

Options for Employers in Thailand During COVID-19 Outbreak

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Outlines

1. Concerned laws and concepts
2. Employer's options during the Covid 19 situations
 - 2.1 Annual leave
 - 2.2 Leave without pay
 - 2.3 Temporary cessation of operation
 - 2.4 Lay-off.
3. Questions and answers under Government's measures during this period

1. Concerned laws and concepts.

1.1 Concerned laws

1.2 Concepts



1.1 Concerned laws

- Labor Protection Act
- Labor Relation Act
- Civil and Commercial Code
- Social Security Act

1.2 Concepts

- ▶ An employment contract is “reciprocal agreement”
- ▶ Both parties have right and duty.

- ▶ Therefore, employer is *not required* to pay wages and benefits to an employee if the employee does not work for the employer except for some circumstances which Labor laws requires the employer to pay.
- ▶ For example, Sick Leave, Annual Leave.
 - *Sick Leave*, the employer is required to pay wages to the employees when the employee takes sick leave not exceeding 30 days a year.
 - *Annual Leave*, an employer is required to pay annual leave to employee at least 6 days a year for the employer who fails to provide the annual leave to the employee.

NOTE

1. **An employee is *quarantined by authorities* for being in a risk group**
 - The employer does not need to pay wages to the employee during the quarantine period, under the principle of “no work no pay.”
2. **Authorities issue *an order* requiring the employer’s business to temporarily close down**
 - The employer is not required to pay wages during the closure period ordered by the authorities—again under the principle of “no work no pay.”
3. **An employee falls *ill with COVID-19* and needs to take *sick leave***
 - The employer *is required* by law to pay wages to the employee, but *not exceeding* 30 days in a year.

Under the Covid 19 Situation currently, if an employee *does not work* for an employer, the employer has options to reduce cost as follows.

1. Annual leave
2. Leave without pay
3. Temporary cessation of operations
4. Lay-off

2.1 Annual leave

- ▶ Under Thai law, LPA section 30 states that “An employee who has worked continuously for one year shall be entitled to an annual leave of not less than 6 working days, which shall be *fixed in advance by the employer* or *fixed as agreed by the employer and the employee*”.

2.2 Leave without pay

- ▶ Negotiation

2.3 The employer decides to temporarily cease operations

- ▶ If the COVID-19 outbreak critically impacts the employer's business, for example by causing a greatly reduced number of customers or a greatly decreased amount of purchase orders, and the employer needs to close down the business temporarily or stop production, the employer may apply for a *temporary cessation of operations under section 75*.

2.3 The employer decides to temporarily cease operations

- ▶ Under **section 75** of the *Labor Protection Act (LPA)*, an employer is entitled to temporarily cease operations, during which time they must pay employees at least 75% of their regular working-day wages, subject to the following conditions:
 - There is a necessity and a significant cause for the employer to take this step.
 - The necessity must not be *force majeure* under Thai law. If an event is deemed to have arisen due to a *force majeure* event, the employer is entitled to forgo paying wages to employees.

2.3 The employer decides to temporarily cease operations

- The employer *has to elect* whether to seek temporary cessation of operations on a whole or partial basis.
- The employer *has to inform a labor inspection officer*, and the employees, three business days in advance of the intended cessation of operations.
- The employer *has to pay employees* throughout the entire period of cessation.
- The cessation period depends on the situation on *a case-by-case basis*. Once the previously cited reason for cessation of operations has subsided, making the measure no longer necessary, the employer has to cancel the cessation measure.

2.4 Lay-off

- ▶ Under Thai labor law, if the COVID-19 virus impacts the employer's business to the point that the business cannot operate, the employer may terminate or lay off employees, taking care to observe the following conditions:
 - An employer must inform the employee regarding the layoffs **at least one pay period in advance**, in accordance with the LPA. Otherwise, the employer is required to pay remuneration in lieu of advance notice. If a relevant employment contract or Collective Bargaining Agreement (CBA) or work rules states **a longer period** for informing the employee of layoffs, the employer *must comply with the contract or CBA*.

2.4 Lay-off.

- **Statutory severance** depends on each employee's **length of service**, from 30 days' pay at the employee's most recent wage rate for those who have worked with the employer for at least 120 days consecutively, but less than one year; up to 400 days' pay for employees who have worked with the employer for at least 20 consecutive years.
- Employers must make **necessary remuneration** for other benefits under the employment contract, work rules, and laws, such as unused annual leave and so on.
- In addition, if the employer has a **CBA** with a labor union or the employees regarding temporary cessation of operations or layoffs, the employer **must abide** by the procedures stated in the CBA. Failure to do so could result in the employees claiming violation of the CBA.

Force majeure

- ▶ Prevents the employer from paying wages
- ▶ At present, the court has *not taken a clear position* on **whether the COVID-19 situation is or can result in a force majeure event**, and it is likely to be addressed by the court on a case-by-case basis. Situations arising from events deemed as force majeure, resulting in the employer not being able to operate, enable the employer to withhold all wages from employees.
- ▶ Force majeure is described under Thai law as referring to **events that a person is not able to protect against, despite taking the appropriate care** that should be reasonably expected from him or her in such a situation. Earthquakes and tsunamis are examples of force majeure—for example, the collapse of a factory due to an earthquake, resulting in the employer being unable to operate, would justify withholding of wages.

Force majeure

- ▶ The Thai Supreme Court has ruled that the following events *do not qualify as force majeure*:
 - A seasonal wildfire where the party does not undertake any preventive action;
 - A violent storm that usually occurs every season;
 - Flooding of a factory's premises; and,
 - A factory fire.
- ▶ However, if the above incidents result in the shutdown of a factory, the employer would still be entitled to apply for *temporary cessation of operations under LPA section 75*.
- ▶ The Government issued an announcement to revise regulations and Social Security Act by stating that pandemic is force majeure and also increase some payments to employees during unemployment and quarantine period.





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