



COVID-19: How to Pay Your Employees

Published on April 1, 2020



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During this Covid-19 situation, many business owners/operators in Thailand face a tough decision, particularly on how to manage the employee payroll expenses while the business has taken a hit from this pandemic. This article offers some legal guidance regarding your options for your employee payroll.

As the Governor of Bangkok Metropolitan Administration started off with a mandatory closing of shopping malls and many other places in Bangkok that was announced on Saturday, March 21, 2020 to become effective on Sunday, March 22, 2020 and other authorities in Thailand began to issue other similar mandatory measures to deal with the covid-19 situation over the past weeks, from employer's perspective the question then arose on how to pay your employees in this time of crisis. And definitely we cannot completely rule out a compulsory lockdown. In this short article, I hope to clarify the legal situation on how to pay your employees in this circumstance.

There are two main scenarios.

Scenario 1. Government Mandatory Closing



If any government authority requires that your business be temporarily closed down, something that happens to many retailers in Bangkok's shopping malls, the interpretation is that the performance of an obligation (i.e. work) becomes impossible for an employee through no fault of an employer and no fault of an employee. Therefore, an affected employee does not have to perform the work during this period and is not entitled to receive a wage in return from an employer.

In conclusion, the employer does not have to pay any affected employee if your business is temporarily closed down by any mandatory government measure.

This no work no pay situation is likely to apply to many more employers if the government decides to apply a complete mandatory lockdown, something that has not happened at the time of this writing.

Scenario 2. No Government Mandatory Closing

If no government authority imposes any mandatory measure that makes it impossible for an employee to work, the employer is still obliged to pay the employee the full wage regardless of whatever happens to customers.

However, given the circumstance of this pandemic the employer may exercise the right under Section 75 of the Labor Protection Act, B.E. 2541 (1998) to suspend the business either entirely or partially and pay an affected employee 75% of the wage during the period of this epidemic.



Any other arrangement beside this Section 75, must be personally consented by each affected employee.

Work from Home

If the employee works from home according to the employer's instruction, the employer still has to pay the employee that full wage.

Can I pay an employee less than 75% of the wage during this temporary closing in Scenario 2?

Unless the government authority imposes any mandatory measure that forces your business to temporarily shut down like Scenario 1, any other arrangement you make with your affected employee must be consented by your affected employee, ideally in writing such as a consent letter or a consent notice.

What does happen if an affected employee refuses to take a pay cut?

The employer has the right to terminate an employment of that refusing employee. But the employer will have to make:

(i) a severance payment; (ii) a payment in lieu of advantage notice; (iii) a payment for any unused annual leave of that year in proportion to the time that the employee works in that year; and (iv) a payment for an accumulative unused annual leave (carried over from previous years) (if any).

Can I ask the employees to take the leave without pay?

The employer has no statutory right to ask the employee to take the leave without pay. But this is subject to employee's consent. You will have to discuss with your employee about this proposal.

This legal article was written by Narit Direkwattanachai, a corporate & tax attorney at NARIT & Associates with expertise in corporate commercial, commercial dispute and employment/labor law. He holds a bachelor of laws (1st class honors) from Chulalongkorn University, a master of law from the University of Cambridge, UK and an MBA in finance from the Georgia Institute of Technology, USA. He can be reached at narit@naritlaw.com

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Thanks for this information, its very helpful.

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Dear K Narit, thank you for this very helpful guide.

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