

Labor Protection Act (No.2), B.E. 2551 (2008)

Translation

BHUMIBOL ADULYADEJ REX.

Given on the 15th Day of February B.E. 2551

Being the 63rd Year of the Present Reign

His Majesty the King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to amend the law governing labor protection;

This Act contains certain provisions relating to the restrictions on the rights and liberties of an individual which Section 29 together with Section 41 and Section 43 of the Constitution of the Kingdom of Thailand prescribe to be permissible by virtue of law.

Be it, therefore, enacted by H.M. the King with the advice and consent of the National Legislative Assembly as follows:

Section 1

This Act shall be cited as "Labor Protection Act (No.2), B.E. 2551 (2008)".

Section 2

This Act shall come into force after ninety days from the date of its publication in the Government Gazette.

Section 3

The definition of "Employer" in Section 5 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Employer" means a person who agrees to accept an employee for work by paying wages and includes

- (1) a person entrusted to act on behalf of the Employer;
- (2) in case where an Employer is a juristic person, the term also includes a person authorized to act on behalf of the juristic person and a person entrusted by an authorized person to act on his or her behalf.

Section 4

The provision of paragraph one of Section 9 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 9

Where an Employer fails to pay back a security in money under Section 10 paragraph two, or fails to pay wages, overtime pay, holiday pay and holiday overtime pay within the period prescribed under Section 70, or severance pay under Section 118, special severance pay in lieu of advance notice, or special severance pay under Section 120, Section 121 and Section 122, the Employer shall pay interests to an Employee at the rate of fifteen percent per annum during the default period."

Section 5

The provisions of Section 10 and Section 11 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 10

Under Section 51 paragraph one, an Employer shall be prohibited from demanding or receiving from an Employee a security deposit for work or a security deposit for

damage to work regardless of money, other property or suretyship by person, unless the nature or conditions of work require the Employee be responsible for money or property belonging to the Employer, which may cause damage to the Employer.

The nature or conditions of work which the Employer is allowed to demand or receive a security deposit from the Employee, as well as any type of the security, values of the security and means of keeping shall be in accordance with the rules and procedures as prescribed in the Notification by the Minister.

Where the Employer demands or receives the security deposit or makes a guarantee contract with the employee to compensate for damage done by the Employee, when an employment is terminated by the Employer or the resignation is made by the Employee or the guarantee contract is expired, the Employer shall pay back the security thereof plus interests, if any, to the Employee within seven days from the date of termination of employment, or from the date of resignation, or from the expiry date of the guarantee contract, as the case may be.

Section 11

A debt owing by an Employer to be paid under this Act or money to be compensated by the Employer to the Employee Welfare Fund under Section 135, an employee or the Department of Labor Protection and Welfare, as the case may be, shall have a preferential right over all properties of the Employer who is a debtor in the same rank as the preferential rights of taxes and duties under the Civil and Commercial Code."

Section 6

The following provisions shall be added as Section 11/1 of the Labor Protection Act, B.E. 2541:

"Section 11/1

Where an entrepreneur has entrusted any individual to recruit persons to work, which is not a business of employment services, and such work is any part of manufacturing process or business operation under the entrepreneur's responsibility, and regardless of whether such person is the supervisor or takes the responsibility for paying wages to the persons who perform work, the entrepreneur shall be deemed as an Employer of such workers.

The entrepreneur shall provide contract employees, who perform work in the same manner as employees under the employment contract, to enjoy fair benefits and welfare without discrimination."

Section 7

The following provision shall be added as Section 14/1 of the Labor Protection Act, B.E. 2541:

"Section 14/1

A contract of employment between an Employer and an employee, work rule, regulation or order of an Employer result in the Employer being in exploitation of the Employee, the Court shall have a power to order such contract of employment, work rule, regulation or order being enforceable only to the extent as it is fair and reasonable."

Section 8

The provisions of Section 16, Section 17 and Section 18 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 16

An Employer, a chief, a supervisor, or a work inspector shall be prohibited from committing sexual abuse, harassment or nuisance against an employee.

Section 17

A contract of employment shall expire upon the completion of the period specified in the contract of employment with no requirement for advance notice.

Where the period is not specified in the contract of employment, an Employer or an employee may terminate the contract by giving advance notice in writing to the other party at or before any due date of wage payment in order to take effect on the following due date of wage payment, with no requirement for advance notice of more than three months. In addition, a probationary contract shall also be deemed as an indefinite period contract of employment.

Upon the notice of contract of employment under paragraph two, the Employer may pay wages in an amount to be paid up to the due time of termination of the contract of employment as specified in the notice and may dismiss the Employee immediately.

The advance notice under this Section shall not apply to the termination of employment under Section 119 of this Act and Section 583 of the Civil and Commercial Code.

Section 18

Where this Act prescribes that an Employer is required to notify any act or submit any document to the Director-General or any person entrusted by the Director-General or the Labor Inspector, the Employer shall notify or submit it in person or by mail, telephone, facsimile, electronic communication or any other kinds of information technology in accordance with the rules and procedures as prescribed in the Notification by the Director-General."

Section 9

The provision of Section 23 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 23

An Employer shall notify a normal working time to an employee, by specifying the commencing and ending time of work in each day of the employee, which shall not exceed the working time for each type of work as prescribed in the Ministerial Regulations and not exceed eight hours per day. Where the working hours of any day are less than eight hours, the Employer and the employee may agree to make up the remaining working hours in other normal working days, but not exceed nine hours per day and the total working hours per week shall not exceed forty-eight hours. Except for the work which may be harmful to health and safety of the employees as prescribed in the Ministerial Regulations for which the normal working hours shall not exceed seven hours per day and the total working hours per week shall not exceed forty-two hours.

Where the Employer and the employee agree to make up the remaining hours in other normal working days under paragraph one and the total working hours exceed eight hours per day, the Employer shall pay remuneration to the daily employee and the hourly employee at a rate of not less than one and a half times of the hourly wage rate on a working day for a number of exceeding working hours, or to the employee who receives wages on a piece rate basis at a rate of not less than one and a half times of the piece rate of wages of a working day for a number of piece work done in the exceeding working hours.

Where the Employer may not notify the commencing and ending time of daily work due to the nature or conditions of work, the Employer and the employee shall agree to specify the working hours in each day of not exceeding eight hours and the total working hours per week shall not exceed forty-eight hours."

Section 10

The provisions of Section 38 and Section 39 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

“Section 38

An Employer shall be prohibited to require a female Employee to perform any of the following work:

- (1) mining or construction work to be performed underground, underwater, in a cave, in a tunnel or mountain shaft, except where the conditions of work are not harmful to health or body of the Employee;
- (2) working on a scaffold of ten meters or more above the ground;
- (3) producing or transporting of explosive or inflammable materials, except where the conditions of work are not harmful to health or body of the Employee;
- (4) any other work as prescribed in the Ministerial Regulations.

Section 39

An Employer shall be prohibited to require a female Employee who is pregnant to perform any of the following work:

- (1) work involving vibrating machinery or engine;
- (2) work of driving or going on a vehicle;
- (3) work of lifting, carrying on the back, carrying on shoulder, carrying with a pole across shoulder, carrying on a head, pulling or pushing of loads in excess of fifteen kilograms;
- (4) work on a boat; or
- (5) any other work as prescribed in the Ministerial Regulations.”

Section 11

The following shall be added as Section 39/1 of the Labor Protection Act, B.E. 2541:

“Section 39/1

An Employer shall be prohibited to require a female employee who is pregnant to work between 10.00 p.m. and 06.00 a.m., to work overtime or to work on holidays.

Where the female employee who is pregnant works in an executive position, academic work, clerical work or work relating to finance or accounting, the Employer may require the employee to work overtime in the working days as long as there is no effect on the health of pregnant employee and with prior consent of the pregnant employee on each occasion.”

Section 12

The provisions of Section 50 and Section 51 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

“Section 50

An Employer shall be prohibited to require an Employee who is a youth under eighteen years of age to work in any of the following places:

- (1) a slaughterhouse;
- (2) a gambling place;
- (3) a recreation place in accordance with the law governing recreation places;
- (4) any other place as prescribed in the Ministerial Regulations.

Section 51

An Employer shall be prohibited from demanding or receiving a security deposit for any purpose from a young employee.

The Employer shall be prohibited to pay wages of the young employee to any other person.

Where the Employer pays money and any other benefit to the young employee, the parent or guardian of the young employee or other persons before employment, at the commencement of employment, or before the due time of wage payment in each period, that payment shall not be deemed as the payment or receipt of wages for the young employee. The Employer shall be prohibited to deduct such money or such benefit from the wages to be paid to the young employee in the specified time."

Section 13

The provision of Section 65 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 65

An employee who is authorized or assigned by an Employer to perform any of the following work shall not be entitled to overtime pay under Section 61 and holiday overtime pay under Section 63, but the employee required by the Employer to perform work as provided in item (3), (4), (5), (6), (7), (8) or (9) below shall be entitled to receiving remuneration in money equivalent to the hourly wage rate of a working day for the number of hours of work done:

- (1) an employee who is authorized to act on behalf of the Employer in regard to the employment, granting of pension or termination of employment;
- (2) an itinerant vending or induce about the purchase of goods which the Employer pays a commission from the sale of goods to the employee.
- (3) railway service operation including work on a railway carriage and work for facilitating a railway transportation;
- (4) work of opening or closing of watergate or sluice gate;
- (5) work of indicating of water levels and measuring of water volume;
- (6) work on fire fighting or prevention of disaster;
- (7) work of which nature or condition has to be performed outside of the premise and the definite working time may not be fixed;
- (8) work on watch-keeping of the premise or property which is not a regular duty of the employee;
- (9) any other work as prescribed in the Ministerial Regulations

The exception for the aforementioned is where any Employer agrees to pay overtime or holiday overtime payment to the employee."

Section 14

The provision of Section 67 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 67

Where an Employer terminates the employment of an employee upon any condition other than provided in Section 119, the Employer shall pay wages to the employee for annual holidays for the year of termination in proportion to a number of annual holidays to which the employee is entitled under Section 30.

Where an employee is a party to terminate a contract of employment or the Employer is a party to terminate an employment regardless of any condition under Section 119, the Employer shall pay wages to the employee for accumulated annual holidays to which the employee is entitled under Section 30."

Section 15

The provision of Section 75 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 75

When it is necessary for an Employer for whatever cause other than a force majeure which affects his/her business and causes the Employer incapable to operate his or her business as normal so as to temporarily suspend the business in whole or in part, the Employer shall pay wages to an employee in amount of not less than seventy-five per cent of wages of working days received by the employee before the suspension of business for the entire period which the Employer does not require the employee to work.

The Employer shall give written notice to the employee and the Labor Inspector in advance prior to the date of suspension of business under paragraph one for not less than 3 working days."

Section 16

The provisions of Section 93 and Section 94 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 93

The Labor Welfare Committee shall have powers and duties as follows:

- (1) to make comments to the Minister concerning policies, guidelines and measures on Labor welfare;
- (2) to make comments to the Minister on the issue of Ministerial Regulations, Notifications or Rules concerning the provision of welfare in establishments;
- (3) to provide advices on the provision of Labor welfare for different types of establishments;
- (4) to evaluate and report the performance results to the Minister;
- (5) to issue an order to an Employer to pay a special severance pay or a special severance pay in lieu of advance notice under Section 120;
- (6) to perform any other task as prescribed by this Act or by any other law to be the powers and duties of the Labor Welfare Committee or as assigned by the Minister.

Section 94

Section 78 paragraph two, Section 80, Section 81, Section 82 paragraph one, Section 83, Section 84, Section 85 and Section 86 shall apply mutatis mutandis to the Labor Welfare Committee."

Section 17

The following shall be added as Section 115/1 of the Labor Protection Act, B.E. 2541:

"Section 115/1

For the purpose of performing duties of the Labor Inspector under Section 139, an Employer who employs 10 employees or more shall submit a report form on conditions of employment and working conditions to the Director-General or a person entrusted by the Director-General within every January. The Labor Inspector shall provide the form as prescribed by the Director-General to the employer within every December.

Where there is any change in the facts or conditions of employment and working conditions submitted under paragraph one, the Employer shall inform the Director-General or a person entrusted by the Director-General in writing of the change within the following month after the existence of such change."

Section 18

The provisions of Section 119 and Section 120 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 119

An employer may not pay severance pay to an employee when employment is terminated upon any of the following conditions:

- (1) performing his/her duty dishonestly or intentionally committing a criminal offence against the Employer;
- (2) willfully causing damage to the Employer;
- (3) committing negligent acts causing serious damage to the Employer;
- (4) violating work rule, regulation or order of the Employer which is lawful and just, and after written warning having been given by the Employer, except for a serious case with no requirement for the Employer to give warning.

The written warning shall be valid of not exceeding one year from the date when the employee commits the offence;

- (5) absenting himself/herself from duty without justifiable reason for three consecutive working days regardless of whether there is holiday in between;
- (6) being sentenced to imprisonment by a final court judgment.

In item (6), if the imprisonment is for offences committed by negligence or a petty offense, it shall be the offense causing damage to the Employer.

Upon termination of employment without severance pay under paragraph one, when the Employer fails to specify the fact which is a cause of termination in a letter of termination of employment or fails to inform the cause of termination to the employee at a time of termination of employment, the Employer cannot afterwards claim for such cause.

Section 120

Where an Employer relocates an establishment to another place and the relocation significantly affects the ordinary way of living of an employee or his/her family, the Employer shall inform the employee in advance of not less than thirty days before the date of relocation. For this purpose, if any employee refuses to work at the new location, the employee is entitled to terminate a contract of employment within thirty days from the date of being informed by the Employer or the date of relocation as the case may be. In this regard, the employee is entitled to a special severance pay of not less than the rate of severance pay for which he/she is eligible under Section 118.

Where the Employer fails to inform an employee in advance under paragraph one, the Employer shall pay a special severance pay in lieu of advance notice in an amount equivalent to thirty days pay at the latest wage rate, or equivalent to the wages of the last thirty days for the employee who receives wage based on a piece rate.

The Employer shall pay special severance pay or special severance pay in lieu of advance notice to the employee within seven days from the date when the employee terminates the contract.

Where the Employer fails to pay special severance pay or special severance Pay in lieu of advance notice under paragraph three, the employee is entitled to lodge a

complaint to the Labor Welfare Committee within thirty days from the due date of payment of special severance pay or special severance pay in lieu of advance notice.

The Labor Welfare Committee shall consider and issue an order within sixty days from the date of receiving the complaint.

When it is determined by the Labor Welfare Committee that the employee is entitled to special severance pay or special severance pay in lieu of advance notice, the Labor Welfare Committee shall issue an order in writing to the Employer to pay special severance pay or special severance pay in lieu of advance notice to the employee within thirty days from the date when the Employer has acknowledged or deemed to acknowledge such order.

When it is determined by the Labor Welfare Committee that the employee is not entitled to special severance pay or special severance pay in lieu of advance notice as the case may be, the Labor Welfare Committee shall issue a written order and communicate to the Employer and the employee.

The order of the Labor Welfare Committee shall be final, unless the Employer or the employee appeals against the order to the court within thirty days from the date of acknowledgement of the order. Where the Employer is a party who brings the case before the court, the Employer shall deposit a security with the court in equal to an amount to be paid by the order so as to further the proceeding of the case."

Section 19

The provision of paragraph three of Section 124 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"When it appears from an investigation by the Labor Inspector that the employee is entitled to any sum of money which the Employer is liable to pay under this Act, the Labor Inspector shall order the Employer to pay such money to the employee or to a statutory heir of the deceased employee in the form provided by the Director-General within thirty days from the date of acknowledgment or the date deemed to be acknowledged of the order."

Section 20

The following shall be added as Section 124/1 of the Labor Protection, Act B.E. 2541:

"Section 124/1

Where an Employer has complied with an order of the Labor Inspector under Section 124 within a specified period or complied with a court judgment or an order of the court, the criminal proceedings against the Employer shall be extinguished."

Section 21

The provision of paragraph four of Section 125 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Where the case is final and the Employer is liable to pay any sum of money to the employee or to the statutory heir of the deceased employee, the Court shall have the power to pay the money deposited with the Court by the Employer to the employee or the statutory heir of the deceased employee or the Employee Welfare Fund upon the payment under Section 134 as the case may be."

Section 22

The provision of Section 135 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 135

Where the Department of Labor Protection and Welfare has paid money from the Employee Welfare Fund, either in whole or in part to employee under Section 134, the Department of Labor Protection and Welfare shall have the right of recourse against a person liable to pay such money to the employee including interests at the rate of fifteen per cent per annum from the date when the Department of Labor

Protection and Welfare has paid money from the Employee Welfare Fund to the employee, regardless of whether the liable person already paid such money to the Employee or not.

The prescription of the right of recourse under paragraph one shall be ten years from the date of payment from the Employee Welfare Fund is made."

Section 23

The provision of Section 141 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 141

An appeal against an order of the Labor Inspector under Section 139 (3) shall be made to the Director-General or any person entrusted by the Director-General within a specified period as provided in the order. The Director-General or any person entrusted by the Director-General shall determine the appeal and notify the appellant without delay, but no longer than thirty days from the date of receiving the appeal. The decision of the Director-General or any person entrusted by the Director-General shall be final.

The appeal under paragraph one shall not relieve the Employer's obligation to take any action in compliance with the order of the Labor Inspector, unless the Director-General or the person entrusted by the Director-General issues an order otherwise or a security as provided by the Director-General or the person entrusted by the Director-General is deposited.

Where the Employer or the employee has complied with the order of the Labor Inspector under Section 139(3) or has complied with the decision of the Director-General or the person entrusted by the Director-General under paragraph one within the specified period, the criminal prosecution against the Employer or the employee shall be extinguished."

Section 24

The provision of Section 144 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 144

Any Employer who violates or fails to comply with Section 10, Section 22, Section 24, Section 25, Section 26, Section 37, Section 38, Section 39, Section 39/1, Section 40, Section 42, Section 43, Section 46, Section 47, Section 48, Section 49, Section 50, Section 51, Section 61, Section 62, Section 63, Section 64, Section 67, Section 70, Section 71, Section 72, Section 76, Section 90 paragraph one, or the Ministerial Regulations issued under Section 95, Section 107 or Section 118 paragraph one, or fails to pay special severance pay in lieu of an advance notice or special severance pay under Section 120, Section 121 or Section 122 shall be penalized with imprisonment of not more than six months, or a fine not exceeding one hundred thousand Baht, or both.

Where an Employer violates or fails to comply with Section 37, Section 38, Section 39, Section 39/1, Section 42, Section 47, Section 48, Section 49 or Section 50 thereby causing physical or mental harm to an employee, or causing the death of employee, the Employer shall be penalized with imprisonment of not more than one year or a fine not exceeding two hundred thousand Baht, or both."

Section 25

The following shall be added as Section 144/1 of the Labor Protection Act, B.E. 2541:

"Section 144/1

Any entrepreneur who fails to comply with Section 11/1 shall be penalized with a fine not exceeding one hundred thousand Baht."

Section 26

The provisions of Section 150 and Section 151 of the Labor Protection Act, B.E. 2541 shall be repealed and substituted by the following:

"Section 150

Any person who fails to render any convenience, give a statement, or submit document or object as required by a summons of the Wage Committee, the Labor Welfare Committee, Sub-committee under the Committees thereof or a person entrusted by the Committee or Sub-committees thereof as a case may be, or fails to render convenience to the Labor Inspector, a physician, a social welfare officer or an expert under Section 142 shall be penalized with imprisonment of not more than one month, or a fine not exceeding two thousand Baht, or both.

Section 151

Any person who obstructs the performance of any duty of the Wage Committee, the Labor Welfare Committee, Sub-committee under the Committees thereof, a person entrusted by the Committee or Sub-committee thereof as a case may be, or obstructs the performance of any duty of a Labor Inspector, a physician, a social welfare officer or an expert under Section 142 shall be penalized with imprisonment of not more than one year, or a fine not exceeding twenty thousand Baht, or both.

Any person who fails to comply with an order of the Labor Welfare Committee issued under Section 120 or an order of the Labor Inspector issued under Section 104, Section 105 or Section 124 shall be penalized with imprisonment of not more than one year, or a fine not exceeding twenty thousand Baht, or both."

Section 27

The following shall be added as Section 155/1 of the Labor Protection Act, B.E. 2541:

"Section 155/1

Any Employer who fails to submit or provide a report form on conditions of employment and working conditions under Section 115/1 and, after receiving a warning letter of the Labor Inspector, fails to submit or provide the report form within fifteen days from the date of receiving the warning letter shall be penalized with a fine not exceeding twenty thousand Baht."

Countersigned by

General Surayuth Chulanon

Prime Minister

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