

## Making it clear on both sides

### ***Employment contracts can help cut risk of misunderstandings and disputes***

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**SRIWIPA SIRIPUNYAWIT**

Relationships between employers and employees have all the makings of a nightmare if things don't go as both parties expect them to. But there are some simple steps that can be taken to make things a lot easier, say specialists in employment law.

Preparation of a job description, employment contract and associated expectations on the employer's behalf should leave little room for interpretation. At the same time, it is the employee's responsibility to ensure he or she is supplied with such a description and contract and to be thoroughly aware of what it contains.

Such a simple step before a legally binding relationship is entered into can avoid problems in the future.

Under the law, employment contracts refer to written or oral agreements, which specify that a person has agreed to work for another in return for wages, says [Sasirusm B. Chunhakasikarn](#), a lawyer with Tilleke & Gibbins International. She says such contracts should include the following details:

- Names of employer and employee;
- Employee's information, including address, identification number, social insurance number and, in the case of a foreign worker, passport number;
- Date when employment begins;
- Position name and job description;
- Basic salary and other benefits;
- Age of retirement;
- Probation period;
- Company confidentiality policy and the consequences to employees who breach the rules;

- Work rules and regulations, including working days and hours, holiday entitlements, overtime, disciplinary and grievance procedures. All workplaces with 10 or more employees must have such regulations;
- Punishment for violations of the regulations;
- Copyright and patent agreement for work done by employees;
- Actions that can lead to termination of employment.

Specifying bonus conditions is optional, but Ms Sasirusm recommends that guaranteed bonus payments be left out. "If the employer mentions fixed-term or guaranteed bonuses in the contract, that means he will be obliged to pay that amount every year. And if he does not pay it, the employee can sue the company."

She also recommends that, for the employer's benefit, probation periods should not last longer than 119 days. The law says that employers must pay at least 30 days' salary in severance to employees who have worked for at least 120 days consecutively, but less than one year.

However, Ms Sasirusm says employers often terminate staff for unsatisfactory performance or other reasons after the 120-day period without paying severance. "According to the law, this practice is illegal. Unfortunately, most employees do not know their rights."

Rawat Chomsri, senior associate in the Siam Premier International Law Office, said many employment termination cases had been brought before the Labour Court, in particular disputes about severance and compensation.

Under the law, he said, if an employee violates work rules in a minor way, the employer must first issue a written warning. If the employee violates the same rule within the same year, he or she can be terminated without notice and without severance pay.

But if the employer does not follow the correct procedure, severance and possibly compensation for unfair dismissal must be paid.

"The mistake that most employers usually make is failure to issue a written warning, yet firing the employees right away. That is considered wrong and so they must pay severance and other compensation," said Mr. Rawat.

If a work rule is breached in a way that harms the company, the employer has the right to sack an employee immediately, without issuing a warning or paying severance.

The company must specify what actions are considered minor violations and what is considered serious.

The Labour Protection Act states that the employer does not have to pay severance to an employee terminated under any of the following conditions:

- performing duties dishonestly;
- committing a criminal offence against the employer;
- intentionally causing damage to the employer resulting in losses;
- neglecting duty for three consecutive working days without reasonable cause;
- being imprisoned by a final judgment of imprisonment;
- violating work rules and regulations of the employer that are lawful and just.

The employer should also state in the work contract that employees must give 30 days' notice prior to resignation. If the employee does not do this, the employer has the right to take legal action.