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Thailand: new Ministerial Regulation offers better protection of domestic worker's rights

On 9 November 2012, a new Ministerial Regulation No. 14 (B.E. 2555) entered into force improving workplace rights for domestic workers in the Kingdom of Thailand. Issued under the Labour Protection Act B.E. 2541 (1998), the Regulation applies to employers employing workers to perform domestic work which does not involve business operations.. It aligns several aspects of the legislation with the Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201).

The regulatory initiative has positive implications for the more than 250,000¹ domestic workers in Thailand, including the large proportion of domestic workers who are also migrants. According to official figures from the Ministry of Labour, in mid-2011, 83,066 migrant domestic workers from Cambodia, Lao PDR and Myanmar registered with the Thai authorities. However, many more domestic workers do not have documents authorizing their residence or employment in Thailand. The Foundation for Labour and Employment Promotion (HomeNet Thailand), a non-governmental organization working with homeworkers and domestic workers in Thailand,² estimates that up to 90 per cent of domestic workers are documented

or undocumented migrants from neighbouring countries.

The Regulation extends some new rights and protections provided under the Labour Protection Act B.E. 2541 (A.D. 1998) to domestic workers, namely the right to a weekly rest day, traditional public holidays, sick leave and payment of unused leave days in case of termination. Further, it provides that the general minimum age for admission to employment set by the Labour Protection Act is applicable to domestic workers.³

The new Regulation is an important step towards protecting domestic workers just like other workers in the country, although

domestic workers remain excluded from working hours limitations, overtime compensation and minimum wage coverage, and social security protection. Domestic workers also remain excluded from maternity leave and protection from dismissal based on pregnancy, even if the vast majority of domestic workers are women.⁴

The legal protection available for domestic workers in Thailand under the Labour Protection Act B.E. 2541 (A.D. 1998), as provided in the 2012 Ministerial Regulation is summarized below, with references to the relevant sections of the Act. In addition to the Labour Protection Act, employment of domestic workers is governed by the Civil and Commercial Code.⁵ The Courts have the power to enforce a contract of employment agreed between a domestic worker and a household only as far as it is fair and reasonable.⁶

Weekly holiday, traditional holidays and annual holidays

Domestic workers are entitled to at least one day off each week.⁷ They are also entitled to no less than the standard thirteen traditional holidays per year.⁸ Where such a holiday falls on a weekly holiday, the worker is entitled to take off the following working day. Further, a domestic worker who has worked for an employer for one year without interruption is entitled to at least six working days of annual holidays with pay.⁹

Where work is required from a domestic worker on a weekly holiday, traditional holiday or annual holidays remuneration at the holiday pay rate, including pay for overtime, as specified in the Labour Protection Act is due.¹⁰

Remuneration

Domestic workers' wages must be paid at least once a month. A longer pay interval can be agreed upon between the employer and the domestic worker, if such an arrangement is in the worker's best interest.¹¹ The amount of the remuneration is subject to agreement between the employer and the worker. The minimum wage laws and regulations do not cover domestic workers. However, men and women are to receive the same wages where the work is of the same nature, quality and quantity.¹²

Wages and other monetary payments arising out of the employment are to be paid to the worker in Thai currency at the workplace. Payment can be made elsewhere or by other means, e.g. by cheque or in foreign currency, with the consent of the worker.¹³

Sick leave

In the case of illness, domestic workers are entitled to sick leave. Employers are required to pay the full wage during up to 30 working days of sick leave per year.¹⁴ For sick leave longer than three days, the employer may require a medical certificate or doctor's note attesting to the worker's temporary incapacity for work. The rules for sick leave apply in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. Days on which a worker is unable to work due to injury or illness arising out of employment are not regarded as sick leave.

Minimum age and protection of young workers

With the new Regulation, no employer shall employ a child under the age of 15 in domestic work.¹⁵ Specific protections are envisaged for domestic workers under 18 years of age, including rest periods during the working day, prohibition of night work, and notification of employment of such young workers to the labour inspector.¹⁶

Protection against sexual harassment

The prohibition for employers, persons in charge, supervisors or inspectors from sexually abusing, harassing, or molesting workers, applies to domestic workers.¹⁷

Equal treatment between women and men

In line with the Labour Protection Act, an employer shall treat male and female employees equally in their employment, unless equal treatment is not possible due to the nature of the particular work.¹⁸ As indicated above, the Act's provision on equal pay between men and women for work of equal value also applies to domestic workers.

Termination of employment

If an employment contract specifies the period of employment, the contract will end on the date specified, with no need for advance notice.¹⁹ However, if no specific term of employment is set out in the contract, the employer must give an advance notice to the worker in writing at or before any due date of wage payment in order for the termination to take effect the following due date. Therefore, if a worker is paid on a monthly basis, the notice period shall be at least one month. The employer is permitted to immediately pay the domestic worker an amount corresponding to the wages for the notice period, and terminate the worker's employment immediately. Advance notice is not required in certain circumstances involving fault on the part of the worker (e.g. intentionally causing damage to the employer, gross negligence, criminal offence against the employer, etc.) outlined in section 119 of the Labour Protection Act, and section 583 of the Civil and Commercial Code.²⁰

In case of termination, workers are entitled to be paid within three days.²¹ The employer is also required to pay the wage due for unused annual holidays, except in cases whether the termination is for reasons listed in section 119 of the Labour Protection Act.²²

Other provisions

In addition to the above-mentioned rights and protections, the following provisions under the Labour Protection Act apply to domestic workers:

- Employers are prohibited from demanding from the worker a deposit or bond as a condition for obtaining or retaining employment or to compensate for damage.²³
- Weekly holidays, leave, and other days off granted or ordered by the employers are to be included for the purpose of calculating the period of employment. If the worker has not worked continuously on account of an intention by the employer to deprive the worker of entitlements under the Act, periods of employment are to be accumulated for the purpose of acquisition of rights.²⁴
- In case of a change of employer in the event of a transfer or merger, the rights of the worker will remain the same.²⁵

Complaints and enforcement

Domestic workers are entitled to lodge a petition with the labour inspector for violation of their rights. Following an investigation, the labour inspector may order the employer to make outstanding payments. Violations of legal entitlements enjoyed by domestic workers are subject to penalties under the Labour Protection Act.²⁶

¹ Amounting to 251,100 in total in the second quarter of 2012; see National Bureau of Statistics, Thailand: The Labour Force Survey, Quarter 2: April-June 2012 (Bangkok).

² A "homeworker" is a person that carries out work in his or her home or in other premises of his or her choice, other than the workplace of the employer; see Article 1 of the Home Work Convention, 1996 (No. 177). By contrast, a "domestic worker" is a person that performs work in or for a household or households, i.e. households other than the worker's own household; see Article 1 of the Domestic Workers Convention, 2011 (No. 189).

³ Regulation No. 14 (2012) amends provisions of an earlier Ministerial Regulation B.E. 2541 (1998). For an overview of the situation of domestic workers in Thailand before the adoption of the 2012 Regulation, see V. Boontinand: Domestic Workers in Thailand: their situation, challenges and the way forward (Bangkok, ILO, 2010), http://www.ilo.org/asia/whatwedo/publications/WCMS_120274/lang-en/index.htm (accessed 17 Dec 2012).

⁴ Domestic workers remain outside the scope of the Social Security Act 1990, the Workmen's Compensation Act, 1994, and the Labour Relations Act, 1975.

⁵ The applicability of the Civil and Commercial Code is established by section 14 of the Labour Protection Act, as amended by Labour Protection Act (No. 2) of 2008. The Civil and Commercial Code provides, for instance, that domestic workers are entitled to obtain a work certificate from the employers upon termination or end of the contract. It also provides that an employer is obliged to pay the cost of the return travel of a worker at the end of the contract where the worker was hired and brought from elsewhere (section 586).

⁶ Section 14(1).

⁷ Section 28.

⁸ Section 29.

⁹ Section 30.

¹⁰ Sections 62 and 64. The application of these provisions, particularly as regards holiday overtime appears impeded by the exclusion of domestic workers from normal working hours and minimum wage provisions.

¹¹ Section 70. As specified in Ministerial Regulation No. 14, section 70 applies to domestic workers as far as wages and holiday pay is concerned.

¹² Section 53. In an observation issued in 2012, the ILO Committee on the Application of Conventions and Recommendations (CEACR) noted that section 53 is narrower than the principle of equal remuneration for men and women for work of equal value as set out the Equal Remuneration Convention, 1951 (No. 100), ratified by Thailand, and should therefore be amended. In other words, women and men should receive also the same remuneration when their respective work is of different nature but nevertheless of equal value.

¹³ Sections 54 and 55. These provisions apply to domestic workers as far as wages and holiday pay is concerned.

¹⁴ Sections 32 and 57.

¹⁵ Section 44.

¹⁶ Sections 45 and 47. In addition, section 51, as amended by Labour Protection Act (No. 2) of 2008, applies.

¹⁷ Section 16 as amended by Labour Protection Act (No. 2) of 2008.

¹⁸ Section 15.

¹⁹ Termination of employment is regulated in section 17 of the Labour Protection Act, as amended by section 8 of Labour Protection Act (No. 2) of 2008.

²⁰ Section 586 refers to willful disobedience, habitual neglect of lawful instructions of his employer, absence, gross misconduct, or other acts incompatible with the due and faithful discharge of duty.

²¹ Section 70.

²² Section 67 as amended by Labour Protection Act (No. 2) of 2008.

²³ Section 10 as amended by Labour Protection Act (No. 2) of 2008.

²⁴ Sections 19 and 20.

²⁵ Section 13.

²⁶ See chapters 14 and 16 of the Labour Protection Act.

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