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Note on the Best Practices for Hiring and Terminating Employees for CEOs and HR Managers

This note summarized the comments and answers given from the perspective of Thai law by the moderator and the panelist from LawPlus Ltd. (Kowit Somwaiya and Kulkanya Vorawanichar) in response to the questions raised during the conference on the Best Practices for Hiring and Terminating Employees for CEOs and HR Managers organized jointly by LawPlus Ltd., Joyce A. Tan & Partners LLC (Singapore), LAW Partnership (Malaysia) and HHR Lawyers (Indonesia) on 13th August 2026 at Dusit Thani Bangkok.

Session 1: Hiring Essentials: The Do's and Don'ts for Employment Agreements, Work Rules and Policies, Employee Handbooks, and Other Critical Employment Documents

1. What is the most common misunderstanding about the employment contract in your jurisdiction?

The common misconceptions about employment contracts in Thailand are as follows:

First, many employers and employees believe that an employment contract does not exist unless there is a signed written agreement. However, under Thai law, an employment contract does not need to be in writing. It may be verbal or implied by the parties' conduct.

Second, employers cannot contract out of statutory employee protections. Any contractual provision that provides less than the minimum rights of the employee under the Labour Protection Act B.E. 2541 (1998) ("**LPA**"), such as a waiver of severance or overtime pay, is generally unenforceable. If any provision of the employment contract is against the LPA and negatively against the employee, such provision is void.

Finally, paying all statutory termination entitlements does not necessarily protect an employer from an unfair termination claim. Employers should therefore ensure that any termination is based on fair and reasonable grounds and is carried out through a fair process.

2. Are fixed-term employment contracts permitted in your jurisdiction? If so, can they be used to avoid statutory severance pay or other termination entitlements?

Yes, fixed-term employment contracts are permitted in Thailand, but they cannot be used to avoid statutory severance pay.

Under the LPA, the severance exemption for fixed-term employees applies only in limited circumstances. The employment must be for a specific project outside the employer's normal business, or for temporary or seasonal work, and the contract must be in writing with clear start and end dates and a term not exceeding two years.

If a fixed-term contract is used for the employer's regular business operations or does not meet these statutory requirements, the severance exemption will not apply, and the court may rule that such a fixed-term contract is actually a non-fixed-term contract.

3. How much flexibility do employers have during the probation period? If an employee does not perform well, can the employer extend probation or terminating the employee? Are there risks to do so?

Employers may place an employee on probation by agreement, but they must still comply with Thai labour law.

Probation is not prohibited. It is allowed as a contractual arrangement between the employer and employee. If the employee is not performing satisfactorily, the employer may extend the probation period with the employee's consent, as this may constitute a change to the employee's employment conditions.

The employer may terminate the employee during or at the end of probation. However, the usual termination requirements still apply. This means the employer must give the required notice or make payment in lieu of notice, and if the employee has worked for at least 120 days, the statutory severance pay will also be payable. Poor performance during or after the probation period is not a statutory ground for termination without paying severance pay.

4. Are pre-employment screening measures, such as criminal background checks, reference checks, medical examinations, and drug tests, permitted in your jurisdiction? Can an offer of employment or continued employment be made conditional upon satisfactory screening results?

Pre-employment screening, such as criminal background checks, reference checks, medical examinations and drug tests, is generally permitted, subject to compliance with applicable laws, such as the Personal Data Protection Act B.E. 2562 (2019) ("**PDPA**").

The employer must inform job applicants in advance about the collection, use and disclosure of their personal data. Job applicants are the "data subjects" under the PDPA. Where screening involves processing of sensitive personal data, such as criminal records or health information, explicit written consent is required.

For reference checks, employers may rely on an appropriate lawful basis under the PDPA, such as legitimate interests or consent, depending on the circumstances.

Employers may also make a job offer conditional upon satisfactory screening results. This should be clearly stated in the offer letter or employment contract so that employment only takes effect once the required screening has been successfully completed.

5. Is an employer legally required to implement an employee handbook or work rules in your jurisdiction? If so, what legal requirements or thresholds trigger this obligation?

Yes. In Thailand, an employer with 10 or more employees is legally required to prepare Work Rules ("WR").

Under the LPA, the WR must be in Thai and cover certain mandatory matters, including working hours, holidays, leave entitlements, disciplinary measures, grievance procedures, and termination of employment.

The employer must announce the WR to employees and keep a copy at the workplace.

Session 2: Terminating Pitfalls: Termination With or Without Cause, Mutual Separation Arrangements, Unfair Dismissal Claims, and Strategies for Managing Employment Disputes

1. What legal requirements and obligations must an employer comply with when terminating an employee in your jurisdiction, such as notice requirements and statutory termination payments? Do these requirements and entitlements differ between termination with cause and termination without cause?

The legal requirements depend on whether the termination is with or without cause.

For termination without cause, including restructuring, redundancy, or poor performance, the employer must give advance notice prior to at least one salary payment period or make payment in lieu of notice. The employer must also pay all outstanding statutory and contractual entitlements, including unpaid wages, payment for unused annual leave where applicable, and statutory severance pay ranging from 30 to 400 days' wages, depending on the employee's length of service.

For termination with cause, the employer may dismiss the employee without advance notice and without statutory severance pay, but only if the termination falls within one of the grounds specified under Section 119 of the LPA. Examples include dishonesty in performing duties, intentionally causing damage to the employer, and certain serious or repeated violations of the employer's lawful work rules or orders.

2. Can employers terminate employees for misconduct or poor performance without paying statutory termination benefits?

Misconduct is a broad concept. The employer may terminate the employee without notice or statutory severance pay only if the misconduct of the employee falls within one of the legal causes of termination under Section 119 of the LPA. The alleged misconduct should be fully investigated and the accused employee be given a chance to defend him/herself before the termination takes place.

Poor performance, redundancy and workforce reduction are not statutory grounds for dismissal without severance pay. The employer must therefore generally give the required termination notice or payment in lieu of notice and pay statutory severance pay to the affected employee.

3. What are the most common employment-related claims or disputes in your jurisdiction? Does unfair termination claim exist or recognised in your jurisdiction?

Common claims before the Thai Labour Court include unpaid statutory termination payments, and unfair termination claims.

Unfair termination is expressly recognized under the Act Establishing the Labour Courts and Labour Court Procedure B.E. 2522 (1979). As the law does not define the "unfair termination", to decide whether the termination is fair or unfair, the Labour Court exercises broad discretion taking into consideration the circumstances of each case, such as the reason for termination, the employee's conduct and performance, the employee's service term, and the employer's business needs.

If the court finds the termination unfair, the court may order reinstatement of employment or award unfair termination compensation in addition to the statutory termination payments. In practice, compensation is more commonly awarded and reinstatement is rare.

4. Are mutual separation agreements, as an alternative to unilateral termination, recognized and enforceable in your jurisdiction?

Although the Thai labour law is silent on mutual separation, a mutual separation agreement is valid and enforceable under the principle of freedom of contract, provided that the employee enters into the agreement voluntarily and is not misled, pressured or forced into signing it. It must be an agreement between the employer and the employee to end the employment relationship on mutually agreed terms, rather than the employer terminating the employee unilaterally. The parties usually agree that, after the employment ends, neither party will bring any employment-related claims, including an unfair termination claim, against the other.

And as part of the mutual agreement, the employer often offers an *ex-gratia* payment in addition to all the statutory and contractual entitlements of the employee in order to encourage the employee to enter into the agreement and agree not to pursue any claim against the employer in court.

5. What documentation should employers maintain before and during the termination process to minimise the risk of future employment claims, and for how long should such documents be retained?

Employers should retain documents supporting the reasons for termination. Depending on the circumstances, these may include the employment contract, work rules, job description, performance evaluations, performance improvement plans (PIPs), warning letters, investigation reports, relevant correspondence and meeting notes, and other evidence of misconduct or poor performance.

Employers should also retain records relating to the termination process, including the termination letter and evidence of receipt, records of statutory termination payments, and any separation agreement.

Employment-related documents should be retained for at least 10 years after termination, in line with the applicable prescription periods for claims for breach of employment contract and unfair termination claims.

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