

THAILAND

Items	Regulations in force on 1 January 2014
<p>1: Notification procedures in the case of individual dismissal of a worker with a regular contract</p>	<p>Generally, a written notice is required to terminate an open-ended contract. The Labour Protection Act (section 17) provides that either party can terminate an open-ended contract by giving a prior notice in writing of at least one month, with an exception of grave misconduct, as stipulated in section 119. The employer can immediately terminate with payment for the wage equivalent to the notice period in lieu of such notice.</p> <p>In case of dismissal because of redundancy, the employer must send a notification indicating the date, the reasons and name(s) of the employee(s) to the labour inspector and those to be dismissed at least 60 days prior to implementation of such dismissal. In the case of failure to notice, the employer must pay 60 day's wage to those to be dismissed (the Labour Protection Act section 121).</p> <p>To dismiss a member of the employees' committee, the employer must receive a permission from the labour court in advance (the Labour Relations Act section 52)</p> <p>Calculation: 1.5 = unweighted average of personal reasons (1) and redundancy (2)</p>
<p>2: Delay involved before notice can start</p>	<p>The Labour Protection Act (section 119) provides that the employer should give a warning in writing for violation of work rules, regulations, or orders of the employer, except in the case of a serious violation or a grave misconduct (a warning is not necessary in this case), to dismiss an employee for a disciplinary cause. There is no requirement for mail or registered mail in delivery of the notice.</p> <p>Calculation: 1 day for notice plus 6/2 for warning (applies only to personal reasons)</p>
<p>3: Length of notice period at different tenure durations (a)</p>	<p>Ordinary individual dismissal: the notice should be given at least one wage payment period before effective termination (normally one month). There are exceptions (See item 1 above)</p> <p>Dismissal because of redundancy: the notice period is at least 60 days.</p> <p>There is no variation based upon length of tenure.</p> <p>An equivalent amount of wage corresponding to the notice period can be given in lieu of the notice (See item 1 above)</p> <p>Calculation: average of redundancy and personal reasons</p>

<p>4: Severance pay at different tenure durations (a)</p>	<p>Ordinary individual dismissal: a mandatory severance pay must be paid except the cases provided in the section 119 (See below) of the Labour Protection Act. The minimum requirement for the eligibility is at least 120 consecutive days tenure and the amount of the severance pay varies based on the length of tenure as below (section 118 of the Labour Protection Act).</p> <p>≤ 120 days, < one year: at least 30 days' basic pay ≤ one year, < three years: at least 90 days' basic pay ≤ three years, < six years: at least 180 days' basic pay ≤ six years, < ten years: at least 240 days' basic pay ≤ ten or more years: at least 300 days' basic pay</p> <p>Misconducts that exempt an employer of duty to severance pay are: (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.</p> <p>Dismissal because of redundancy: a special severance pay must be paid to the employees with six years or more tenure in addition to the ordinary severance pay. This special severance pay should be at least 15 days' basic pay per each year but with an overall severance-pay ceiling of 360 days' basic pay (section 122 of the Labour Protection Act).</p> <p>Calculation: average of redundancy and personal reasons 9 months tenure: 1 month 4 years tenure: 6 months 20 years tenure: $(10+12)/2 = 11$ months</p>
<p>5: Definition of unfair dismissal (b)</p>	<p>The Labour Protection Act provides that either of the employer and employee can terminate an open-ended contract with a due notice. But Thai courts may consider a dismissal as unfair on the ground of lack of a reasonable cause. But the scope of reasonable cause for a fair dismissal is relatively wide. For example, lack of capability is a sufficiently reasonable cause for a dismissal, if clear evidence is provided in its support. However, the employer is requested to take the relevant measures to improve the employee's capability or performance, although such a request does not have to mandatorily include transfer of job or provision of job training.</p> <p>The Act on the Establishment of and Procedure for Labour Court (section 48) requires the court to consider a vast range of social and economic factors in order to provide fairness to both parties in the trial of a labour case, including the unfair dismissal case.</p> <p>Thai law also have some prohibited grounds for a dismissal, e.g. a dismissal because of pregnancy or union activities.</p> <p>Redundancy also constitutes a reasonable cause for a dismissal. The Labour Protection Act allows a wide range of circumstances that could cause redundancy as reasonable causes for a dismissal, including "improvements to the working unit, production, distribution or service processes, arising from the utilization of machinery or a change of machinery or technology, and which is the cause of the reduction in the number of employees".</p> <p>Calculation: 1 because reasonable cause is needed and, more important, social and economic aspects should be taken into account</p>
<p>6: Length of trial period (c)</p>	<p>There is no regulation on the trial period or probation, except that the Labour Protection Act provides that "a probationary contract shall also be deemed as an indefinite period contract of employment." But this does not mean that a probationary employee is given the same employment protection as a regular worker. However, he/she is eligible for the severance pay, and hence, the maximum period of a probation period is generally up to 119 days in practice.</p>

<p>7: Compensation following unfair dismissal (d)</p>	<p>Under the Act on the Establishment of and Procedure for Labour Court (section 49), the labour court has power to order a reinstatement of the dismissed employee at the same level of wage at the time of dismissal or a payment of compensation if the court thinks that the dismissed employee and the employer cannot work together. The amount of such compensation is decided by the court in consideration of various factors including age of the employee, the working period, the employee's hardship, the cause of dismissal and the compensation the employee is entitled to receive.</p> <p>The compensation includes compensatory damage in the future. But other damages such as physical pains or emotional distress are rarely accepted by the court. A practical standard in calculation of such compensation is one month's wage per one year of tenure.</p>
<p>8: Reinstatement option for the employee following unfair dismissal (b)</p>	<p>The Act on the Establishment of and Procedure for Labour Court (section 49) provides that "...if the labour court thinks the dismissal is unfair, it shall order the employer to reinstate the employee at the same level of wage at the time of dismissal. However, if the labour court thinks that such employee and employer cannot work together, it shall fix the amount of compensation to be paid by the employer...". Thus, an ordinary remedy for an unfair dismissal is reinstatement and compensation is a supplementary one, where a certain condition is met and hence reinstatement may not be awarded.</p>
<p>9: Maximum time period after dismissal up to which an unfair dismissal claim can be made (e)</p>	<p>There is no time restriction for filing a complaint of an unfair dismissal with the court in the Labour Protection Act or The Act on the Establishment of and Procedure for Labour Court. But the Civil and Commercial Code (section 448) provides that a complaint for damages arising out of a wrongful act should be brought within one year from the date when the injured person became to know about the wrongful act or ten years from the date when the wrongful act was committed.</p> <p>Calculation: based on the assumption that an unfair dismissal lack of a reasonable reason could be regarded as a wrongful act and the dismissed employee may know about the wrongful termination at the time of dismissal or notice.</p>
<p>10: Valid cases for use of standard fixed term contracts</p>	<p>A fixed-term contracts are permitted only for "objective" or "material situation", i.e. to perform a task which itself is of fixed duration and there is no exception for such requirement, such as the employer's need (e.g. launching a new activity) or the employee's need (e.g. searching first job)</p> <p>The Labour Protection Act (section 118) provides that "A fixed-term contract is allowed "in the case of employment on a special project, which is not in the normal way of business or trade of the employer, where there is a fixed schedule for commencement and completion of work; or for work of a temporary nature with a fixed schedule for its commencement or completion; or for seasonal work in respect of which employees are only engaged during that season; provided that the work must be completed within a period of two years and the employer and employee have entered into a written agreement at or prior to the commencement of employment."</p>
<p>11: Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations)</p>	<p>Although there is no regulation on the maximum number of successive standard of FTCs, Thai court is very strict on the matter of renewal or extension of a fixed-term contract. The Labour Protection Act (section 118) limits the time constraint for a fixed-term contact up to maximum two years.</p>
<p>12: Maximum cumulated duration of successive standard FTCs</p>	<p>See item 11.</p>
<p>13: Types of work for which temporary work agency (TWA) employment is legal</p>	<p>Thai law does not clearly recognise the TWA relationship. The Labour Protection Act (section 11/1) provides that the user firm take up the employer's responsibility over the workers of a third party if they work in the genuine or essential part of the user firm's business, except for the case where the third party is a licenced employment service agency. In this sense, licenced employment service agencies may do the TWA service business and there is no restriction in terms of industry or occupation.</p>
<p>14: Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f)</p>	<p>No restrictions (There is no regulation on the number of renewals and/or prolongations of the TWA assignments)</p>
<p>15: Maximum cumulated duration of TWA assignments (f)</p>	<p>No restrictions (There is no regulation on the maximum cumulated duration of the TWA assignments)</p>
<p>16: Does the set-up of a TWA require authorisation or reporting obligations?</p>	<p>Under the Employment and Job-Seeker Protection Act, an employment service agency must obtain a licence from the authority. It also has duty to report periodically (on a monthly basis) the record of its business implementation to the authority.</p>
<p>17: Do regulations ensure equal treatment of regular workers and agency workers at the user firm?</p>	<p>The Labour Protection Act (section 11/1 second paragraph) requires the user firm to ensure a fair and equal treatment for the workers who perform work in the same manner as employees of the user firm. This is to ensure fair benefits and welfare without discrimination for the workers of a third party who work in the user firm. Thus, the protection would include both wages and working conditions.</p>

18: Definition of collective dismissal (b)	There is no threshold number for a dismissal to be a collective one, although redundancy constitutes a reasonable cause for a dismissal, where the same rule would apply regardless of the number of the dismissed.
19: Additional notification requirements in cases of collective dismissal (g)	No regulations.
20: Additional delays involved in cases of collective dismissal (h)	No regulations.
21: Other special costs to employers in case of collective dismissals (i)	No regulations.

Legend: d: days; w: weeks; m: months; y: years. For example "1m < 3y" means "1 month of notice (or severance) pay is required when length of service is below 3 years".

Notes:

- a) Three tenure durations (9 months, 4 years, 20 years). Case of a regular employee with tenure beyond any trial period, dismissed on personal grounds or economic redundancy, but without fault (where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment). Averages are taken where different situations apply – e.g. blue collar and white collar; dismissals for personal reasons and for redundancy.
- b) Based also on case law, if court practice tends to be more (or less) restrictive than what specified in legislation.
- c) Initial period within which regular contracts are not fully covered by employment protection provisions and unfair dismissal claims cannot usually be made.
- d) Typical compensation at 20 years of tenure, including back pay and other compensation (e.g. for future lost earnings in lieu of reinstatement or psychological injury), but excluding ordinary severance pay and pay in lieu of notice. Where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment and that a court case takes 6 months on average. Description based also on case law.
- e) Maximum time period after dismissal up to which an unfair dismissal claim can be made.
- f) Description based on both regulations on number and duration of the contract(s) between the temporary work agency and the employee and regulations on the number and duration of the assignment(s) with the same user firm.
- g) Notification requirements to works councils (or employee representatives), and to government authorities such as public employment offices. Only requirements on top of those requirements applying to individual redundancy dismissal count for the OECD EPL indicators (cf. Item 1).
- h) Additional delays and notice periods in the case of collective dismissal (only delays on top of those required for individual dismissals – as reported in Items 2 and 3 – count for the OECD EPL indicators).
- i) This refers to whether there are additional severance pay requirements and whether social compensation plans (detailing measures of reemployment, retraining, outplacement, etc.) are obligatory or common practice.