

THAILAND
Prepared by Sarah Roquefeuil & Patama Mokaves
Vovan & Associates

1. Are there any laws that govern a layoff of employees? If so, what do the laws require?

There is no specific law regarding the layoff-off of employees, but the rules to be followed are stated in the general laws governing employment matters, known as the Labor Protection Act (LPA) of 1998 and its updated version of 2008. In addition, the Social Security Office (SSO) has issued regulations governing employees' termination compensation.

2. Are there any formal requirements for terminating an employee or groups of employees?

When an employer wishes to terminate an employee or group of employees, the employer must give the employee or employees to be terminated advance notice of the termination of at least one cycle of compensation payment (1 day/1 week/1 month). For example, if an employee is paid on a monthly basis, the employer must provide him or her with advance notice of at least one month prior to termination.

There are specific situations, such as in cases of business restructuring, where the employer must provide 60 days advance notice.

When the termination is for cause (i.e. dishonest performance of professional duties, intentional act(s) against the employer, gross negligence, violation of the company's rules, absence for 3 consecutive days without sufficient reason or imprisonment), the employer does not have to provide either advance notice or severance payment. Rather, the employer must pay the balance of compensation within 3 days after the effective termination date.

When the termination is not for cause, the employer must provide severance payment, the amount of which is based on months and years of service rendered by the employee. This severance payment varies from 0 to 300 days and must be paid within 7 days after the effective termination date. Employees who have been terminated are entitled to receive the equivalent of 6 month's compensation at roughly 50% of their most recent gross wage (not exceeding 15,000 THB per month).

3. Are there special legal requirements for a layoff caused by redundancy in the workforce?

No. The motivation of the lay-off caused by redundancy in the workforce is a discretionary management decision taken by the employer. Most of the time, there is a layoff plan negotiated with the labor union or employee committee and with the local labor inspection.

4. Are there employment laws that laid-off employees can use to challenge their inclusion in the lay-off?

Employment Law itself provides no concrete recourse to employees who have been laid off. However, the laid-off employee can file a complaint to the labor inspection and/or ad hoc committees (Welfare Committee, Human Rights Committee, etc.) regarding the grounds supporting the lay-off, especially if he or she can prove that the process of termination used by the employer is not transparent and is unfair.

5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?

In case of failure to give advance notice, compensation must be paid in place of the advance notice to which the employee is entitled. Legal interest will also be assessed at a rate of 15% if the severance payment is not paid within 7 days and at the rate of 7% or 5% for the supplementary month to be paid in case of failure to give at least one month advance notice. If the employee files a complaint to the labor inspection and the attempt to negotiate fails, then the case will go before the labor court. The labor court has the power to order the employer to reinstate the ex-employee, provided such reinstatement is feasible and if the termination is deemed as an unfair one. The labor court can also sentence the employer to pay complementary indemnifications in addition to severance payment.

6. What are the one or two most common mistakes that employers make that lead to liability for a lay-off?

One common mistake is to confuse the requirement to pay severance payment with the requirement to give advance notice equal to at least one pay cycle or more than one pay cycle (in case of business restructuring, for example). Another common issue is the miscalculation of severance payment, particularly with respect to the payment of fringe benefits (bonus, allowance, thirteenth month, etc.). Indeed, the employer's understanding may vary about whether such items are classified as wage or as benefits.

7. What other employment issues are likely to arise from a lay-off in your jurisdiction that you have not addressed in your answers to the previous questions?

Another employment issue which is likely to arise is the case of resignation "subject to condition". In the case where the employee and the employer agree about the resignation concept and the latter still accepts to provide a financial compensation, the employer has to be careful about the wording of documentation to be signed by both parties. The wording of the "agreement" is particularly sensitive because, if not well done, it could lead to further issues, such as legal recourse and the risk that the contract might be re-qualified.

Another issue which frequently arises concerns the termination of a foreign employee, which implicates immigration matters. Indeed, once the foreign employee is laid-off he automatically loses his work permit and, consequently, the business visa allowing him to stay in the country as the visa is very often linked with the validity of the work permit. Most of the time, the employee and her family must leave the kingdom within 7 calendar days.