



TMI Eyes No. 16: Termination of the Employment Contract: Legal Considerations

Termination of an employment contract is a significant and sometimes necessary step for businesses. It involves various legal and ethical considerations that employers must navigate to ensure compliance with labor laws and to maintain fair treatment of employees. This article provides a comprehensive overview of the key aspects of terminating an employment contract.

The Remuneration to which the Employees are legally entitled.

1. **Severance Pay:** Employees who have worked for at least 120 consecutive days are entitled to this by law, as specified in Section 118 of the Labor Protection Act B.E. 2541. However, Employers should be aware that not every termination requires severance pay, even if the employee has worked continuously for 120 days. Severance pay may not be owed if the termination falls under the following exceptions:
 - **Special Employment Contracts**

According to Section 118, paragraphs three and four of the Labor Protection Act B.E. 2541, severance pay is not required if the employment contract is for a specific term, and the termination occurs at the end of that term. This applies to specific types of work as defined in Section 118, paragraph four, where the work must be completed within two years and the employer shall make a written contract with the employee at the beginning of the employment.
 - **The Grounds for Termination**

Section 119 of the Labor Protection Act B.E. 2541 outlines specific grounds for termination without severance pay, For example;

 1. Performing his/her duty dishonestly or intentionally committing a criminal offense against the employer such as employees claiming travel and accommodation expenses without entitlement (Supreme Court Judgment No.2563/2526), employees attempting to trespass or vandalize company property (Supreme Court Judgment No.11/2547), a procurement employee concealed a lower bid proposal (Supreme Court Judgment No. 3809/2548), and stealing company equipment for resale (Supreme Court Judgment No.973-974/2559).
 2. Willfully causing damage to the employer such as obstructing the employer's delivery trucks (Supreme Court Judgment No.3597-3598/2525) and the employee sold the employer's car at a loss (Supreme Court Judgment No.1904-1905/2558).
 3. Committing negligent acts causing serious damage to the employer such as leaving a safe key unattended, leading to a theft of nearly THB 700,000 (Supreme Court Judgment

No.5603/2546) and allowing contaminants in products due to carelessness (Supreme Court Judgment No.4028/2548).

2. Payment of remuneration in lieu of advance notice: When the period is not specified in the employment contract and employers terminate the employment contract without getting advance notice to employees as per Section 17/1 of the Labor Protection Act B.E. 2541.
3. Additional Payments: Employees may also be entitled to other payments, such as compensation for annual leave and accumulated annual leave.

Employers must disburse these payments within the legally specified timeframe. Failure to do so may result in additional interest and penalties payable to the employee.

Fair Dismissal Considerations

Employers should also be aware of the grounds for termination. Terminating an employee without sufficient cause may be considered unfair dismissal. In such cases, employees can seek redress from the labor court, which may order reinstate the employee at the same level of wage at the time of dismissal or fix the amount of compensation to be paid by the employer under Section 49 of the Establishment of and Procedure for Labor Court Act B.E. 2522.

The fair dismissal must be primarily determined by the grounds for the termination. Therefore, an employer's failure to provide advance notice or to pay severance does not definitively establish that the termination was unfair.

Cases deemed Unfair Dismissal by the court include: Termination due to the employee's spouse working for a competitor (Supreme Court Judgment No. 3432/2524), termination due to the employee expressing opinions contrary to the employer (Supreme Court Judgment No. 1347/2525), termination due to the employee gambling outside of work hours and off company premises (Supreme Court Judgment No. 1684/2526), termination without cause (Supreme Court Judgment No. 2299/2528), and termination due to the employee committing minor infractions without fraudulent intent (Supreme Court Judgment No. 4064/2530).

Best Practices for Termination

To prevent disputes, employers shall ensure that all terminations are based on documented, the grounds of termination are justifiable reasons, and full payment of all entitlements has been made to employees. Moreover, terminating an employment contract is a complex process that requires careful consideration of legal obligations and best practices. Therefore, seeking legal advice from labor law experts can help employers navigate employment termination challenges effectively.

Daiki Koso, Partner and Monchai Varatthan, Partner, TMI Associates (Thailand) Co., Ltd.


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 bangkok@tmi.gr.jp

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HO CHI MINH CITY | PHNOM PENH | SILICON VALLEY | LONDON

 Sathorn Square Office Tower, 26th Floor, unit 2608-2609, North Sathorn Rd., Silom, Bangrak, Bangkok 10500

 Facebook: TMI Associates – Thailand
Instagram: tmibkk
LinkedIn: TMI Associates (Thailand)