

COVID-19 — PRACTICAL GUIDANCE FOR EMPLOYERS IN THAILAND

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Introduction

As employers brace for the longer-term financial impacts likely to follow the COVID-19 pandemic, they are faced with challenging decisions across their business operations, including in relation to their workforces. This article provides some practical guidance for employers considering their options under Thai employment laws in these unprecedented times.

Amendment of Employment Conditions

In the Labour Relations Act B.E. 2518 (1975) (**Labour Relations Act**), “employment conditions” refers to any conditions of employment or work, working days and working hours, wage, welfare, termination of employment, or any other benefits of the employer or the employees related to employment or work.

Employers may consider amending employment conditions to correspond appropriately to the current situation. Under section 20 of the Labour Relations Act, an employer may amend employment conditions without the consent of employees so long as such amendment is deemed beneficial to the employees. However, if the amendment is not beneficial to employees, then the employer must first obtain the relevant employees’ consent.

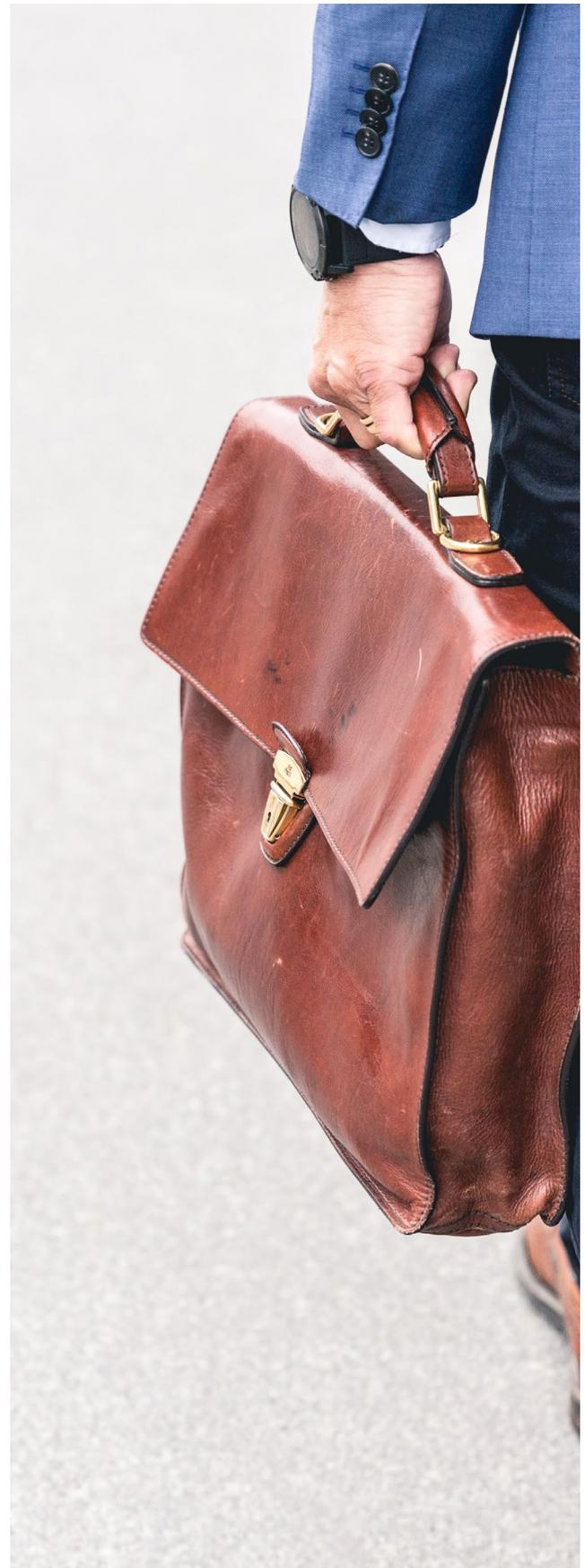
The following are some of the changes to employment conditions currently being implemented by employers in Thailand:

- Work from home

As working from home is considered beneficial to employees, such changes to employment conditions can be implemented without the employees’ consent. However, during this time employees are considered to be working their normal hours and as such are entitled to receive full salary payments.

- Decreasing working hours

Given that decreasing working hours will inevitably affect the total wage payable to employees, such changes would deprive the employees from the payable hours that the employees are otherwise entitled to. Therefore, such changes to employment conditions are considered



to be detrimental to employees and require the employees' consent before implementing.

As such amendment requires the consent of each affected employee, it will only be binding on employees who have given consent to such amendment. Employees who have not consented to such amendment will not be bound by it and will be entitled to work the usual hours and receive full payment for such hours.

- Requesting employees to take leave without pay

Employers may find themselves in a position where it is necessary to decrease salary liabilities owed to employees by decreasing the number of active employees to correspond appropriately to the slowed down business operations.

While employers may request employees to take unpaid leave until business operations return to normal, this is a matter requiring agreement between the employer and employee. In this regard, the employer should first obtain consent from the relevant employee agreeing to take unpaid leave until further notice. If consent is obtained, then during the period of unpaid leave the employer will not be required to pay salary to the employee and the employee will not be required to perform work for the employer during such period.

Temporary cessation of business operation

While many businesses are experiencing declines in sales and revenue during the restrictions, other businesses in certain sectors have been rendered completely non-operational. In such case, employers may be required to temporarily cease business operations until further notice.

Section 75 of the Labour Protection Act B.E. 2541 (1998) (**Labour Protection Act**) provides that "*where it is necessary for an employer to temporarily cease his/her business operation, wholly or partly, for whatever cause of significance, but not a force majeure, affecting his/her business activities to the extent that the employer is unable to carry on his/her normal operation, the employer shall pay wages to an employee in the amount of not less than seventy-five per cent of wages for a working day that the employee was receiving before the cessation of business operation for the entire period in which the employer does not require the employee to work.*"

This section provides employers some leeway to cease business operations for any reason which is a "*cause of significance, but not force majeure*" under the condition that the employer pays the employees not less than 75% of the wages the employees are entitled to before such cessation. However, as the Labour Protection Act does not provide a definition for "*force majeure*", section 8 of the Civil and Commercial Code ("**CCC**") needs to be considered in this regard. Section 8 of the CCC provides that "*force majeure*" means "*any event having chance to incur or to cause disaster, and that event is beyond the ability to prevent its effect by any person who has to face or nearly face with that event, notwithstanding that reasonable care as might be expected by any person under such conditions and situations would have been exercised*".

Therefore, given that government orders shutting down certain categories of businesses to curb the spread of COVID-19 is likely to be deemed as a *force majeure* event for the purpose of the Labour Protection Act as discussed above in conjunction with section 8 of the CCC, the cause of which neither the employer nor the employee is responsible for, employers in such categories of businesses can cease business operations without being required to pay 75% of the wages otherwise required to be paid pursuant to section 75 of the Labour Protection Act. Nevertheless, employees may still apply for compensation under the social security scheme.

Layoffs

As a last resort, employers may seek to terminate the employment of employees. In accordance with section 17 of the Labour Protection Act, in terminating employment, the employer must provide advance notice in writing to the employees concerned on or before a salary payment date in order for the termination to take effect on the following the salary payment date. In the event the employer does not provide advance notice as required, the employer must provide compensation to the employees in lieu of advance notice. In addition to the above, employees whose employment has been terminated are entitled to a severance payment as prescribed in section 118 of the Labour Protection Act, as well as payment for any unused annual leave.

Aside from the above, termination of employment generally leaves an employer exposed to claims filed by employees on the ground of unfair termination. A successful claim by an employee may result in the employer being ordered to pay an additional amount to the employee concerned as determined by the Labour Court.

Termination of employment should be used as a last resort, as not only will employers be required to make payments legally owed to employees such as severance pay and payment in lieu of prior notice, but it also leaves employers vulnerable to being the subject of legal proceedings brought by employees it has dismissed.

Conclusion

During these difficult times, employers have options under Thai employment laws with respect to managing their workforces. However, employers should take extra care when considering the right measures to implement, and if uncertain, obtain legal advice. Employers should also keep regularly informed of government announcements which may affect their rights or obligations under Thai employment laws.



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