

Legal Update

Termination Is Not the Endgame: A Preventive Strategy for Employers in Thailand

Economic and geopolitical uncertainty is creating a challenging environment for companies operating across Thailand and further afield. Furthermore, the ever-advancing capabilities of artificial intelligence and other technologies, such as the implementation of robotics in manufacturing and service industries, are leaving companies with difficult decisions to make regarding headcount. Inevitably, this is leading to terminations and the associated legal issues that arise when terminating employees.

To help prepare employers for commencing, running and successfully closing termination proceedings, the team at PDLegal Thailand has prepared this strategic guide detailing key considerations for the termination of employment under Thai law.

For employers, the real risk is not only whether the termination is legally possible under Thai law, but whether the employer can later explain, with documentation and a credible process, why the decision was fair, proportionate and commercially justified under Thai law.

1. What rights do employees have in Thailand?

Under the Labour Protection Act B.E. 2541 (1998) (the “**LPA**”), Thai employment law gives employees strong protection, especially with regards to termination of employment.

Key provisions under the LPA that commonly arise in termination planning include statutory notice, severance pay, dismissal without severance and special rules for technology or restructuring-related redundancies. In particular, Section 118 sets out statutory severance entitlements by length of service; Section 119 identifies limited circumstances where severance is not required, such as dishonesty, intentional damage, serious negligence, repeated breach after written warning, unjustified absence for three consecutive working days, or imprisonment by final judgment; and Sections 121 and 122 impose additional obligations where termination results from organisational, production, distribution or service

changes due to machinery or technology, including advance notification requirements and possible special severance.¹

In most terminations, employers must be prepared to pay statutory severance, notice or payment in lieu of notice, outstanding wages, accrued holiday payments and other contractual entitlements.

These statutory exceptions should be interpreted cautiously. In practice, not every breach of policy, mistake or performance issue will justify immediate dismissal without severance.

Summary termination without severance pay is available only in limited circumstances under Thai law. Under Section 119 of the LPA, an employer is not required to pay severance pay if the employee is terminated for statutory cause, including dishonesty, intentional damage to the employer, gross negligence causing serious damage, repeated breach after written warning, absence from work without justifiable reason for three consecutive working days, or imprisonment by final judgment.

Compliance with severance payment rules is only one layer of protection for businesses. It does not automatically prevent an unfair termination claim under Thai law.

A termination may still be challenged if the employee believes the decision was sudden, discriminatory, unsupported by evidence, disproportionate or driven by the employer's internal convenience rather than for a genuine and fair reason.

Separately, employers should consider the risk of an unfair termination claim under Section 49 of the Act on Establishment of and Procedure for Labour Court B.E. 2522 (1979). If the Labour Court considers a dismissal unfair, it may order reinstatement at the wage level applicable at the time of dismissal. If reinstatement is not appropriate because the employer and employee cannot work together, the court may instead award compensation, taking into account factors such as the employee's age, length of service, hardship caused by dismissal, the cause of dismissal and the statutory compensation already received.

In practice, this means that payment of severance is not the end of the analysis: the employer should also be able to justify the fairness of the decision-making process.²

2. Commencing termination proceedings

For performance-related dismissals, employers should create a visible trail of management action before reaching the dismissal stage. This can include clear feedback, measurable expectations, examples of underperformance, written follow-up, and, where appropriate, a performance improvement plan. The aim is not to "paper the file" artificially, but to effectively

¹ Labour Protection Act B.E. 2541 (1998) Section 118, 119, 121 and 122

² The Act on Establishment of and Procedure for Labour Court B.E. 2522 (1979), Section 49

demonstrate that the employee knew the concern, had a fair opportunity to respond or improve and was not effectively blindsided by the decision to terminate their employment.

This is particularly important because unfair termination claims often arise where the terminated employee claims there was no valid reason, no proper warning, no real chance of improvement or only a minor mistake that did not justify their dismissal.

Before communicating a termination to an employee, an employer should pressure-test the reason internally in the following ways:

- **If the reason for termination is poor performance**, the employer should consider whether the standard was clear, whether similar employees were treated consistently and whether the employee received meaningful feedback.
- **If the reason for termination is misconduct**, the employer should consider whether the misconduct is truly serious, whether there is reliable evidence, whether a warning was legally or practically required and whether the response is proportionate to the situation.
- **If the reason is restructuring**, the employer should consider whether the business rationale is documented, whether the selection process is fair, whether the affected role is genuinely redundant and whether subsequent hiring would contradict the stated reason.

This internal review procedure is very important because Thai courts may examine the substance of the employer's decision, not merely the label attached to it.

For example, where an employer describes the termination as a restructuring, the court may consider whether the employer can show a genuine business rationale, whether the affected role or function was in fact redundant, whether the selection criteria were objective and consistently applied and whether the employer's later conduct contradicts the stated rationale, such as hiring a replacement for substantially the same role shortly after termination. Similarly, where the employer relies on performance or misconduct, the court may examine the actual seriousness of the conduct, the evidence available at the time, whether the employee had been warned or given an opportunity to improve where appropriate, and whether the employer treated similar cases consistently (**see Supreme Court Judgment No. 4099/2561**).

Thai Supreme Court decisions on unfair dismissal show that the court may look beyond whether the employer paid statutory amounts and consider the real reason and fairness of the termination. Relevant factors may include whether the employer had a genuine necessity to terminate, whether the employer considered alternatives, whether the selection process was fair, whether comparable employees were treated consistently and whether the

employee's conduct or performance justified dismissal in the circumstances (**see Supreme Court Judgments Nos. 3119–3135/2567**).

3. Termination of employment considerations

The use of “For Cause” termination

Employers may be tempted to rely on serious misconduct to avoid notice and severance obligations under Thai law. However, it should be appreciated that every mistake, conflict, breach of policy or act of poor judgment will not justify immediate dismissal without severance in Thailand.

Where the employer relies on serious misconduct to carry out a termination without severance, the reason for termination should be clearly stated in the written termination notice and communicated at the time of dismissal. This is not merely a drafting point. Under Section 119 of the LPA, if the employer does not specify the facts forming the reason for dismissal in the termination notice or does not notify the employee of that reason at the time of dismissal, the employer may be prevented from relying on that reason later.³

In practice, this may weaken the employer's position, particularly where the burden of proof or burden of evidence falls on the employer. The employer may face difficulty proving that the dismissal was based on serious misconduct. This does not mean that the employee will automatically succeed in every case. However, Thai Supreme Court judgments have indicated that if the employer does not clearly state the reason for termination at the time of dismissal, the employer may not later rely on that ground in court to avoid paying severance.

The court may consider that, at the time of termination, no such serious misconduct ground existed, and that the employer simply intended to terminate the employee without reasonable cause. In those circumstances, any reason raised later may be viewed as an after-the-fact justification intended to make the termination appear lawful.

If the termination is found to be without reasonable cause, it may also amount to an unfair termination under Section 49 of the Act on Establishment of and Procedure for Labour Court B.E. 2522 (1979).

A practical rule we have seen used effectively by organisations is this: if the employer would be uncomfortable defending the misconduct allegation before a labour authority or court in Thailand, it should reconsider whether the termination should truly be framed as “for cause”.

³ Labour Protection Act B.E. 2541 (1998), Section 119

Payment timing is part of the risk strategy

Final payments should not be treated as an accounting issue to be settled later. They are part of the employer's litigation-risk strategy.

Before termination, human resources, finance and legal functions should align on the employee's statutory and contractual entitlements. This includes unpaid salary, overtime if applicable, unused annual leave, severance pay, payment in lieu of notice and any other contractual benefits. Where the employment agreement provides a longer notice period than the statutory minimum, that contractual period should be considered in the payment calculation.

Late payment can create unnecessary exposure, including interest and potential statutory surcharge. For that reason, employers should aim to have the payment calculation, payment method, receipt and supporting documents prepared before the termination meeting.

The termination meeting should be managed, not improvised

The termination meeting should normally involve only necessary participants, such as the supervisor or manager, human resources and the employee to be dismissed.

The employer should explain the decision, provide the termination letter, summarise the payments and next steps and allow the employee time to ask questions.

Certain topics should be avoided entirely: discriminatory remarks, personal criticism, vague accusations, threats, pressure to sign documents immediately or statements suggesting that the decision is still open for negotiation when it is not.

Settlement is a tool, not a shield

Thai case law indicates that a post-termination release or settlement can be relevant evidence if the employee clearly and voluntarily agrees to resolve claims, particularly where the agreement expressly identifies the rights being released and is supported by additional consideration. However, employers should not assume that every receipt, acknowledgement of payment or "full and final" document will automatically prevent a later unfair termination claim. A waiver does not physically prevent an employee from filing a claim. Its value is evidential and strategic: it may show that the employee accepted payment, understood the arrangement and voluntarily agreed to resolve potential claims. The wording, timing, circumstances of signing and whether the employee clearly waived unfair termination claims may all be examined (**see Supreme Court Judgment No. 4099/2561**).

Thai Supreme Court Judgment Nos. 3740–3751/2561, which referred to Sections 150, 850 and 851 of the Thailand Civil and Commercial Code (the "CCC"), recognises that post-

termination releases and settlement agreements may be valid and enforceable, provided that they are properly made and are not contrary to law, public order or good morals.⁴

The better settlement strategy is therefore not pressure, but clarity. The terminated employee should understand what is being paid, what is being released and what continuing obligations apply.

Close the exit cleanly

Employers should recover company property, disable or adjust system access appropriately, secure confidential information, arrange handover where relevant and consider the wording of an employment certificate.

These details matter, as a disorganised exit can create avoidable disputes over property, confidential information, final pay or reputational issues.

4. Case studies

The following examples illustrate how termination risk can arise both in individual dismissal disputes and in large-scale workforce reductions.

Case study 1: Restructuring without a clear selection process

Thai Supreme Court Judgment No. 4099/2561 illustrates the risk of relying on restructuring as a broad label without clear supporting evidence.

The case reinforces that employers should maintain up-to-date documentation showing the business need, affected roles, objective selection criteria and consistency of implementation.

Case study 2: Transfer of the employee to affiliated company

In Thai Supreme Court Judgment No. 5429/2562, the court held that an employer cannot unilaterally transfer an employee to another company without the employee's consent.

If the employee refuses the transfer and the employer no longer allows the employee to work, this may amount to termination by the employer and may be considered unfair termination. This is consistent with the principle that the transfer of employment to a third party requires the employee's consent under Section 577 of the CCC.⁵

⁴ Thailand Civil and Commercial Code, Sections 150, 850 and 851

⁵ Thailand Civil and Commercial Code, Section 577

Case study 3: Mass termination, unpaid entitlements and enforcement risk

A recent public example is the Yarnapund matter. Yarnapund Company Limited (Public Company), an automotive parts manufacturer based near Bangkok, announced the termination of 859 employees on 26 November 2024, citing financial difficulties and cash-flow issues. The company reportedly agreed to pay statutory compensation in three instalments, but failed to make the first scheduled payment, causing the affected employees to petition the Ministry of Labour for assistance.

The Ministry's involvement should not be understood as replacing the employer's statutory liability. Rather, the case demonstrates how non-payment of termination entitlements can escalate beyond a private employment dispute into regulatory intervention, employee mobilisation, criminal complaints and court proceedings. The Minister of Labour would call the company's executives for discussions, proceed according to law, and assist employees through available mechanisms, including the Employee Welfare Fund, Social Security unemployment benefits and job-matching support.⁶

Subsequently, the legal consequences for the employer side continued. Prosecutors proceeded with charges in relation to the dismissal of 859 employees and alleged non-payment of severance and payment in lieu of notice of approximately THB 220 million. Despite a labour inspector's order requiring payment, the employer allegedly did not comply, and the Samut Prakan Provincial Court refused bail for four executive directors of Yarnapund, who were reportedly remanded in custody in connection with alleged offences under the LPA.⁷

Practical takeaway: Employers planning large-scale redundancies should not assume that financial distress will excuse non-payment of statutory entitlements. Where termination payments are delayed or unpaid, the matter may trigger labour-inspector orders, employee complaints, criminal proceedings, director or executive exposure, reputational damage and government scrutiny, in addition to civil liability for unpaid statutory and contractual entitlements.

5. Concluding remarks

The strongest termination strategy is designed backwards from the question a court, labour inspector or a terminated employee's lawyer may later ask: "Why was this fair?"

If the employer can answer that question with a consistent reason, robust evidence, fair treatment, correct payments, respectful communication and clean exit documentation, the risk becomes more manageable for the business.

⁶ <https://www.thaipbs.or.th/news/content/347498>

⁷ https://www.matichon.co.th/politics/news_5310522

The team at PDLegal can help you stay ahead of legal developments and workforce trends in Thailand to ensure continued compliance and protection of your business.

Further information

Should you have any questions with regards to termination of employment in Thailand, please do not hesitate to reach out to our team.

Ravipat Mullijarupongs

Partner, Bangkok

ravipatm@pdlegal.com.sg

Sorawich Techapornhiran

Associate, Bangkok

sorawicht@pdlegal.com.sg

Sudarat Keawmuang

Associate, Bangkok

sudaratk@pdlegal.com.sg

Wisansaya Supasit

Associate, Bangkok

wisansayas@pdlegal.com.sg

© PDLegal Thailand

This article is intended to provide general information only and does not constitute legal advice. It should not be used as a substitute for professional legal consultation. We recommend seeking legal advice before making any decisions based on the information available in this article. PDLegal fully disclaims responsibility for any loss or damage which may result from relying on this article.