

Thailand: Fixed term employment contract?

It is important for an employer to be aware that a fixed-term employment contract may be considered as a non-fixed term employment contract if it contains certain characteristics with the result that an employer may face difficulty when terminating an employee at the end of the contract and may have to pay compensation.

Differences between Fixed and Non-Fixed term employment contract

There are major differences between a fixed term and a non-fixed term employee. Therefore, it is important to know whether the contract of employment is in fact a fixed term employment contract under Thai law.

1. Term of the contract

A fixed term employment contract must have a definite start date and end date, otherwise such contract will be considered as a non-fixed term contract.

2. Probation Period

A fixed term employment contract must not have a probation period. If any fixed term employment contract has a probation period and the employer will only maintain the contract if such employee has passed the required probation period or, if such employee does not pass the

probation period, the employer has a right to end the contract, this kind of agreement would be considered as a non-fixed term contract.

3. Right to terminate a contract before the end of its term

If an employment contract gives any party the right to terminate the contract before the end of its term without any party being in default, it will be considered that the contract is a non-fixed term contract.

4. Right to extend/renew the term of the contract at the end of its term

If an employment contract gives any party the right to extend/renew the term of the contract at the end of its term, it will be considered that the contract is a non-fixed term contract.

5. De facto extension

If after the end of the agreed period of a fixed term contract, the employee continues to work with the employer and the employer does not object, it shall be presumed that an employee is working on a non-fixed term contract.

Advantages of adopting a fixed term contract

1. Notice of termination of the employment contract

A fixed term employment contract shall expire when the specified period in the contract ends without any requirement for advance notice being

Key issues

- There are major differences between fixed term and non-fixed term employees under Thai law
- A fixed term contract must not have certain characteristics otherwise it will be considered as a non-fixed term contract under Thai law
- For some kinds of employment fixed term contracts may be advantageous
- Severance payment must be paid to all employees who have been working for a period of 120 days onwards

given to an employee.

Under a non-fixed term employment contract an employer can only terminate the contract without giving advance notice if an employee is in default or in other limited circumstances that are allowed by law.

2. Unfair Termination

In the case of a fixed term employment contract, at the end of the contract term, the contract will be ended automatically. The employee cannot claim that the employer has unfairly terminated the employee.

Employment period of 120 days – severance payment

It is important to be aware that, regardless of the employment contract being a fixed term contract or not, an employee who has been working with the employer for 120 days or more is entitled to a severance payment. This applies to all cases except if the employee has committed acts which entitle the employer to refuse to pay severance payment according to the law. Please note that some types of fixed term contracts (e.g. employment in a specific project which is not the normal business of the employer, or occasional or seasonal work for a period no longer than 2 years) are not subject to the severance payment requirement.

Recommendation

Our recommendation is that a fixed term employment contract must

clearly specify a definite period of employment and must not have any of the provisions specified above, otherwise, such contract would be considered as a non-fixed term employment contract under Thai law. Termination of a non-fixed term employment contract could result in the employer being liable for payment in lieu of notice of termination and additional compensation on the basis of unfair termination.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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