



Newsletter No. 146 (EN)

**Employees' Welfare
under the
Thai Labour Protection Act**

September 2018September

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I. Introduction

In addition to the legally required benefits under the Thai social security system established under the Thai Social Security Act and the Workman Compensation Fund Act, the Thai Labour Protection Act (“LPA”) sets forth certain welfare provisions for the benefit of employees.

II. Welfare Committee

Under Section 96 of the LPA, a company having 50 or more employees must found a welfare committee. The welfare committee shall consist of at least 5 employee representatives who are elected among the employees.

The welfare committee’s members serve for a period of two years unless any of the following events occurs: death, resignation, incompetence or quasi incompetence, or imprisonment.

The committee shall have following the duties in relation to the welfare of the employees:

- a) to liaise with the employer and discuss employees’ welfare issues;
- b) to provide advice and recommendations to the employer on the provision of welfare;
- c) to inspect, control, and arrange for the welfare contributions approved by the employer; and
- d) to propose guidelines and opinions regarding welfare contributions which would benefit the employees.

The employer must hold a meeting with the welfare committee every 3 months and whenever half of its members request a meeting.

Please note that the formation of the welfare committee does not need to be registered with the Labour Department. However, the Labour Department may randomly investigate whether the company complies with the law and has established such committee.

Failing to implement a welfare committee, the company will be liable to a fine of up to THB 50,000. If failing to convene the required meetings, the company will be liable to a fine of up to THB 2,000 or imprisonment for up to one month or both.

III. Welfare

Welfare is a benefit provided by the company to its employees for their convenience and/or good health.

1. Welfare Required by Law

The company shall arrange for the following:¹

- a) clean drinking water and restrooms as follows:
 - ≤ 15 employees: 1 restroom, 1 toilet, 1 drinking point;
 - ≤ 40 employees: 1 restroom, 2 toilets, 1 drinking point;
 - ≤ 80 employees: 1 restroom, 3 toilets, 2 drinking point;

¹ Announcement of the Ministry of Interior re: the specification of the working time, employees’ holiday, woman and child labour, wage payment, and the arrangement of the welfare for the sanitary of the employee.

- Over 80 employees: for every additional 50 employees: additionally, 1 restroom, 1 toilet, 1 drinking point;
- b) first-aid service and medical supplies for employees' injuries or sickness.

If the company has more than 10 employees it must have a first-aid kit (including e.g. scissors, cotton, alcohol 70%, medicines, etc.) available at the work place.

In case of industrial work place, the following additional facilities have to be provided:

- for the place with more than 100 employees, a ward with one bed, 1 permanent nurse and 1 doctor who visits occasionally;
- for the place with more than 1,000 employees, a ward with 2 beds, 2 permanent nurses, 1 doctor who is scheduled to visit regularly at least for 2 hours, and a transportation to a hospital.

In case the company fails to provide such facilities, the company shall be liable to a fine of up to THB 100,000 or imprisonment for up to 6 months or both.

2. General Welfare

Apart from the above-listed welfare, the LPA does not require the company to provide other welfare / benefits to its staff. However, generally a manufacturing company (especially if not located in an industrial estate or if located in a remote area) usually provides the following benefits to its employees:

- a) Working clothes or uniforms;
- b) Health insurance;
- c) Transportation to factory site;
- d) Canteen inside the factory;

- e) Accommodation; and/or
- f) Monetary benefits such as rewards or bonuses which the employees will receive after achieving certain performance goals as set by the company (e.g. productivity, no mistakes, etc.).

Monetary benefits are quite often used by companies to increase the employees' performance. In various manufacturing companies, additional rewards (diligence bonus) will be granted to employees provided that they:

- (1) do not come to work late throughout the whole month;
- (2) do not take sick leave throughout the whole month;
- (3) do not produce or create any waste or damage to the products for which they are responsible, etc.

Please note that according to the court interpretation, an amendment or cancellation of already announced welfare is considered as an amendment of the employment conditions and therefore requires the prior consent of the employees. It is therefore recommendable that any changes on the welfare should be published on the company's announcement board and the acknowledgment of all employees should be requested. Where possible, the company should state that the payment is discretionary and may be abandoned in the future for business reasons, to ensure a greater flexibility in changing the welfare granted to employees.

3. Welfare vs. Wages

It has been noted that monetary benefits may be either considered as welfare or wages, depending on what grounds the payment is made. In case the company wishes to grant monetary benefits to its employees, it is very important to consider the below points in order to avoid that such benefits

are considered to be wages. Wages need to be included in the basis for calculating potential severance payment, which needs to be paid by the company if the employment is terminated without the employee's misconduct.

According to the LPA and court decisions, the definitions of welfare and wages are:

Welfare: any money or other payment in kind, regardless of how it is termed, that is paid, with a clear intention, as welfare for the employee or as motivation for the employee to work more efficiently, or as a help. Examples are:

- (1) a performance bonus, which is not directly paid in return for normal work done (SCD no.4573/2544);
- (2) a medical fee and insurance (SCD no. 5788/2530);
- (3) accommodation and beverage fee, which is calculated by its actual costs (SCD no. 1437/2524, 1180/2540);

Wages: any money, regardless of how it is termed, that is paid in return for the work done directly under the employment contract or is paid on a regular basis with a fixed amount without being explicitly excluded from wage. For example, commission fee if it is a fixed amount, fixed bonus, allowance, gasoline and telephone fee which are speci-

fied in fixed amounts in the employment agreement.

According to precedent Supreme Court rulings, the following benefits given by the company are considered as wages if the payments are fixed, payable monthly or annually in return for work done under a contract of employment for regular working periods:

- (4) allowances e.g. allowances for meals, living cost, and position fee (SCD no. 3223/2525);
- (5) transportation expenses, e.g. fuel charges, paid without calculating the actual miles spent by such employee or paid in fixed amounts regardless of the consideration of the actual cost or requesting any respective invoice (SCD no.3173/2528);
- (6) commissions or incentives (SCD no. 3724/2537, 1181/2540);

Should the company be looking for enhancing the employees' incentives, it is strongly recommended to increase the welfare part instead of the wages to avoid additional costs which might occur in the future, particularly in case an employment is terminated. We would recommend that we pre-check any additional welfare that you may wish to implement prior to announcing it to the employees in order to avoid legal issues in the future.

We hope that the information provided in this brochure was helpful for you. If you have any further questions, please do not hesitate to contact us.

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