning the payment of basic pay, overtime pay, holiday pay and holiday overtime pay containing the following minimum particulars:

- (1) Working days and working hours;
- (2) Productivity of an employee who is paid on an output basis;
- (3) The rate and amount of basic pay, overtime pay, holiday pay and holiday overtime pay which each employee is entitled to receive.

In making payment of basic pay, overtime pay, holiday pay and holiday overtime pay to an employee, the employer shall require the employee to sign those documents referred to in Paragraph 1 as evidence of payment.

The particulars to be contained in the document referred to in Paragraph 1 may be recorded in one or more documents.

Where an employer pays basic pay, overtime pay, holiday pay and holiday overtime pay to an employee by means of the transfer of money into his deposit account at a commercial bank or other financial institutions, evidence of the transfer of money into the deposit account of the employee shall be deemed to be a document relating to payment.

### **Section 115**

An employer shall maintain a register of employees for not less than two years from the date of termination of the employment of each employee, and the employer shall keep

documents relating to the payment to employees of basic pay, overtime pay, holiday pay and holiday overtime pay for not less than two years from the date of payment thereof.

Where a complaint has been submitted pursuant to Chapter 12 of this Act, or where a labor dispute under the law relating to labor relations or labor law litigation has been instituted, the employer shall keep the register of employees and documents relating to the payment of basic pay, overtime pay, holiday pay and holiday overtime pay until the issuance of a final order or judgment.

## **Chapter 10**

### **Suspension from Work**

#### **Section 116**

Where an employer conducts an investigation into an employee who is allegedly guilty of a transgression, the employer is prohibited from suspending that employee from work during the course of the investigation, except where the work rules or an agreement relating to conditions of employment endow the employer with authority to suspend the employee. Notwithstanding the foregoing, the employer shall issue a written suspension order that specifies the guilty of a transgression and prescribes the period of suspension which shall not exceed seven days, and shall notify the employee of the order before suspending him.

During the period of suspension referred to in the previous paragraph, the employer shall pay the employee at the rate prescribed in the work rules or as agreed upon between the employer and the employee in an agreement relating to conditions of employment, provided that this rate shall not be less than 50 percent of the basic pay for a working day as received by the employee before his suspension.

#### **Section 117**

Once an investigation has been completed and it appears that the employee was not guilty, the employer shall pay the employee his basic pay in an amount equal to that which would have been payable in respect of the working days on which he was suspended, by calculating the money which the employer must pay pursuant to Section 116 as part of his basic pay under this Section, together with interest at 15 percent per annum.

## **Chapter 11**

### **Severance Pay**

#### **Section 118**

An employer shall pay severance pay to an employee whose employment is terminated, as follows:

- (1) An employee who has worked for at least 120 consecutive days, but for less than one year shall be paid basic pay for not less than 30 days at the most recent rate of basic pay received by him or not less than the basic pay he received for work performed in the last 30 days in respect of an employee who is rewarded on the basis of his output;
- (2) An employee who has worked continuously for at least one year but less than three years shall be paid basic pay for not less than 90 days at the most recent rate of basic pay received by him or not less than the basic pay for work performed in the last 90 days in respect of an employee who is rewarded on the basis of his output;
- (3) An employee who has worked consecutively for at least three years but less than six years shall be paid basic pay for not less than 180 days at the most recent rate of basic pay received by him or not less than the basic pay for work performed in the last 180 days in respect of an employee who is rewarded on the basis of his output;

- (4) An employee who has worked consecutively for at least six years but less than 10 years shall be paid basic pay for not less than 240 days at the most recent rate of basic pay received by him or not less than the basic pay for work performed in the last 240 days in respect of an employee who is rewarded on the basis of his output;
- (5) An employee who has worked for more than 10 years consecutively shall be paid basic pay for not less than 300 days at the most recent rate of basic pay received by him or not less than the basic pay for work performed in the last 300 days in respect of an employee who is rewarded on the basis of his output.

Termination of employment in this Section shall mean any act of an employer which prevents an employee from continuing to work and receive his basic pay therefore, whether due to the termination of an employment contract or for any other reason, and shall include the situation where an employee cannot work and be paid because the employer can no longer operate its business.

The provisions of Paragraph 1 shall not apply to an employee whose period of employment is of a fixed duration and whose employment is terminated at the expiration of that duration.

Employment of a fixed duration referred to in Paragraph 3 shall be said to exist in the case of employment on a special project, which is not in the normal way of business or trade of the employer, where there is a fixed schedule for commencement and completion of work; or for work of a temporary nature with a fixed schedule for its commencement or completion; or for seasonal work in respect of which employees are only engaged during that season; provided that the work must be completed within a period of two years and the employer and employee have entered into a written agreement at or prior to the commencement of employment.

#### **Section 119**

An employer is not required to pay severance pay to an employee whose employment has been terminated for any of the following reasons:

- (1) Dishonest performance of his duties or the intentional commission of a criminal act against the employer;
- (2) Intentionally causing loss to the employer;
- (3) Performance of an act of gross negligence which results in severe loss to the employer;
- (4) Violation of the employer's work rules or regulations or orders which are both lawful and equitable when the employer has already issued the employee with a prior written warning, except in a serious instance when the employer is not required to give a warning.

The written warning shall be effective for a period of one year as from the date of the commission of the violation by the employee;

- (5) Neglect of his duties for a period of three consecutive work days without reasonable cause, whether or not a holiday intervenes;
- (6) Imprisonment by reason of a final judgment, except in the case of offenses which arise from negligence or for petty offenses.

#### **Section 120**

Where an employer relocates its place of business and the relocation materially affects the ordinary course of living of the employee or his family the employer shall notify the employee of the relocation not less than 30 days prior to the date of relocation. If an employee does not wish to work for the employer at the new location, he has the right to terminate his employment contract and be entitled to special severance pay at the rate of not less than 50 percent of the rate of severance pay, which the employee would be entitled to under Section 118.



Where an employer fails to give advance notice of relocation of its place of business to an employee pursuant to the previous paragraph, the employer shall also pay special severance pay in lieu of the advance notice in an amount equal to 30-day pay at the most recent rate of basic pay, or the basic pay received in respect of the preceding 30 days in the case of an employee who receives his basic pay based upon his output.

Upon the submission, within 30 days from the date the employer relocates the place of business, by an employee of a request to the Labor Welfare Committee, that Committee will consider whether or not the employer must give prior notice or whether or not the employee is entitled to terminate his employment contract with the right to receive special severance pay under Paragraph 1.

The decision of the Labor Welfare Committee shall be final, unless the employer or employee may appeal against that decision to the Court within 30 days from the date of notification of the decision. Where the employer is the party who commences legal proceedings, it must deposit with the Court an amount equivalent to that that would be payable to an employee if a request had been submitted under Paragraph 3 in the event that the employer wishes to proceed with its case.

An employee must exercise his right to terminate his employment contract under this Section within 30 days from the date the employer relocates its place of business or the date upon which the decision of the Labor Welfare Committee or the judgment of the Court becomes final.

#### **Section 121**

Section 17 Paragraph 2 shall not apply where an employer terminates an employee because of improvements to the working unit, production, distribution or service processes, arising from the utilization of machinery or a change of machinery or technology, and which is the cause of the reduction in the number of employees. The employer shall send notification to a labor inspector, and the employee to be terminated, of the date of termination of employment, the reasons for terminating the employment and the name(s) of the employee(s) to be terminated at least 60 days in advance of the employment termination date.

Where an employer fails to give advance notice to an employee of his termination, or gives advance notice but shorter than that specified in the previous paragraph, in addition to the severance pay payable pursuant to Section 118 the employer shall instead of the advance notice, also pay special severance pay, equal to 60-day pay at the most recent rate of basic pay that the employee has received, or equal to the basic pay received for the last 60 days in the case of an employee who receives his basic pay based upon his output.

Where special severance pay is made instead of the provision of advance notice pursuant to Paragraph 2, it shall be deemed that the employer has paid remuneration instead of providing advance notice under the Civil and Commercial Code.

#### **Section 122**

Where an employer terminates an employee under Section 121 and the employee has worked continuously for six years or more, the employer shall pay special severance pay in addition to the severance pay under Section 118, in an amount of not less than the basic pay received for the most recent 15 days, for each complete year of work; or not less than the basic pay received for the most recent 15 days for each complete year of work in the case of an employee who receives his basic pay based upon his output, but the total severance pay under this Section shall not, in the aggregate, exceed 360-day basic pay at the most recent rate or not exceed the basic pay paid for the last 360 days in the case of an employee who receives his basic pay based upon his output.

In calculating special severance pay, where an employment period is less than one year but the fraction thereof is greater than 180 days, it shall be deemed to be one year of employment.

## **Chapter 12**

### **Submission of Complaints and Consideration**

#### **Section 123**

Where an employer violates or fails to comply with those provisions that concern entitlement to any sum of money under this Act and the employee wishes to have a competent official proceed under this Act, the employee has the right to submit a complaint in the form prescribed by the Director-General to the labor inspector for the locality in which the employee works or in which the employer is domiciled.

In a case concerning entitlement to any sum of money under this Act, if the employee dies, the statutory heir has the right to submit a complaint to the labor inspector.

#### **Section 124**

When a complaint is submitted pursuant to Section 123, the labor inspector shall investigate the facts and issue an order within 60 days from the date when the complaint was received.

Where necessity renders it impossible to issue an order within the period of time specified in the previous paragraph, the labor inspector shall request an extension of time from the Director-General or his delegate and provide reasons therefore. The Director-General or his delegate may grant permission as considered appropriate for a period not exceeding 30 days from the date of expiry of the period referred to in the previous paragraph.

Once the labor inspector has conducted his investigations and found that the employee is entitled to a sum of money which the employer is obliged to pay under this Act, the labor inspector shall issue an order requiring the employer to pay that money to the employee, or his statutory heir in the case of a deceased employee, in the form prescribed by the Director-General within 15 days from the date that the order is acknowledged or deemed to be acknowledged.

The employer shall pay the money referred to in Paragraph 3 to the employee or his statutory heir, in the case of a deceased employee, at the work place of the employee. Where a request is made by the employee or, his statutory heir in the case of a deceased employee, the labor inspector shall have power to order the employer to pay the money at the office of the labor inspector or at such other place as is agreed upon between the employer and the employee or the statutory heir in the case of a deceased employee.

Where the employee, or his statutory heir in the case of a deceased employee, does not collect the money within 15 days from the date the labor inspector issues an order, the labor inspector shall remit the money to the Employee Welfare Fund by depositing it with a bank designated for this purpose. Any interest or other benefit arising by reason of this deposit shall belong to the employee, or the statutory heir in the case of a deceased employee, who is entitled to the money deposited.

Where the labor inspector is of the opinion that the employee, or his statutory heir in the case of a deceased employee, is not entitled to receive money under Section 123, the labor inspector shall issue an order and give written notification thereof to the employer and employee or the statutory heir in the case of a deceased employee, for their information.

#### **Section 125**

When the labor inspector issues an order under Section 124, if the employer, the employee, or the statutory heir in the case of a deceased employee, is not satisfied with the order, legal proceedings must be instituted within 30 days from the date upon which the order became known.

Where the employer, the employee or the statutory heir in the case of a deceased employee, does not institute legal proceedings within the time prescribed, the Section 124 order shall become final.

Where legal proceedings are instituted by the employer, the employer must deposit with the Court an amount equal to that which would be due under the said order, in the event that it wishes to proceed with the case.

When a final decision is made on the case and the employer is obliged to pay money to the employee or a statutory heir in the case of a deceased employee, the Court shall be empowered to release the deposit which the employer has placed with the Court to the employee or his statutory heir in the case of a deceased employee.

## **Chapter 13**

### **Employee Welfare Fund**

#### **Section 126**

There shall be an Employee Welfare Fund established in the Department of Labor Protection and Welfare for use as a welfare fund for employees in circumstances where an employee resigns, dies, or in such other cases as are prescribed by the Employee Welfare Fund Committee.

#### **Section 127**

The Employee Welfare Fund shall consist of:

- (1) The Contributions of both employers and employees;
- (2) Money vested in the Employee Welfare Fund pursuant to Section 133 and Section 136;
- (3) Additional payments made pursuant to Section 131;
- (4) Fines received as a result of the punishment of offenders under this Act;
- (5) Money or property donated;
- (6) Government subsidies;
- (7) Other income;
- (8) Interest on the sums in the Employee Welfare Fund.

The Employee Welfare Fund shall prepare accounts as follows:

- (1) An account of funds of the members showing particulars of employee and employer contributions and the interest of each of the respective members;
- (2) An account of the common fund showing particulars of funds other than those referred to in (1).

#### **Section 128**

Remittance of a fine under Section 127 (4) to the Employee Welfare Fund and the period of time for the remittance thereof shall be in accordance with the regulations, which the Employee Welfare Fund Committee shall prescribe and publish in the Government Gazette.

#### **Section 129**

For the purposes of the implementation of this Act, it shall be deemed that the money and property of the Employee Welfare Fund referred to in Section 127 is owned by the Department of Labor Protection and Welfare and, therefore, need not be remitted to the Ministry of Finance as State Revenue.

There shall be an Employee Welfare Fund Committee which shall be comprised of the Permanent Secretary for Labor and Social Welfare as Chairman, a representative of the Ministry of Finance, a representative of the Office of the National Economic and Social Development Board, a representative of the Bank of Thailand as Directors, and five

employer representatives and five employee representatives appointed by the Minister as Directors, and the Director-General of the Department of Labor Protection and Welfare as Director and Secretary.

The Employee Welfare Fund Committee shall have the following powers and duties:

- (1) Determination of policies concerning the management of and payments out of the Employee Welfare Fund, with the approval of the Minister;
- (2) The consideration and provision of opinions to the Minister relating to the enactment of Royal Decrees, promulgation of Ministerial Regulations, notifications or regulations, for the purpose of the implementation of this Act;
- (3) Establishment of regulations concerning the receipt, payment and custody of the monies of the Employee Welfare Fund, with the approval of the Minister;
- (4) Establishment of regulations concerning profit acquisition of the Employee Welfare Fund, with the approval of the Minister;
- (5) Allocation of money of the Employee Welfare Fund of not more than 10 per cent of the interest derived by the Fund per annum for use as administrative expenses of the Employee Welfare Fund;
- (6) Execution of any other act as this Act or other law prescribes as being within the power and duty of the Employee Welfare Fund Committee or as delegated by the Minister.

Section 78 Paragraph 2, Section 80 and Section 81, Section 82 Paragraph 1, and Section 83 and Section 84 shall apply to the Employee Welfare Fund Committee mutatis mutandis.

### **Section 130**

Employees of a business operation having 10 or more employees shall be members of the Employee Welfare Fund.

The provisions of the previous paragraph shall not apply to those businesses where the employer has set up a provident fund under the law relating to provident funds, or where provision has been made for the welfare of employees in the event of their resignation or death, according to the rules and procedures prescribed in Ministerial Regulations.

A Royal decree shall be enacted whenever the provisions of Paragraph 1 apply to employees of a business having less than 10 employees.

The Employee Welfare Fund Committee may issue regulations permitting employees of a business exempt from this Act to apply to be members of the Employee Welfare Fund, when such employees wish to be members of the Employee Welfare Fund with the consent of the employer, then the employer shall have the same duties as provided by this Act as if that business were subject to this Act.

An employer with employees who are members of the Employee Welfare Fund under Paragraph 1 shall file a form that sets out the names of those employees and other requisite details. When the employer files this form, the Department of Labor Protection and Welfare shall issue a certificate of registration to the employer.

Where there is a change of particulars in the form, which has been filed, the employer shall notify the Department of Labor Protection and Welfare in writing of its request to change or amend the said form.

The filing of a request for a change or amendment of the form and issuance of a certificate of registration to the employer shall be in accordance with the forms, rules and procedures prescribed by the Employee Welfare Fund Committee.

The person filing a form or requesting a change or amendment of the form under the law on social security shall be deemed to have complied with the provisions in Paragraphs 5, 6 and 7 of this Section.

### **Section 131**

As from the date an employee becomes a member of the Employee Welfare Fund, whenever a payment of basic pay is made, the employee shall pay a contribution which the employer shall deduct from his basic pay, and the employer shall pay a contribution to the Employee Welfare Fund at the rate prescribed in Ministerial Regulations, but not exceeding five per cent of basic pay.

If an employer fails to pay basic pay at the scheduled time of payment, the employer has the duty to remit the employee and employer contributions as if payment of basic pay had been made.

Where an employer fails to remit the employee or employer contributions, or does not remit the same in full within the time prescribed by Paragraph 4, the employer shall make an additional payment to the Employee Welfare Fund of five per cent per month from the date when the remittance of the employee or employer contributions was due and which have not been remitted or in respect of which is missing. In relation to a period, which is less than a full month, if the period is 15 days or more, it shall be deemed to be one month; but if it is less than 15 days, it shall be disregarded. A failure to make a deduction from basic pay or an insufficient deduction may not be raised by the employer as grounds for its release from liability to remit the requisite sum.

The Employee Welfare Fund Committee shall in accordance with the rules and procedures prescribe remittances of the employee and employer contributions and additional payments to the Employee Welfare Fund.

### **Section 132**

Where an employer fails to remit the employee or employer contributions or does not remit the same in full within the prescribed time, a labor inspector shall issue a written warning requiring the employer to pay the outstanding amount within not less than 30 days from the date of receipt of the written warning.

In issuing a warning pursuant to the previous paragraph, if an amount of certain basic pay is not ascertained, the labor inspector shall be empowered to assess the employee and employer contributions which the employer is obliged to remit in accordance with the rules and procedures prescribed by the Employee Welfare Fund Committee.

### **Section 133**

Where an employee resigns, the Department of Labor Protection and Welfare shall pay the employee out of that part of the Employee Welfare Fund that includes the employee and employer contributions and interest derived thereon.

Where an employee dies, if he has not named the person entitled to receive money from the Employee Welfare Fund in the form prescribed by the Director-General and given it to the Department of Labor Protection and Welfare, or if a person was so named but has predeceased the employee, money paid out of the Employee Welfare Fund pursuant to the previous paragraph shall be paid to the sons, daughters, husband, wife, father and mother of the deceased employee in equal shares.

If no person is entitled to receive money as a result of the death of the employee from the Employee Welfare Fund according to Paragraph 2, that money shall become vested in the Employee Welfare Fund.

### **Section 134**

For payments of money out of the Employee Welfare Fund in cases other than those under Section 133, the Employee Welfare Fund Committee shall prescribe regulations concerning the payment of welfare funds, the rate of payment and the duration of the payment by taking into account the amount contained in the Employee Welfare Fund which is not money payable pursuant to Section 133.

### **Section 135**

Where the Department of Labor Protection and Welfare has paid money out of the Employee Welfare Fund, either in whole or in part, to an employee in accordance with

Section 134, the Employee Welfare Fund has the right to demand that the person whose legal duty is to pay such money to the employee reimburse the Employee Welfare Fund the sum paid by the Employee Welfare Fund together with interest at the rate of 15 percent per annum.

The limitation period in respect of the right of the Employee Welfare Fund to make a claim shall be 10 years from the date that the Employee Welfare Fund makes a payment pursuant to the previous paragraph.

#### **Section 136**

A labor inspector shall be empowered to issue a written order for the seizure, attachment and sale by auction of the property of a person who has the legal duty to remit the employee and employer contributions or additional payments, and who has failed so to do or who has not remitted the same in full, or money payable by virtue of Section 135.

The issuance of an order to seize or attach property pursuant to the previous paragraph can be made only after a written warning has been given to the person who has the legal duty to pay the outstanding employee and employer contributions or additional payments or money payable by virtue of Section 135 within a prescribed period of time which shall not be less than 30 days from the date when that person received the warning and failed to make payment within the prescribed period.

Rules and procedures for seizure, attachment and sale by auction of property pursuant to Paragraph 1 shall be in accordance with regulations prescribed by the Minister. In this regard, the rules and procedures under the Civil Procedure Code shall apply mutatis mutandis.

The proceeds from a sale by auction shall be subject to deductions for the expenses incurred in the seizure, attachment and sale by auction, and payment of outstanding employee and employer contributions or additional money in arrears, or money which the person with the legal duty is obliged to pay by virtue of Section 135. The balance (if any) of the proceeds shall be returned to the said person without delay. The labor inspector shall send a written notice by registered mail with its acknowledged receipt returned (to the sender) to inform that person of his right to claim the said balance. If that person fails to claim reimbursement thereof within five years, the monies shall become vested in the Employee Welfare Fund.

#### **Section 137**

A right to claim money from the Employee Welfare Fund is neither transferable nor liable to execution.

#### **Section 138**

Within 120 days from the end of a calendar year, the Employee Welfare Fund Committee shall submit a balance sheet and a revenue and expenditure statement of the Employee Welfare Fund in respect of the previous year to the Office of the Auditor-General of Thailand for auditing and certification prior to submission to the Minister.

The Minister shall submit the said balance sheet and revenue and expenditure statement to the Cabinet for its information and cause the same to be published in the Government Gazette.

### **Chapter 14**

#### **Labor Inspectors**

#### **Section 139**

In the performance of their duties, labor inspectors shall have the following powers:

- (1) To enter any place of business or office of an employer and work place of an employee during business hours so as to inspect the working conditions of

employees and the conditions of employment, make inquiries as to facts, take photos, make copies of documents relating to employment, payment of basic pay, overtime pay, holiday pay, holiday overtime pay and the register of employees, collect samples of materials or products in respect of work safety analysis and to do any other act to obtain facts relating to the enforcement of this Act;

- (2) To send notices of inquiry or summons to an employer, an employee or other persons concerned for the clarification of facts or to send relevant items or documents for their consideration;
- (3) To issue written orders requiring an employer or an employee to comply with this Act.

#### **Section 140**

In the performance of his duties under Section 139 (1), a labor inspector shall present his identification card to an employer or a person concerned, and the employer or person concerned shall facilitate and shall not obstruct the performance by the labor inspector of his duties.

The identification card of a labor inspector shall be in the form prescribed by the Minister.

#### **Section 141**

Where an employer or employee has complied with an order of a labor inspector under Section 139 (3) within the prescribed time, any criminal prosecutions against the employer or the employee shall be barred.

#### **Section 142**

When inspecting a place of business or office of an employer or of the work place of an employee, the Director-General or his designate may arrange for a physician, social welfare official or expert appointed by the Minister to enter that place for the purpose of the provision of an opinion or rendition of assistance to the labor welfare official in the performance of his duty under this Act.

An employer or a person concerned shall provide facilitative assistance and shall not obstruct a physician, social welfare official or expert mentioned in the previous paragraph in the performance of his duties.

### **Chapter 15** **Delivery of Notices**

#### **Section 143**

Delivery of orders or notices of the Director-General or a labor inspector who has issued orders under this Act, shall be made by registered mail with its acknowledged receipt returned, or be hand delivered by a labor inspector or an official at the domicile or address or office of an employer during the business hours of the employer. If the employer is not found at his domicile or address or office or if the employer is found but refuses to receive the same, then the order or notice may be given to any person who is of legal age and resides or works in the house or office, which appears to belong to the employer. When this has been done, it shall be deemed that the employer has duly received the order or notice of the Director-General or the labor inspector.

If delivery as referred to in the previous paragraph cannot be made, the order or notice of the Director-General or labor inspector shall be posted in a highly conspicuous place at the office of the employer, work place of the employee, domicile or address of the employer. When this has been done and a period of not less than 15 days has elapsed, it shall be deemed that the employer has duly received the order or notice of the Director-General or the labor inspector.

## **Chapter 16**

### **Penalties**

#### **Section 144**

An employer who violates or fails to comply with any of Sections 10, 22, 24, 25, 26, 37, 38, 39, 40, 42, 43, 46, 47, 48, 49, 50, 51, 61, 62, 63, 64, 67, 70, 71, 72 or 76, Section 90 Paragraph 1, Ministerial Regulations issued under Section 95 and Section 107, Section 118 Paragraph 1 or fails to pay special severance pay under Section 120 Paragraph 1 or 2, Section 121 Paragraph 2 or Section 122, shall be punished with a term of imprisonment not exceeding six months or a fine not exceeding Baht 100,000, or both.

Where an employer violates or fails to comply with any of Section 37, Section 38, Section 39, Section 42, Section 47, Section 48, Section 49 or Section 50 thereby causing an employee to suffer bodily or mental injury or to death, the employer shall be punished with a term of imprisonment not exceeding one year or a fine not exceeding Baht 200,000, or both.

#### **Section 145**

An employer who fails to comply with Section 23 shall be punished with a fine not exceeding Baht 5,000.

#### **Section 146**

An employer who fails to comply with any of Sections 15, 27, 28 or 29, Section 30 Paragraph 1, Sections 45, 53, 54, 56, 57, 58, 59, 65, 66, 73 or 74, Section 75 Paragraph 1, Section 77 or 99, Section 105 Paragraph 2, any of Sections 108, 111, 112, 113, 114, 115, 117 or fails to give advance notice pursuant to Section 120, Section 121 Paragraph 1, or Section 139 (2) or (3), shall be punished with a fine not exceeding Baht 20,000.

#### **Section 147**

Any person who violates Section 16 shall be punished with a fine not exceeding Baht 20,000.

#### **Section 148**

An employer, who violates Section 31 or Section 44 or fails to comply with Ministerial Regulations issued pursuant to Section 103 Paragraph 1, shall be punished with a term of imprisonment not exceeding one year or a fine not exceeding Baht 200,000, or both.

#### **Section 149**

An employer who fails to comply with either of Section 52 or Section 55, Section 75 Paragraph 2, Section 90 Paragraph 2, either of Section 110 or Section 116, shall be punished with a fine not exceeding Baht 10,000.

#### **Section 150**

Any person who fails to facilitate, or provide a statement, or send documents or any material set out in a written summons of the Remuneration Committee or Sub-committee or person entrusted by the Remuneration Committee or Sub-committee, or fails to give facilitative assistance to a labor inspector, physician, social welfare official or expert shall be punished with a term of imprisonment not exceeding one month or a fine not exceeding Baht 2,000, or both.

#### **Section 151**

Any person who obstructs the Remuneration Committee or Sub-committee or person entrusted by the Remuneration Committee or Sub-committee, a labor inspector, physician, social welfare official or expert in the performance of its or his duties shall be punished with a term of imprisonment not exceeding one year or a fine not exceeding Baht 20,000, or both.

Any person who fails to comply with an order of a labor inspector issued pursuant to Section 124 shall be punished with a term of imprisonment not exceeding one year or a fine not exceeding Baht 20,000, or both.



**Section 152**

An employer who fails to comply with Section 96 shall be punished with a fine not exceeding Baht 50,000.

**Section 153**

An employer who fails to comply with Section 98 shall be punished with a term of imprisonment not exceeding one month or a fine not exceeding Baht 2,000, or both.

**Section 154**

An employer who fails to prepare documents, evidence or reports in compliance with Ministerial Regulations issued under Section 103, or prepares documents, evidence or reports which are false, shall be punished with a term of imprisonment not exceeding six months or a fine not exceeding Baht 100,000, or both.

**Section 155**

Any person who has the duty to certify or examine documents, evidence or reports pursuant to Ministerial Regulations issued under Section 103 and who makes a false statement in certifying or examining the same shall be punished with a term of imprisonment not exceeding one year or a fine not exceeding Baht 200,000, or both.

**Section 156**

Any person who fails to submit forms or give written notification requesting a change or amendment to particulars within the prescribed period set out in Section 130, or submits forms or gives written notification requesting a change or amendment of particulars set out in Section 130 by giving false statements, shall be punished with a term of imprisonment not exceeding six months or a fine not exceeding Baht 10,000, or both.

**Section 157**

Any competent official who reveals any facts concerning the business of an employer which are facts that are normally treated as confidential and not revealed by the employer, and were acquired or came into his knowledge in the performance of his duties under this Act, shall be punished with a term of imprisonment not exceeding one month or a fine not exceeding Baht 2,000, or both, except where the revelations form part of the performance of official duties for the purposes of this Act or in the interests of labor protection, labor relations or investigation or judicial proceedings.

**Section 158**

Where a juristic entity commits an offense, if the commission of the offense by that juristic entity results from an order, act or omission of any person in respect of which the ultimate responsibility lies with the managing director or any other person responsible for operation of the juristic entity, that person shall also be liable to be so punished for the offense by virtue of the provisions of such an offense.

**Section 159**

In respect of all offenses under this Act except those under Section 157, if the authority designated below is of the opinion that an offender should not be punished with a term of imprisonment or should not be prosecuted, that authority shall have the power to determine the matter as follows:

- (1) The Director-General or his designate, for an offense, which arises in the Bangkok Metropolis;
- (2) The provincial governor or his designate, for an offense, which arises in provinces other than Bangkok.

In the event of an investigation, if the investigator finds that a person has committed an offense under this Act and that person consents to a resolution of the case, the investigator shall refer the matter to the Director-General or provincial governor, as the case may be, within seven days from the date when the person consents to the resolution of the case.

When the offender pays a fine imposed within 30 days, it shall be deemed that the case has been resolved in accordance with the Criminal Procedure Code.

If the offender does not agree to the resolution of the case, or has agreed to the resolution but fails to pay the fine within the period prescribed by Paragraph 3, the prosecution shall continue to proceed.

## **Transitional Provisions**

### **Section 160**

Section 44 shall not apply to an employee who is a child aged between 13 and 15 years old who has been in the employment of the employer in accordance with Notification No. 103 of the Revolutionary Party dated 16 March B.E. 2515 (1972) prior to the date upon which this Act comes into force.

### **Section 161**

Within 15 days from the date on which this Act comes into force, an employer shall give notice of the employment of employees who are children under the age of 18 years old and who have been in the employment of the employer in accordance with Notification No. 103 of the Revolutionary Party dated 16 March B.E. 2515 (1972) prior to the date upon which this Act comes into force.

### **Section 162**

The Remuneration Committee, Sub-committee and Working Groups that hold office on the date upon which this Act comes into force shall remain in office until the expiration of their respective terms.

### **Section 163**

Whenever the collection of employee and employer contributions for use as employee welfare funds pursuant to the provisions governing Employee Welfare Fund in Chapter 13 may commence, a Royal Decree shall be enacted in respect thereof.

### **Section 164**

Complaints which have not yet been finalized or lawsuits which remain pending prior to the date upon which this Act comes into force shall be subject to notifications of the Ministry of Interior or of the Ministry of Labor and Social Welfare issued under Notification No. 103 of the Revolutionary Party dated March 16, B.E. 2515 (1972) until those complaints or lawsuits are finalized.

### **Section 165**

Any person who becomes entitled to receive basic pay or other monies from an employer pursuant to Notification No. 103 of the Revolutionary Party dated March 16, B.E. 2515 (1972) prior to the date upon which this Act comes into force shall continue to receive the same.

### **Section 166**

All notifications or orders issued under Notification No. 103 of the Revolutionary Party dated March 16, B.E. 2515 (1972) shall remain in full force and effect insofar as they do not contradict or are inconsistent with this Act, until such time as Ministerial Regulations, regulations and notifications issued under this Act come into force.

Countersigned by  
Mr. Chuan Leekpai  
Prime Minister

## Fees

Registration fee to be a registered person who can certify and examine documents, evidence and reports on safety, occupational sanitation and the working environment is Baht 5,000 per annum

**Remarks:** The reasons for the promulgation of this Act are as follows:

Announcement No. 103 of the Revolutionary Party dated 16<sup>th</sup> day of March, B.E. 2515 (1972) has been in force for a long time and some of its provisions are not suited to the present situation. In addition, those requirements concerning labor protection issued under the said Announcement are in the form of a ministerial notification or a subsidiary law. This has led to a problem of recognition. Therefore, in order for the utilization of labor to be adjudged fair and proper in the present situation, it is considered appropriate to revise the provisions regarding the utilization of labor, such as, granting the Minister the power to issue Ministerial Regulations to provide more protection for certain types of labor as opposed to labor in general, forbidding employers from terminating pregnant female employees, giving permission to child employees to take leave for educational or training purposes, requiring an employer to pay compensation to employees for loss of income in the case of the cessation of business of the employer, laying down the circumstances under which certain debts may be deducted from remuneration, work of employees, establishment of a welfare fund for employees or persons specified by an employee as beneficiaries, or, where no person is so specified, for the employee's heirs who will benefit from the welfare fund of a deceased employee as well as updating penalties to be more in accord with the present economic condition.

### **Disclaimer**

This translation is intended to help Thais or foreigners to understand Thailand laws and regulations only, not to use as references, because it is only the original Thai version of legislation that carries legal effect. [www.ThaiLaws.com](http://www.ThaiLaws.com), therefore, shall not be held responsible in any way for any damage or otherwise the user may incur as a result of or in connection with any use of this publication for any purposes. It's the responsibility of the user to obtain the correct meaning or interpretation of this publication or any part thereof from Thai version or by making a formal request to the appropriate or related authorities.

**Labor Protection Act (No.2), B.E. 2551 (2008)**

Translation

BHUMIBOL ADULYADEJ REX.

Given on the 15th Day of February B.E. 2551

Being the 63rd Year of the Present Reign

His Majesty the King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to amend the law governing labor protection;

This Act contains certain provisions relating to the restrictions on the rights and liberties of an individual which Section 29 together with Section 41 and Section 43 of the Constitution of the Kingdom of Thailand prescribe to be permissible by virtue of law.

Be it, therefore, enacted by H.M. the King with the advice and consent of the National Legislative Assembly as follows:

**Section 1**

This Act shall be cited as "Labor Protection Act (No.2), B.E. 2551 (2008)".

**Section 2**

This Act shall come into force after ninety days from the date of its publication in the Government Gazette.

**Section 3**

The definition of "Employer" in Section 5 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Employer" means a person who agrees to accept an employee for work by paying wages and includes

- (1) a person entrusted to act on behalf of the Employer;
- (2) in case where an Employer is a juristic person, the term also includes a person authorized to act on behalf of the juristic person and a person entrusted by an authorized person to act on his or her behalf.

**Section 4**

The provision of paragraph one of Section 9 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 9

Where an Employer fails to pay back a security in money under Section 10 paragraph two, or fails to pay wages, overtime pay, holiday pay and holiday overtime pay within the period prescribed under Section 70, or severance pay under Section 118, special severance pay in lieu of advance notice, or special severance pay under Section 120, Section 121 and Section 122, the Employer shall pay interests to an Employee at the rate of fifteen percent per annum during the default period."

**Section 5**

The provisions of Section 10 and Section 11 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 10

Under Section 51 paragraph one, an Employer shall be prohibited from demanding or receiving from an Employee a security deposit for work or a security deposit for

damage to work regardless of money, other property or suretyship by person, unless the nature or conditions of work require the Employee be responsible for money or property belonging to the Employer, which may cause damage to the Employer.

The nature or conditions of work which the Employer is allowed to demand or receive a security deposit from the Employee, as well as any type of the security, values of the security and means of keeping shall be in accordance with the rules and procedures as prescribed in the Notification by the Minister.

Where the Employer demands or receives the security deposit or makes a guarantee contract with the employee to compensate for damage done by the Employee, when an employment is terminated by the Employer or the resignation is made by the Employee or the guarantee contract is expired, the Employer shall pay back the security thereof plus interests, if any, to the Employee within seven days from the date of termination of employment, or from the date of resignation, or from the expiry date of the guarantee contract, as the case may be.

#### Section 11

A debt owing by an Employer to be paid under this Act or money to be compensated by the Employer to the Employee Welfare Fund under Section 135, an employee or the Department of Labor Protection and Welfare, as the case may be, shall have a preferential right over all properties of the Employer who is a debtor in the same rank as the preferential rights of taxes and duties under the Civil and Commercial Code."

#### Section 6

The following provisions shall be added as Section 11/1 of the Labor Protection Act, B.E. 2541:

##### "Section 11/1

Where an entrepreneur has entrusted any individual to recruit persons to work, which is not a business of employment services, and such work is any part of manufacturing process or business operation under the entrepreneur's responsibility, and regardless of whether such person is the supervisor or takes the responsibility for paying wages to the persons who perform work, the entrepreneur shall be deemed as an Employer of such workers.

The entrepreneur shall provide contract employees, who perform work in the same manner as employees under the employment contract, to enjoy fair benefits and welfare without discrimination."

#### Section 7

The following provision shall be added as Section 14/1 of the Labor Protection Act, B.E. 2541:

##### "Section 14/1

A contract of employment between an Employer and an employee, work rule, regulation or order of an Employer result in the Employer being in exploitation of the Employee, the Court shall have a power to order such contract of employment, work rule, regulation or order being enforceable only to the extent as it is fair and reasonable."

#### Section 8

The provisions of Section 16, Section 17 and Section 18 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

##### "Section 16

An Employer, a chief, a supervisor, or a work inspector shall be prohibited from committing sexual abuse, harassment or nuisance against an employee.

## Section 17

A contract of employment shall expire upon the completion of the period specified in the contract of employment with no requirement for advance notice.

Where the period is not specified in the contract of employment, an Employer or an employee may terminate the contract by giving advance notice in writing to the other party at or before any due date of wage payment in order to take effect on the following due date of wage payment, with no requirement for advance notice of more than three months. In addition, a probationary contract shall also be deemed as an indefinite period contract of employment.

Upon the notice of contract of employment under paragraph two, the Employer may pay wages in an amount to be paid up to the due time of termination of the contract of employment as specified in the notice and may dismiss the Employee immediately.

The advance notice under this Section shall not apply to the termination of employment under Section 119 of this Act and Section 583 of the Civil and Commercial Code.

## Section 18

Where this Act prescribes that an Employer is required to notify any act or submit any document to the Director-General or any person entrusted by the Director-General or the Labor Inspector, the Employer shall notify or submit it in person or by mail, telephone, facsimile, electronic communication or any other kinds of information technology in accordance with the rules and procedures as prescribed in the Notification by the Director-General."

## Section 9

The provision of Section 23 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

### "Section 23

An Employer shall notify a normal working time to an employee, by specifying the commencing and ending time of work in each day of the employee, which shall not exceed the working time for each type of work as prescribed in the Ministerial Regulations and not exceed eight hours per day. Where the working hours of any day are less than eight hours, the Employer and the employee may agree to make up the remaining working hours in other normal working days, but not exceed nine hours per day and the total working hours per week shall not exceed forty-eight hours. Except for the work which may be harmful to health and safety of the employees as prescribed in the Ministerial Regulations for which the normal working hours shall not exceed seven hours per day and the total working hours per week shall not exceed forty-two hours.

Where the Employer and the employee agree to make up the remaining hours in other normal working days under paragraph one and the total working hours exceed eight hours per day, the Employer shall pay remuneration to the daily employee and the hourly employee at a rate of not less than one and a half times of the hourly wage rate on a working day for a number of exceeding working hours, or to the employee who receives wages on a piece rate basis at a rate of not less than one and a half times of the piece rate of wages of a working day for a number of piece work done in the exceeding working hours.

Where the Employer may not notify the commencing and ending time of daily work due to the nature or conditions of work, the Employer and the employee shall agree to specify the working hours in each day of not exceeding eight hours and the total working hours per week shall not exceed forty-eight hours."

## **Section 10**

The provisions of Section 38 and Section 39 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

### **"Section 38**

An Employer shall be prohibited to require a female Employee to perform any of the following work:

- (1) mining or construction work to be performed underground, underwater, in a cave, in a tunnel or mountain shaft, except where the conditions of work are not harmful to health or body of the Employee;
- (2) working on a scaffold of ten meters or more above the ground;
- (3) producing or transporting of explosive or inflammable materials, except where the conditions of work are not harmful to health or body of the Employee;
- (4) any other work as prescribed in the Ministerial Regulations.

### **Section 39**

An Employer shall be prohibited to require a female Employee who is pregnant to perform any of the following work:

- (1) work involving vibrating machinery or engine;
- (2) work of driving or going on a vehicle;
- (3) work of lifting, carrying on the back, carrying on shoulder, carrying with a pole across shoulder, carrying on a head, pulling or pushing of loads in excess of fifteen kilograms;
- (4) work on a boat; or
- (5) any other work as prescribed in the Ministerial Regulations."

## **Section 11**

The following shall be added as Section 39/1 of the Labor Protection Act, B.E. 2541:

### **"Section 39/1**

An Employer shall be prohibited to require a female employee who is pregnant to work between 10.00 p.m. and 06.00 a.m., to work overtime or to work on holidays.

Where the female employee who is pregnant works in an executive position, academic work, clerical work or work relating to finance or accounting, the Employer may require the employee to work overtime in the working days as long as there is no effect on the health of pregnant employee and with prior consent of the pregnant employee on each occasion."

## **Section 12**

The provisions of Section 50 and Section 51 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

### **"Section 50**

An Employer shall be prohibited to require an Employee who is a youth under eighteen years of age to work in any of the following places:

- (1) a slaughterhouse;
- (2) a gambling place;
- (3) a recreation place in accordance with the law governing recreation places;
- (4) any other place as prescribed in the Ministerial Regulations.

### Section 51

An Employer shall be prohibited from demanding or receiving a security deposit for any purpose from a young employee.

The Employer shall be prohibited to pay wages of the young employee to any other person.

Where the Employer pays money and any other benefit to the young employee, the parent or guardian of the young employee or other persons before employment, at the commencement of employment, or before the due time of wage payment in each period, that payment shall not be deemed as the payment or receipt of wages for the young employee. The Employer shall be prohibited to deduct such money or such benefit from the wages to be paid to the young employee in the specified time."

### Section 13

The provision of Section 65 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

#### "Section 65

An employee who is authorized or assigned by an Employer to perform any of the following work shall not be entitled to overtime pay under Section 61 and holiday overtime pay under Section 63, but the employee required by the Employer to perform work as provided in item (3), (4), (5), (6), (7), (8) or (9) below shall be entitled to receiving remuneration in money equivalent to the hourly wage rate of a working day for the number of hours of work done:

- (1) an employee who is authorized to act on behalf of the Employer in regard to the employment, granting of pension or termination of employment;
- (2) an itinerant vending or induce about the purchase of goods which the Employer pays a commission from the sale of goods to the employee.
- (3) railway service operation including work on a railway carriage and work for facilitating a railway transportation;
- (4) work of opening or closing of watergate or sluice gate;
- (5) work of indicating of water levels and measuring of water volume;
- (6) work on fire fighting or prevention of disaster;
- (7) work of which nature or condition has to be performed outside of the premise and the definite working time may not be fixed;
- (8) work on watch-keeping of the premise or property which is not a regular duty of the employee;
- (9) any other work as prescribed in the Ministerial Regulations

The exception for the aforementioned is where any Employer agrees to pay overtime or holiday overtime payment to the employee."

### Section 14

The provision of Section 67 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

#### "Section 67

Where an Employer terminates the employment of an employee upon any condition other than provided in Section 119, the Employer shall pay wages to the employee for annual holidays for the year of termination in proportion to a number of annual holidays to which the employee is entitled under Section 30.



Where an employee is a party to terminate a contract of employment or the Employer is a party to terminate an employment regardless of any condition under Section 119, the Employer shall pay wages to the employee for accumulated annual holidays to which the employee is entitled under Section 30."

### **Section 15**

The provision of Section 75 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

#### **"Section 75**

When it is necessary for an Employer for whatever cause other than a force majeure which affects his/her business and causes the Employer incapable to operate his or her business as normal so as to temporarily suspend the business in whole or in part, the Employer shall pay wages to an employee in amount of not less than seventy-five per cent of wages of working days received by the employee before the suspension of business for the entire period which the Employer does not require the employee to work.

The Employer shall give written notice to the employee and the Labor Inspector in advance prior to the date of suspension of business under paragraph one for not less than 3 working days."

### **Section 16**

The provisions of Section 93 and Section 94 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

#### **"Section 93**

The Labor Welfare Committee shall have powers and duties as follows:

- (1) to make comments to the Minister concerning policies, guidelines and measures on Labor welfare;
- (2) to make comments to the Minister on the issue of Ministerial Regulations, Notifications or Rules concerning the provision of welfare in establishments;
- (3) to provide advices on the provision of Labor welfare for different types of establishments;
- (4) to evaluate and report the performance results to the Minister;
- (5) to issue an order to an Employer to pay a special severance pay or a special severance pay in lieu of advance notice under Section 120;
- (6) to perform any other task as prescribed by this Act or by any other law to be the powers and duties of the Labor Welfare Committee or as assigned by the Minister.

#### **Section 94**

Section 78 paragraph two, Section 80, Section 81, Section 82 paragraph one, Section 83, Section 84, Section 85 and Section 86 shall apply mutatis mutandis to the Labor Welfare Committee."

### **Section 17**

The following shall be added as Section 115/1 of the Labor Protection Act, B.E. 2541:

#### **"Section 115/1**

For the purpose of performing duties of the Labor Inspector under Section 139, an Employer who employs 10 employees or more shall submit a report form on conditions of employment and working conditions to the Director-General or a person entrusted by the Director-General within every January. The Labor Inspector shall provide the form as prescribed by the Director-General to the employer within every December.

Where there is any change in the facts or conditions of employment and working conditions submitted under paragraph one, the Employer shall inform the Director-General or a person entrusted by the Director-General in writing of the change within the following month after the existence of such change."

### **Section 18**

The provisions of Section 119 and Section 120 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

#### **"Section 119**

An employer may not pay severance pay to an employee when employment is terminated upon any of the following conditions:

- (1) performing his/her duty dishonestly or intentionally committing a criminal offence against the Employer;
- (2) willfully causing damage to the Employer;
- (3) committing negligent acts causing serious damage to the Employer;
- (4) violating work rule, regulation or order of the Employer which is lawful and just, and after written warning having been given by the Employer, except for a serious case with no requirement for the Employer to give warning.

The written warning shall be valid of not exceeding one year from the date when the employee commits the offence;

- (5) absenting himself/herself from duty without justifiable reason for three consecutive working days regardless of whether there is holiday in between;
- (6) being sentenced to imprisonment by a final court judgment.

In item (6), if the imprisonment is for offences committed by negligence or a petty offense, it shall be the offense causing damage to the Employer.

Upon termination of employment without severance pay under paragraph one, when the Employer fails to specify the fact which is a cause of termination in a letter of termination of employment or fails to inform the cause of termination to the employee at a time of termination of employment, the Employer cannot afterwards claim for such cause.

#### **Section 120**

Where an Employer relocates an establishment to another place and the relocation significantly affects the ordinary way of living of an employee or his/her family, the Employer shall inform the employee in advance of not less than thirty days before the date of relocation. For this purpose, if any employee refuses to work at the new location, the employee is entitled to terminate a contract of employment within thirty days from the date of being informed by the Employer or the date of relocation as the case may be. In this regard, the employee is entitled to a special severance pay of not less than the rate of severance pay for which he/she is eligible under Section 118.

Where the Employer fails to inform an employee in advance under paragraph one, the Employer shall pay a special severance pay in lieu of advance notice in an amount equivalent to thirty days pay at the latest wage rate, or equivalent to the wages of the last thirty days for the employee who receives wage based on a piece rate.

The Employer shall pay special severance pay or special severance pay in lieu of advance notice to the employee within seven days from the date when the employee terminates the contract.

Where the Employer fails to pay special severance pay or special severance pay in lieu of advance notice under paragraph three, the employee is entitled to lodge a

complaint to the Labor Welfare Committee within thirty days from the due date of payment of special severance pay or special severance pay in lieu of advance notice.

The Labor Welfare Committee shall consider and issue an order within sixty days from the date of receiving the complaint.

When it is determined by the Labor Welfare Committee that the employee is entitled to special severance pay or special severance pay in lieu of advance notice, the Labor Welfare Committee shall issue an order in writing to the Employer to pay special severance pay or special severance pay in lieu of advance notice to the employee within thirty days from the date when the Employer has acknowledged or deemed to acknowledge such order.

When it is determined by the Labor Welfare Committee that the employee is not entitled to special severance pay or special severance pay in lieu of advance notice as the case may be, the Labor Welfare Committee shall issue a written order and communicate to the Employer and the employee.

The order of the Labor Welfare Committee shall be final, unless the Employer or the employee appeals against the order to the court within thirty days from the date of acknowledgement of the order. Where the Employer is a party who brings the case before the court, the Employer shall deposit a security with the court in equal to an amount to be paid by the order so as to further the proceeding of the case."

#### **Section 19**

The provision of paragraph three of Section 124 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"When it appears from an investigation by the Labor Inspector that the employee is entitled to any sum of money which the Employer is liable to pay under this Act, the Labor Inspector shall order the Employer to pay such money to the employee or to a statutory heir of the deceased employee in the form provided by the Director-General within thirty days from the date of acknowledgment or the date deemed to be acknowledged of the order."

#### **Section 20**

The following shall be added as Section 124/1 of the Labor Protection, Act B.E. 2541:

"Section 124/1

Where an Employer has complied with an order of the Labor Inspector under Section 124 within a specified period or complied with a court judgment or an order of the court, the criminal proceedings against the Employer shall be extinguished."

#### **Section 21**

The provision of paragraph four of Section 125 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Where the case is final and the Employer is liable to pay any sum of money to the employee or to the statutory heir of the deceased employee, the Court shall have the power to pay the money deposited with the Court by the Employer to the employee or the statutory heir of the deceased employee or the Employee Welfare Fund upon the payment under Section 134 as the case may be."

#### **Section 22**

The provision of Section 135 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 135

Where the Department of Labor Protection and Welfare has paid money from the Employee Welfare Fund, either in whole or in part to employee under Section 134, the Department of Labor Protection and Welfare shall have the right of recourse against a person liable to pay such money to the employee including interests at the rate of fifteen per cent per annum from the date when the Department of Labor

Protection and Welfare has paid money from the Employee Welfare Fund to the employee, regardless of whether the liable person already paid such money to the Employee or not.

The prescription of the right of recourse under paragraph one shall be ten years from the date of payment from the Employee Welfare Fund is made."

### **Section 23**

The provision of Section 141 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

#### **"Section 141**

An appeal against an order of the Labor Inspector under Section 139 (3) shall be made to the Director-General or any person entrusted by the Director-General within a specified period as provided in the order. The Director-General or any person entrusted by the Director-General shall determine the appeal and notify the appellant without delay, but no longer than thirty days from the date of receiving the appeal. The decision of the Director-General or any person entrusted by the Director-General shall be final.

The appeal under paragraph one shall not relieve the Employer's obligation to take any action in compliance with the order of the Labor Inspector, unless the Director-General or the person entrusted by the Director-General issues an order otherwise or a security as provided by the Director-General or the person entrusted by the Director-General is deposited.

Where the Employer or the employee has complied with the order of the Labor Inspector under Section 139(3) or has complied with the decision of the Director-General or the person entrusted by the Director-General under paragraph one within the specified period, the criminal prosecution against the Employer or the employee shall be extinguished."

### **Section 24**

The provision of Section 144 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

#### **"Section 144**

Any Employer who violates or fails to comply with Section 10, Section 22, Section 24, Section 25, Section 26, Section 37, Section 38, Section 39, Section 39/1, Section 40, Section 42, Section 43, Section 46, Section 47, Section 48, Section 49, Section 50, Section 51, Section 61, Section 62, Section 63, Section 64, Section 67, Section 70, Section 71, Section 72, Section 76, Section 90 paragraph one, or the Ministerial Regulations issued under Section 95, Section 107 or Section 118 paragraph one, or fails to pay special severance pay in lieu of an advance notice or special severance pay under Section 120, Section 121 or Section 122 shall be penalized with imprisonment of not more than six months, or a fine not exceeding one hundred thousand Baht, or both.

Where an Employer violates or fails to comply with Section 37, Section 38, Section 39, Section 39/1, Section 42, Section 47, Section 48, Section 49 or Section 50 thereby causing physical or mental harm to an employee, or causing the death of employee, the Employer shall be penalized with imprisonment of not more than one year or a fine not exceeding two hundred thousand Baht, or both."

### **Section 25**

The following shall be added as Section 144/1 of the Labor Protection Act, B.E. 2541:

#### **"Section 144/1**

Any entrepreneur who fails to comply with Section 11/1 shall be penalized with a fine not exceeding one hundred thousand Baht."

## Section 26

The provisions of Section 150 and Section 151 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

### "Section 150

Any person who fails to render any convenience, give a statement, or submit document or object as required by a summons of the Wage Committee, the Labor Welfare Committee, Sub-committee under the Committees thereof or a person entrusted by the Committee or Sub-committees thereof as a case may be, or fails to render convenience to the Labor Inspector, a physician, a social welfare officer or an expert under Section 142 shall be penalized with imprisonment of not more than one month, or a fine not exceeding two thousand Baht, or both.

### Section 151

Any person who obstructs the performance of any duty of the Wage Committee, the Labor Welfare Committee, Sub-committee under the Committees thereof, a person entrusted by the Committee or Sub-committee thereof as a case may be, or obstructs the performance of any duty of a Labor Inspector, a physician, a social welfare officer or an expert under Section 142 shall be penalized with imprisonment of not more than one year, or a fine not exceeding twenty thousand Baht, or both.

Any person who fails to comply with an order of the Labor Welfare Committee issued under Section 120 or an order of the Labor Inspector issued under Section 104, Section 105 or Section 124 shall be penalized with imprisonment of not more than one year, or a fine not exceeding twenty thousand Baht, or both."

## Section 27

The following shall be added as Section 155/1 of the Labor Protection Act, B.E. 2541:

### "Section 155/1

Any Employer who fails to submit or provide a report form on conditions of employment and working conditions under Section 115/1 and, after receiving a warning letter of the Labor Inspector, fails to submit or provide the report form within fifteen days from the date of receiving the warning letter shall be penalized with a fine not exceeding twenty thousand Baht."

Countersigned by

General Surayuth Chulanon

Prime Minister

### **Disclaimer**

This translation is intended to help Thais or foreigners to understand Thailand laws and regulations only, not to use as references, because it is only the original Thai version of legislation that carries legal effect. www.ThaiLaws.com, therefore, shall not be held responsible in any way for any damage or otherwise the user may incur as a result of or in connection with any use of this publication for any purposes. It's the responsibility of the user to obtain the correct meaning or interpretation of this publication or any part thereof from Thai version or by making a formal request to the appropriate or related authorities.

**Labor Protection Act (No. 3), B.E.2551 (2008)**

Translation

BHUMIBOL ADULY ADEJ, REX.

Given on the 15th February B.E. 2551

Being the 63rd year of the present Reign

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that:

Whereas it is expedient to revise the Law Governing Labor Protection.

This Act contains the provisions in relation to the restriction of rights and liberties of persons, in respect of which Section 29, in conjunction with Section 43 of the Constitution of the Kingdom of Thailand so permit by virtue of law.

Be it, therefore, enacted an Act by the King, by and with the advice and consent of National Legislative Assembly, as follows.

**Section 1**

This Act shall be called "Labor Protection Act (No.3), B.E. 2551."

**Section 2**

This Act shall come into force from the day following the date of its publication in the Government Gazette.

**Section 3**

The definition of the words "base minimum wage rate" under Section 5 of Labor Protection Act, B.E. 2541, shall be repealed.

**Section 4**

The definition of the words "workmanship standard wage rate" shall be inserted in between the definition of the word "minimum wage rate" and "overtime working" under Section 5 of Labor Protection Act, B.E. 2541.

"Workmanship standard wage rate" means the wage rate prescribed by Wage Committee for each career field in accordance with the workmanship."

**Section 5**

The contents under Section 79 of Labor Protection Act, B.E. 2541, shall be repealed and superseded by the following contents:

"Section 79 Wage Committee shall have the power and duty as follows:

- (1) Proposing opinions and giving advices and recommendations to the Council of Ministers in relation to the policy and development on the wages and revenues.
- (2) Prescribing guidance for use in the employers' considerations in making wage adjustment in accordance with the economic and social situation.
- (3) Fixing the minimum wage rates.
- (4) Fixing workmanship standard wage rates.
- (5) Giving advices on the academic aspect and way on interest coordination for various governments both in the government and private sectors as well as the general public.
- (6) Performing other tasks prescribed by law or as assigned by the Council of Ministers or Minister.

In proposing such opinions to the Council of Ministers, Wage Committee may as well come up with any observations in relation to the country revenue system development."

## **Section 6**

The contents under Section 82 of Labor Protection Act, B.E. 2541, shall be repealed and superseded by the following contents:

### **"Section 82**

The Wage Committee meeting shall be attended by members of not less than a half of the total number of the Committee members which, at least one of each shall be a member on the employer's and employee's sides, to constitute a quorum.

In a meeting to consider the fixing of the minimum wage rates and workmanship standard wage rates in accordance with Section 79, there must be members of not less than two third of the total number of the Committee members which, at least two of each shall be members on the employer's and employee's sides, attending the meeting to constitute a quorum.

In any meeting sessions to consider the fixing of the minimum wage rates and workmanship standard wage rates, if the quorum cannot be constituted in accordance with paragraph two above, the meeting shall be held once again within fifteen days from the date of the first meeting session schedule. In the succeeding meeting, even there may be no member from the employer and employee sides in attendance, if the meeting is attended by members of not less than two third of the total number of the total Committee members, the quorum shall be considered as constituted and that the resolution, at least, at two third of the members in attendance must be attained."

## **Section 7**

The contents under Section 84 of Labor Protection Act, B.E. 2541, shall be repealed and superseded by the following contents:

### **"Section 84**

Wage Committee shall have the power to appoint a Sub-Committee to consider or perform any acts assigned by Wage Committee.

Wage Committee shall prescribe the quorum and operational procedures of the Sub-Committee as appropriate."

## **Section 8**

The following contents shall be added thereto as Section 84/1 of Labor Protection Act, B.E. 2541.

### **"Section 84/1**

Wage Committee shall have the power to appoint qualified persons not exceeding five of them as Advisors to Wage Committee and that among them, at least, there must be qualified persons in the field of labor, wage and salary administration, economics, industry or law.

On the aspect of holding and vacating office of the Advisors appointed by Wage Committee under paragraph one above, the provisions under Section 80 and Section 81 shall apply *mutatis mutandis*."

## **Section 9**

The contents under Section 87, Section 88, Section 89, Section 90 and Section 91 of Labor Protection Act, B.E. 2541, shall be repealed and superseded by the following contents:

### **"Section 87**

In the consideration on the fixing of the minimum wage rate, Wage Committee shall study and consider the facts relating to the wage rate having been currently received by the employees in conjunction with the other facts by taking into account the cost of living index, inflation rate, subsistence standard, production

cost, goods and service price, business capability, labor productivity, gross domestic product (GSP) and economic and social condition.

In a consideration on the fixing of the minimum wage rate, it may be fixed for use specifically for whichever business, work or career field category, to what extent and locality.

In the consideration on the fixing of the workmanship standard wage rate, Wage Committee shall study and consider the facts relating to the wage rate having been currently received by the employees in each career field in accordance with the prescribed workmanship standard by measuring the value of skill, knowledge and capability provided, however, that the workmanship standard wage rate shall not be lower than the minimum wage rate fixed by Wage Committee.

#### Section 88

Once a study on information data and considerations on the facts prescribed under Section 87, have already been conducted, Wage Committee shall announced and prescribed the minimum wage rate or workmanship standard wage rate by submitting to the Council of Ministers for publication in the Government Gazette.

#### Section 89

The Announcements on the minimum wage rate or workmanship standard wage rate in accordance with Section 88 shall apply to all employers and employees without any discrimination.

#### Section 90

Once the Announcements on the minimum wage rate or workmanship standard wage rate have come into force, no employer shall pay the wages to employees lesser than the prescribed minimum wage rate or workmanship standard wage rate.

Labor Inspectors shall forward the Announcements on the minimum wage rate or workmanship standard wage rate to employers within the scope of the enforcement and that the employers shall post such Announcements at the openly highly visible place at the employee's working places to so inform the employees throughout the period on which such Announcements have still been in effect.

#### Section 91

There shall be a Wage Committee Office in Ministry of Labor, having the power and duty as follows:

- (1) Preparing the Country Wage System and Revenue Development Plan for submission to Wage Committee.
- (2) Preparing the Project Plan for submission to Wage Committee and Sub-Committee.
- (3) Coordinating the plans and work operations of Wage Committee and Sub-Committee.
- (4) Compiling, studying, researching, analyzing and assessing the situation on economics, labors, subsistence conditions, labor market expansions, labor productivity, investments, labor migration and other related information data for use in mapping out the plan on the development of the country wage system and revenues and as the information data to support the considerations of Wage Committee and Sub-Committee.
- (5) Giving recommendations on the results of the study and academic considerations and other supplementary measures to Ministry of Labor and related organizations for the advantage in the developments of wage system and revenues.



- (6) Making follow-ups and assessment on the country wage system and revenues as well as the performances in accordance with the resolution of Wage Committee.
- (7) Performing other tasks as assigned by Wage Committee and Sub-Committee."

#### **Section 10**

All rules, announcements or orders issued under the provisions of Section 79, Section 84, and Section 88 of Labor Protection Act, B.E. 2541, enforceable prior to the date on which this Act has come to force shall continue to be enforceable as long as they are not contradictory to or inconsistent with this Act until there shall be rules, announcements or orders issued under Section 79, Section 84, and Section 88 of Labor Protection Act, B.E. 2541, which have been revised by this Act.

#### **Section 11**

Labor Minister shall have charge and control over the executions under this Act.

Countersigned by

General Surayuth Chulanond

Prime Minister

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