

Call in for a Coffee

RSM Nelson Wheeler, Thailand

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Introduction

Welcome to RSM's fifteenth edition of "Call in for a Coffee".

Many of our readers have inquired about the issues facing employers with respect to terminating staff and accordingly, we summarise these in this edition.

Termination of Employment

The Labour Protection Act B.E. 2541 (1998) ("the Act") applies to all businesses. The employer / employee relationship is governed by this Act, including matters relating to the termination of an employee.

The main reasons why an employer would consider terminating staff can be summarised briefly as for economic reasons, poor performance or misconduct.

It is common in Thailand that the Labour Court tends to favour the employee and accordingly it is extremely important that employers adopt the correct procedures insofar as termination is concerned.

Termination Payment Calculation Summary

The following is a summary of the quantum of severance pay which must be paid by an employer to an employee if Section 118 of the Act is applied. This is calculated in accordance with the employee's length of service.

- 120 days but less than 1 year – 30 days pay
- 1 year but less than 3 years – 90 days pay
- 3 years but less than 6 years – 180 days pay
- 6 years but less than 10 years – 240 days pay
- more than 10 years – 300 days pay

Exclusions to Payment of Severance Pay

A. Short or Temporary Employment Periods

Employers can be excluded from the requirement to pay severance payments if the following conditions apply:

- An employee has served the company for less than 120 days.
- An employee whose employment is stipulated in a contract set for a definite period and the employment is terminated at the end of that period (Section 118 of the Act).

Employment with a definite period is allowed only for the following categories;

1. Employment on a specific project which is not the normal business of the employer.
2. Employment for occasional or temporary work.
3. Seasonal employment.

A written employment contract is required for the above with clauses stipulating the commencement and completion dates. In addition, all tasks must be completed within two years.

B. Termination with Cause

Under Section 119 of the Act, there are certain exceptions which enable an employer to avoid the payment of severance to an employee and which are as follows:-

1. The employee performs dishonestly or intentionally commits an offence against the employer.
2. The employee intentionally causes the employer to suffer loss.
3. The employee causes serious damage to the employer as a result of negligence.
4. The employee violates the employer's working rules or regulations or the employer's orders which are legal and fair where the employer has already given the employee a written warning, except in a serious situation where the employer is not required to provide a warning.
5. The employee neglects to complete his or her duties by not attending work without justifiable reason for three consecutive working days.
6. The employee has spent time in prison by final judgement, with the exception of negligence or petty offences.

The exceptions to which employers are liable for severance pay are stipulated in Section 119 (1) – (6) of the Act. If the employer terminates the employment contract of the employee for other grounds, the employee is entitled to receive severance pay.

Nevertheless, to terminate the employment of any employee on the grounds stipulated in Section 119 of the Act, the employer must provide a letter of termination to the employee with the reasons for termination. Please

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note that the reasons provided must be real.

Special Severance Pay

In the case where an employer relocates the place of business which affects the normal living of an employee or his/her family, the employer shall notify the employee at least 30 days before the date of relocation. The employee may refuse to move and become entitled to receive severance pay. Failure to notify the employee may result in a special severance payment in lieu of the advance notice of 30 days.

With respect to the termination of the employment on the basis of reorganizing the business, production line, sales or services due to the adoption of machinery or technologies which result in a reduction of the number of employees, the employer has a duty subject to Section 121 of the Act to notify the employee as well as the labour inspector not less than sixty days prior to the contemplated date of termination. Failure to do so will result in a special severance payment in lieu of the advance notice being paid.

Summary

RSM strongly advises employers to take extreme care when terminating an employee. Since the Thai Labour Court tends to favour the employee, all steps should be taken to ensure that termination is conducted accurately and equitably.

Alert to British Citizens residing outside the UK

There is a strong likelihood that the British Government will abolish the rights of British expatriates to obtain free health care in the UK if they are domiciled in another country for a period greater than six (6) months. Pensioners returning home, we understand will not be affected. Further, certain other expatriates may not be affected if they have health schemes that specifically allow for repatriation.

Social Security Update

With effect from January 1, 2004, the Social Security Department has announced that the amount of money that the employer and employee must pay monthly for their contributions to the Social Security Fund will increase from 4% to 5% of employee's remuneration

for obtaining sickness, injury and invalidity, maternity, death, child allowance, old – age pension and unemployment benefits.

The level of salary on which Social Security is payable is capped at Baht 15,000 per month.

RSM News

RSM, has recently concluded a merger with Lorenz & Partners Limited, a German Company that has operated in Thailand for over seven years in the same area of business. Furthermore, RSM has entered into a joint venture with MLI Limited, a Hong Kong company to provide expatriates & Thais with investment and life assurance products. The British Ambassador to Thailand was kind enough to allow the new company – RSMLI Life Assurance Brokers Limited - to launch the Joint Venture Partnership in the garden of his residence on January 28, 2004. This venture will commence when all the necessary Thai regulatory requirements have been met.

Free Consultation

If your company has any issues requiring clarification with respect to legal, financial, taxation, accounting, auditing or other problems, please contact the RSM Team and “**Call In For A Coffee**” for a free consultation.

Translation of business ideas into realistic projects requires expert advice. RSM can assist you in formulating practical solutions to obstacles which may be encountered while undertaking business in Thailand

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