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## **Coronavirus (COVID-19) Update for Employers in Thailand**

*Current as of 23 March 2020*

Businesses in Thailand continue to struggle with Coronavirus (“**COVID-19**”). As a result, employers keep reaching out to us with questions on their rights and obligations under Thailand’s labor law to make informed decisions on measures they can take to protect their business and provide support to their employees. We have, therefore, prepared this overview to provide some guidance to our clients and the Thai business community based on the most frequent questions we received.

As the situation may quickly change considering the rapid developments taking place, we recommend regularly monitoring the situation and information provided by the Thai government and other bodies, such as chambers of commerce. In addition, the general guidelines provided in this overview should be reviewed in conjunction with applicable work rules and the individual employment contracts of affected employees.

If you have any specific questions concerning your business, please do reach out to us as we are here to support you during this difficult time.

### **A. MEASURES TO MITIGATE FINANCIAL IMPACT OF THE COVID-19 PANDEMIC ON BUSINESSES**

#### **1. Is it possible for employers to (temporarily) reduce wages and other benefits if the business faces a sharp decline in revenues as a result of the COVID-19 pandemic?**

Under the Thai Labor Protection Act, if an employer is incapable of operating its business as normal for whatever reason (other than a *force majeure* event), then the employer is permitted to temporarily suspend its business either in whole or in part. The employees who are affected by the suspension, however, remain entitled to 75% of their normal wage for the duration of the suspension. Employees also need to be informed about the duration of the suspension.

Based on current laws and regulations, a suspension with pay is the only measure an employer is entitled to take unilaterally and without employee consent to mitigate business issues. From our discussions with the Thai labor authorities, COVID-19 is not currently regarded as a *force majeure* event that would allow employers to suspend their business without being required to pay wages.

**2. Can employers require staff to work shorter hours or do they need to obtain prior consent from the affected employee?**

Based on current laws and regulations, employers are not permitted to request staff to work shorter hours if such measure affects the employees' compensation. The current COVID-19 pandemic does not change this, even if the respective business faces a sharp decline in revenues and faces potential cash flow issues.

In practice, employers should openly discuss the situation with staff and explain that measures are required to protect the business and ensure that employees do not need to be laid off. An employee's consent should be accurately documented in writing to mitigate potential claims.

**3. Can employers require employees to take paid or unpaid leave even if they do not want to? Will the employees receive support from the government in case of unpaid leave?**

Thai labor law does not permit employers to require employees to take leave (with or without pay) against their will except in the case of a business suspension as we have addressed in Section A1 above.

Such measures would therefore need the affected employee's consent. The Social Security Office ("SSO") is in the process of proposing relief measures for employees who have agreed to take unpaid leave. Based on the current proposal, SSO-registered employees would receive 50% of their average wage (capped at THB 7,500 per month) from the SSO for a maximum period of 180 days if they agree to take leave without pay. In case of termination by the employer, they would receive 70% of their average wage for a period of 200 days and if they resign, they would receive 45% of their average wage for a period of 90 days. This proposal has not yet been officially approved but will be proposed to the cabinet on 24 March 2020. In the case of termination and resignation, it is not yet clear what the capped amount will be but is expected not to exceed THB 15,000 per month.

Based on current regulations, SSO-registered employees who are being made redundant are entitled to receive unemployment pay, which also amounts to 50% of an employee's latest wage (capped at THB 15,000 per month) for a period of 180 days.

**4. Are employers required to continue paying wages even if the government forces a shutdown of their business operation?**

The Labor Department has not yet issued a clear statement on this. In our view, however, a government-imposed shutdown would be considered to be a *force majeure* event that releases the employer from paying wages for as long as the *force majeure* event persists. Labor officers we spoke to concerning this matter unofficially confirmed this interpretation. Based on relief measures proposed by the SSO, employees would be entitled to 50% of their average wage for a period of 60 days if the employer is ordered by the government to temporarily suspend its business.

Based on current discussions, the Labor Department may also treat the closure of the borders to foreign travelers as a *force majeure* event for affected businesses. For hotels and tour operators, for example, this could mean that although they are generally able to operate, they are still faced with a *de facto force majeure* event as their customers are not able to enter the country. Related developments should be closely monitored and are expected to be confirmed in the following days.

**5. What do employers need to consider if, as a result of employees refusing consent to temporary measures or for cash flow purposes, redundancies become unavoidable?**

The Thai government has not yet issued special regulations in response to the COVID-19 crisis that could impact existing labor law principles or make it easier for employers to lay off employees.

Terminations will need to follow the general process under the Labor Protection Act (“LPA”). Under the LPA, an employer is permitted to terminate an employee for convenience and is not required to consult with the terminated staff before issuing the termination. Unless a longer period is agreed in the individual employment contract, prior notice of at least one month needs to be given to the employee. The notice needs to be issued on or before the regular salary payment date and will become effective on the next salary payment date. It is possible to terminate an employee with immediate effect, however, the employer would have to compensate the employee for non-compliance with the required notice period. For example, in the case of a one-month notice period, the employer would have to make payment in lieu of the one monthly salary.

Based on the current business practice we see, employers would usually discuss the severity of the situation with all employees before issuing termination notices and, depending on business size and financial capability, either temporarily suspend the employees from work for a pre-defined period in accordance with the LPA (in which case they still remain entitled to 75% of their latest wage for the suspension period) due to the current crisis, or ask them to consent to taking unpaid leave or agree to a temporary adjustment of their wages to avoid redundancies and only use termination as a last resort. Proceeding in this way would also help employers object to any possible compensation claims for unfair termination that employees may try to file if their employment is terminated.

**6. Are employees who are made redundant as a result of the COVID-19 pandemic entitled to receive severance pay?**

Despite the COVID-19 pandemic, in the absence of specific regulations addressing this situation, employees remain entitled to severance pay under the LPA if an employer terminates for convenience. The severance pay entitlement depends on the number of years an employee has been working for the employer.

In addition, despite the current crisis, employees may still consider taking legal action against employers and claim damages for unfair termination. The courts and labor officers usually favor the employees in the case of an unfair termination claim, however, as the COVID-19 pandemic is an unprecedented situation it remains to be seen how the courts would deal with this. In our view, if

the employer can at least demonstrate that it tried to keep the redundancies to a minimum, it should be possible to defend against such a claim. Nevertheless, it would be preferable to enter into a settlement agreement with employees under which they waive possible claims for unfair termination (e.g., against the company promising to consider them with priority in case of rehiring after the crisis has eased off). Compensation for unfair termination will be determined by the court on a case-by-case basis, and as a rule of thumb, the court would grant one monthly salary for each year of employment.

**7. Do employers have to offer redundant staff a re-hiring priority once the COVID-19 pandemic has come to an end?**

There is currently no such requirement. Employers may, however, offer a re-hiring priority to employees to have them agree to enter into settlement agreements and mitigate potential unfair termination claims.

**8. Are there any rules employers have to follow in deciding which staff are made redundant?**

In order to mitigate possible claims for unfair termination, employers at least need to be able to justify the rationale as to why certain employees have been terminated and others not. As a rule of thumb, non-essential staff could be terminated first and employees with higher wages may be considered to be laid off if this allows the company to minimize the overall number of redundancies.

There are, however, no special COVID-19 requirements or easements. The employer will need to be able to demonstrate that it acted fairly and reasonably in its attempt to mitigate the impact of the COVID-19 pandemic on its business. Economic concerns (e.g., profitability of the company) alone usually will not be considered in an unfair termination case.

**B GOVERNMENT AID FOR AFFECTED BUSINESSES**

Based on our information, the Thai government is still working on a package of measures to help businesses that are most affected by the COVID-19 pandemic, such as hotels and other tourism-related businesses.

Currently, the government has only approved to reduce both employer's and employee's portions for contributions to the Social Security Fund from 5% to 4%. The new rates currently apply for six months, from March to August 2020. Delayed payment for contributions for the months of March, April and May 2020 are also being discussed. Based on the latest proposal we have reviewed: (i) social security contributions for March 2020 could be paid within 15 July 2020; (ii) social security contributions for April 2020 could be paid within 15 August 2020; and (iii) social security contributions for May 2020 could be paid within 15 September 2020.

This measure still needs to be published in the *Royal Gazette* to take effect and employers can claim a refund for overpaid contributions. Prior to the publication in the *Royal Gazette*, changes to the regulations may still be possible.

The Finance Ministry has also proposed measures to support hotel operators and other affected businesses, which were approved by the Cabinet on 4 February 2020. Hotel operators as defined under the Hotel Act will enjoy increased tax deductions for certain expenses spent on additions, modifications, expansions or developments during the period from January 2020 to 31 December 2020, provided that the property will be completed and ready for operation by 31 December 2020.

## **C. HEALTH AND SAFETY ISSUES**

### **1. What are an employer's health and safety obligations to its employees?**

Based on the Notification of the Department of Health RE: Criteria, Methods and Measures on Protection Related to the Coronavirus, which the Department of Labour Protection and Welfare also announced for employers, it has been advised for employers to comply with the following measures:

- (a) Regular cleaning of office areas, including in particular frequently touched areas and surfaces, such as door handles, keypads, elevator buttons, etc., as well as any canteen or pantry area within the office.
- (b) Employers must provide hand sanitizers in the common areas of the office.
- (c) Employees who face an increased risk of possible exposure to the virus or pose a possible risk to others (such as receptionists and maids) should be educated on general hygiene measures, such as regular hand washing, etc. Such personnel should also wear face masks and/or gloves while working.
- (d) Clear policies need to be put in place requiring employees to report themselves if they develop fever, cough, difficulty of breathing or other COVID-19 symptoms. Employees who develop a fever or show more than one COVID-19 symptom should be advised to stop working and visit a doctor.
- (e) Employers shall ensure that their employees are educated on COVID-19 and its symptoms as well as what measures can be taken to mitigate the risk of infection.
- (f) Particularly for offices with a larger workforce, the employer should arrange for an inspection point to check the body temperature of employees before they enter the office.
- (g) If a large number of employees falls sick (but are not yet confirmed as positive for COVID-19), the employer must consider closing the relevant section or the entire office temporarily.

The notification is meant to provide guidance to employers to best address the current situation. Employers will not face penalties or other charges if they do not comply with such guidelines. Many companies have implemented their own policies and best practices that go beyond the official guidelines of the Ministry of Public Health.

In addition to the above guidelines, pursuant to Section 31 of the Communicable Disease Act, employers **must notify** the authorities immediately in case an employee is confirmed to be infected with COVID-19 or is reasonably suspected of being infected. If this duty is not complied with, a fine not exceeding THB 20,000 may be imposed.

## **2. In what circumstances are employees required to self-isolate?**

From a legal perspective, according to the Announcement issued by the Department of Disease Control:

- (a) Employees who have arrived to Thailand from a Disease Infected Zone (DIZ) (currently China (including the special administrative regions Macau and Hong Kong), South Korea, Italy and Iran) are required to self-quarantine for 14 days from the date they arrived in Thailand.
- (b) Employees who arrived from other local transmission areas (currently France, Spain, United States, Switzerland, Norway, Denmark, Netherlands, Sweden, Great Britain, Japan (specific cities: Hokkaido, Tokyo, Aichi, Wakayama, Kanagawa, Chiba, Okinawa, Kyoto and Osaka) and Germany) are required to provide their address and other details when they enter Thailand and are required to monitor frequently whether they show possible COVID-19 symptoms during the first 14 days after their arrival. Such employees are not currently required to self-quarantine.

Other than the above announcement, there are currently no laws or regulations in place that would require persons to self-isolate. Employers may therefore implement their own policies in this regard. Employers may request their employees to self-isolate if they have travelled to a potentially risky area, show symptoms that can be associated with COVID-19 or had contact with a person who is diagnosed positive for COVID-19.

## **3. Do employers have to pay an employee if they self-isolate?**

The announcement issued by the Department of Labour Protection and Welfare states that where an employee was quarantined by the authorities (e.g., when entering Thailand at an airport, etc.) as a result of showing COVID-19 symptoms, the employee is not deemed absent from work for the duration of the quarantine. The employer would therefore not be permitted to terminate such employee for absence from work, but based on the general principle of “no work – no pay”, would not be required to pay wages to the employee during such period.

However, as the announcement is not entirely clear with regard to the employer's obligation to pay wages, we recommend employers to implement clear travel policies in this respect. Various employers have restricted their employees from travelling abroad if there is no urgent reason to do so, in which case approval from the employer is required. If an employee violates the policy, then in our view, the employer could refuse to continue to pay wages for the period the employee is in quarantine or required to self-isolate.

For employees who have not travelled abroad, but show symptoms and decide to visit a doctor for a medical check, the general labor law principles apply. An employee is entitled to take up to 30 days of sick leave with pay per year. If the employee has used up such 30 days, then the employer is no longer required to pay wages if the employee falls sick. The employee will then usually be entitled to receive compensation from the Social Security Office for not more than 90 days a time and 180 days a year at 50% of their average wage (capped).

Due to the absence of relevant laws and regulations, we recommend employers to issue clear policies under what circumstances an employee is required or entitled to self-isolate.

#### **4. How should an employer deal with an employee who refuses to work because they are concerned about coronavirus?**

By law, employees who are absent from work without valid reason for a period of at least three days could be terminated for cause without severance pay. Accordingly, if an employee is merely concerned about travelling to the office or being exposed to other people, then an employer can instruct the employee to come to the office and take labor law related measures if the employee refuses to do so (e.g., warning letter(s) and/or termination) and/or stop paying the employee's wages during his or her absence.

If the employee has a valid concern, for example, if there have been COVID-19 cases in the proximity of the office, then sanctions such as termination of employment may be challengeable.

In practice, employers should discuss respective concerns with employees and determine what measures could be taken to make the employees feel more safe (e.g., reimburse taxi fares for employees who do not have a private car and need to travel by bus or other crowded public transport) and/or discuss work-from-home arrangements where possible.

#### **5. What should an employer do if an employee is confirmed as having the virus and has recently been in the workplace?**

As mentioned above, employers must notify the authorities immediately in case an employee is confirmed to be infected with COVID-19 or is reasonably suspected of being infected.

In addition, health authorities recommend to temporarily close the office to sanitize the work place. Anyone who has worked closely with such an infected employee should be isolated and be required

to monitor for COVID-19 symptoms. Also, if possible, work-from-home arrangements should be implemented during the time of the closure. However, no mandatory laws or regulations have been announced at this time to address this issue.

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We hope that the above is of assistance. If you have any questions, please do not hesitate to contact us.

Sincerely yours,

**Blumenthal Richter & Sumet Ltd.**

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