

Employment Litigation in Thailand: PART 2 – what the court can award to an employee

When there is a dispute between an employer and an employee in Thailand that cannot be settled informally one of the parties may consider taking the issue to court. By way of the Labor Court Establishment and Procedure Act (1979) (the “Act”), Thailand has established a special **Labor Court** and procedure to resolve employment-related disputes.

The Labor Court has jurisdiction over disputes involving the following:

A. Employment contracts.

B. Wrongful acts between employers and employees in connection with a labor dispute or in connection with the performance of work under an employment agreement.

C. Appeals against a decision of a member of the Labor Relations Committee or the Minister of the Interior (where A or B above were first submitted to the Committee or Minister rather than directly to the Labor Court).

By far the most common case filed in Labor Court is by an employee against a former employer. Under Thai law, the potential “remedies” to which such an employee may be entitled (assuming the employee has not committed what the law considers to be a wrongful act against the employer) are as follows:

1. **Unpaid salary for work time completed.** It should be noted that if an employer does not pay any such outstanding amount within after seven days of date payment is due, without reasonable cause, interest at the rate 15% will be applicable and compounded every seven days thereafter.

2. **Unpaid holiday pay.** If the employer terminates the employment contract or the employee resigns, the employer must pay the employee's unpaid wages for any annual leave due to the employee at the time of employment termination.

3. **Payment in lieu of notice.** The employer must give the employee notice of the employer's intention to terminate the contract before or at the time of payment in order for that notice to take legal effect at the following time of payment. However, if the employer wishes the employee to stop working immediately the employer can do so as long as the employer pays the employee's wages through the end of the notice period mentioned above.

4. **Severance Pay.** Severance pay is compensation that is paid to an employee who is terminated without legal cause. The amount of compensation depends upon the employee's duration of employment.

| Duration of employment | Severance pay (= amount equivalent to what the employee would receive at the employee's most recent wage rate for following number days) |
|------------------------|--|
| 120 days ≤ 1 Years | 30 |
| 1 ≤ 3 Years | 90 |
| 3 ≤ 6 Years | 180 |
| 6 ≤ 10 Years | 240 |
| 10 Years or more | 300 |

5. **Unfair Dismissal Compensation.** Apart from the above-mentioned rights, if an employee believes that his termination of employment contract is unfair, he may also request to the Labor Court consider awarding him this additional remedy available under the Act.

The Act does not explicitly define what type of termination qualifies as "unfair" but the following decisions by the Labor in cases awarding and denying such additional unfair termination remedy are instructive.

Cases where the Labor Court DID grant the unfair termination remedy:

- a. An employee's husband was working for other competitive company.
- b. An employee worked as a technician who needed a professional license to lawfully do his work. His license expired and the employer fired him. The employee was able to prove that many of his colleague's licenses were also expired; yet only he was terminated.
- c. An employer's annual business profit decreased in comparison with previous years (note: the employer was still profitable). The employer then reduced expenses and costs by terminating some of its employees.
- d. An employee was gambling outside of working hours. The employer's work regulations stated that the penalty for such would be a decreased of wages, but the employer terminated the employee.
- e. An employer changed an employee's employment terms without the employee's consent.
- f. An employer was responsible for, or failed to remedy, the employee's work environment being hostile to the employee.
- g. An employer terminated an employee because the employee refused to accept less compensation.

Cases where the Labor Court DID NOT grant the unfair termination remedy:

- a. An employee did not pass the employment probation period.
- b. Termination was pursuant to the retirement required by the employer's official work regulations.
- c. An employer was not profitable for several years. The employer took several steps to try to become profitable (e.g., provided for voluntary employee resignations) but such measures were not successful and the employer remained unprofitable. The employer then terminated some employees to save the business.

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