

LABOR LAW IN THAILAND: PART 6 – The Labor Protection Act: warnings prior to termination

The major legislation governing labor protection law in Thailand is the Labor Protection Act (the “LPA”). The LPA prescribes labor protection standards applicable to both employers and employees working in Thailand. However, the LPA does not apply to Government and State Enterprise employees.

In our last article we discussed employee termination and noted that the LPA distinguishes between termination “for cause” and termination “without cause” of an employee contracted to work for an indefinite period of time. Where such an employee has work for at least two months and one and is then terminated without cause, the employer will be liable to pay that employ severance compensation to the employee in an amount equal between thirty and three hundred days of that employee’s most recent wages.

We also quoted the what the LPA considers to be the six qualifying “for cause” reasons for which an employer may terminate an employee, among them being where an employee: “violates the lawful and just work rules or regulations or orders of the employer, after receiving written warning of the employer . . . such written warning is valid for only one year.”

But what qualifies as such “written notice”? For instance, does the employee need to acknowledge it, or even sign it? The LPA does not detail the requirement beyond its need to be in writing. However, the Thai Supreme Court has helped to clarify this question by interpreting the following to satisfy this written notice requirement:

- a. the employee signing the written warning;
- b. the employer reading the written warning to the employee and a third party

witness signs the written warning;

c. posting the warning in a conspicuous place where everyone can see it at the place of employment; and

d. sending the written warning to the employee by registered to post to the employee's address.

But it should be emphasized again that it is not possible for to "go back in time" with a written warning. In other words, it is not possible for the employer to become aware of an employee's misconduct and only later issue a written warning to the employee.

When an employer has done that, the Thai Supreme Court has interpreted the employer's failure to issue the warning earlier as the employer having consented to the conduct. Therefore, it is an employer must issue any such warning as soon as the offending conduct occurs, ideally immediately after such conduct occurs; otherwise repetition of such conduct, even within the next one year, will not be grounds for termination "for cause".

Note: any employer who violates or fails to comply with the LPA may be punished according to the level of his or her offence with a fine of Thai Baht 5,000 to Thai Baht 200,000, or imprisonment of up to one year, or both.

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