TMI EYES
TMI Associates (Thailand) Co., Ltd.

TMI Eyes No. 37: Navigating Unfair Termination under Thai Labor Law: Criteria and Compensation

Following our previous article discussing the termination of underperforming employees, TMI further invites readers to explore the concept of unfair termination under Thai labor law, including the applicable legal criteria and potential compensation.

Unfair Termination and Compensation

Many employers and employees in Thailand commonly misunderstand that, provided an employer pays statutory severance pay and other amounts required under the Labour Protection Act (LPA) upon termination, no further payment obligations or legal risks remain. However, this is not necessarily the case.

Readers should note that, in labor litigation, Section 49 of the Establishment of and Procedure for Labour Court Act B.E. 2522 (1979) (the "Act") provides an additional layer of employee protection and grants the Thai Labor Court broad discretion to intervene where a dismissal is deemed unjustified.

Under the Act, the court may grant two primary remedies: (1) reinstatement, requiring the employer to re-employ the employee with the same benefits received at the time of dismissal; or (2) where the employment relationship is considered irreparable, an order requiring the employer to pay damages for unfair termination.

What Constitutes Unfair Termination?

Thai labor laws do not provide a precise statutory definition or fixed criteria for what constitutes "unfair termination." Instead, the Labor Court considers the specific facts and surrounding circumstances of each case to determine whether a termination is unfair.

Examples of situations where Thai courts have ruled that a termination was unfair:

- Dismissing employees without misconduct, reasonable cause, or prior warning;
- Terminating underperforming employees without proper performance evaluation, objective standards, or sufficient opportunity to improve;
- Unjustified or sham business restructuring used as a pretext for dismissal;
- Forced resignation; and

- Termination solely based on the employer's policy to reduce organizational costs or expenses, without clear evidence of reasonable cost-reduction measures, fair selection procedures, or objective criteria for selecting employees for termination.

Examples of cases where the Labor Court may consider termination justified and not unfair:

- Employees disregarding lawful employer instructions or conducting business for personal benefit in a manner that causes damage to the employer;
- Employees consistently reporting late to work over an extended period, constituting a failure to properly and honestly perform their duties;
- Termination arising from genuine business necessity, such as discontinuation of a department, outsourcing to improve competitiveness, provided that the employer adopts reasonable and appropriate measures before termination, such as consulting employees, explaining the reasons in advance, and offering fair severance or voluntary resignation packages; and
- Termination of underperforming employees where the employer can demonstrate clear performance deficiencies with prior written warnings, sufficient opportunity for improvement.

Please note that the examples above are derived from certain Thai Supreme Court decisions and are provided for general informational purposes only. Whether a termination is considered fair or unfair depends on the specific facts and circumstances of each case, and these examples must not be treated as definitive legal criteria under Thai labor law.

How Unfair Termination Compensation is Calculated

Unlike statutory severance pay under Section 118 of the LPA, Section 49 of the Establishment of and Procedure for Labor Court Act does not prescribe a fixed formula for calculating unfair termination compensation. Instead, the Labor Court considers various factors, including the employee's age, length of service, hardship suffered from the loss of employment, the reasons for termination, and any statutory severance already paid.

Based on practical experience and court observations, unfair termination compensation is often awarded at approximately one month's salary per year of service. However, the amount may vary depending on the circumstances of each case. In particular, courts may award higher compensation to senior, highly paid, or long-serving employees who may face substantial difficulty securing equivalent employment due to age or position.

TMI's Notes

Both employers and employees should be aware of this additional layer of employee protection under Thai labor law. Unfair termination claims may expose employers to significant financial liabilities and provide employees with remedies in cases of unjustified dismissal.

To minimize the risk of unfair termination claims, employers should ensure that any termination is based on valid, justified, and sufficient grounds, and that appropriate measures have been taken to address the issue prior to dismissal. Employers should also maintain clear documentary evidence, accurate performance evaluations, lawful written warnings, and verifiable business reasons for any restructuring or redundancy exercise. Importantly, the true and specific reason for termination should be clearly stated in the termination letter.

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