

COMPLIANCE CHECK: THAILAND: FIXED TERM EMPLOYMENT

Many employers in Thailand often choose to offer fixed term contracts given the difficulties in terminating permanent employment under Thai laws. However, there are situations where fixed term employment may be deemed permanent. This update considers these deemed permanent employment risks.

Continuing to work after the expiry of contracts

Where an employee continues to work for the employer after the end of an agreed period under a fixed term employment contract, and the employer does not challenge the extension, the employment after the fixed term contract is presumed to exist under permanent employment contract with the same terms as the fixed term contract.

Drafting issues which may give rise to deemed permanent employment

A fixed term employment contract may be deemed by the Thai courts to be a permanent employment contract in certain circumstances, including where the contract contains:

- a probationary period;
- a clause entitling either party to terminate the contract before the expiry of its term without cause; or
- a clause providing that the contract may be renewed upon its expiry.

Implication for termination of employment

A fixed term employment contract terminates automatically without the need to give advance notice upon the expiry of the agreed period. Where a fixed term employment contract is deemed to be a permanent employment contract, the employer must give advance notice of the termination.

However, the obligation to pay severance exists regardless of whether the employee is employed under a fixed term or permanent contract. An employee who has worked for 120 days or more is entitled to severance payment.

That said, there are (extremely) narrow exceptions to the requirement to pay severance upon the expiry of specific types of fixed term employment, eg where the work is completed within a period not exceeding two years and the parties entered into a written agreement to that effect upon the commencement of employment, and:

- the employment is for work on a specific project that is not within the normal course of the employer's business or trade and which has a definite beginning and end;
- the employment is for work of a temporary nature which has a fixed schedule for its completion; or
- the employment is for seasonal work.

Deemed continuous service period

Where an employee works under a series of fixed term contracts (ie not continuous employment) and it can be shown that the employer structured the employment in this manner to deprive the employee of their entitlements under the law, the employee's period of service will be deemed to

have been added together for the purpose of calculating the employee's benefits (regardless of the work/duty and the length of each interval of employment).

Key takeaways

A key advantage in using fixed term employment in Thailand is the automatic termination of the contract upon its expiry without having to give advance notice. However, given the risks of deemed permanent employment, employers will need to properly assess the nature of the work and review the contract to ensure that the drafting does not inadvertently increase the risk of permanent employment is used.

Herbert Smith Freehills has extensive experience in carrying out multi-jurisdictional employment document compliance reviews, including employment contracts, work rules and other relevant workplace policies. To find out more, contact fatim.jumabhoy@hsf.com.