

## REMOTE WORKING AGREEMENTS IN THAILAND

6 JUNE 2023 • ARTICLE



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The Covid-19 pandemic forced the Thai industry into a difficult position, requiring employees to work from home to ensure continuity of business operations in a slower economy. To combat the spread of Covid-19, many companies implemented remote working policies and some have continued these policies even after the lifting of Covid-19 restrictions. A popular practice for remote working is for employers to announce a remote working scheme for a certain number of days a week and, in some cases, to give employees the flexibility to choose the days in a week in which they work remotely. Many of these remote working schemes have not been formally implemented by amending

**employers' work rules or employees' employment contracts.**

In an effort to formalise remote working arrangements, the Labour Protection Act (No. 8) B.E. 2566 (2023) was enacted with effect from 18 April 2023 as an amendment to the Labour Protection Act B.E. 2541 (1998) (the "Amended LPA"). The Amended LPA deals with remote working arrangements and aims to enhance employees' quality of life and performance at work and benefit employers' business operations.

The summarised provisions and key considerations of the Amended LPA are:

- an employer and employee may agree that the employee will work from home or work from anywhere using information technology tools (remote working). The work which may be carried out remotely would be work that the employee could perform effectively outside the employer's business premises or office. Remote working agreements must be made in writing or in electronic form.

It is not a statutory requirement for employers to enter into remote working agreements in order to implement remote working arrangements and there are no legal implications or sanctions if the parties fail to enter into a written agreement or an electronic agreement to deal with remote working arrangements;

**"If a remote working agreement is entered into, the employee is entitled to refuse any communication from their employer after normal working hours unless they have given their prior consent."**

Regardless of whether a written or an electronic remote working agreement has been entered into, the basic principle of employee consent for any change in working conditions still applies. As work location is considered one of an employee's working conditions, a change of work location normally requires employee consent if the change downgrades existing benefits or increases any burdens on them. Whilst remote working may provide more flexibility and benefits (e.g. travelling time and expense) for employees, their consent is required if it also entails any burdens (e.g. procurement of office furniture and technology necessary to work remotely);

- remote working agreements may include the duration of the remote working arrangement, normal working days and hours, break times, overtime work, holiday work, annual leave, the scope of work and employer's supervision and the provision

of the necessary working tools, equipment and expenses required to carry out the work. If a remote working agreement were to be made, the Amended LPA provides guidelines regarding the provisions that should be included in the agreement. It is not compulsory to incorporate all of the suggested provisions in the agreement and there is no legal implication or sanction if the parties fail to include any of the provisions;

- if a remote working agreement is entered into, the employee is entitled to refuse any communication through any channel from their employer, supervisors, work controllers or work examiners after normal working hours or the end of the work assigned by the employer, unless they have given their prior consent.

**"Employees working remotely will be entitled to the same rights and benefits as employees working onsite or at the employer business premises."**

As this entitlement is specific to remote working, the right to refuse out-of-hours communications from an employer (or other specified personnel) would likely be limited to employees working remotely with a remote working agreement. However, employers should bear in mind that communications with an employee out of working hours would constitute overtime work if the communication relates to work and the employee performs work by responding to the communication, regardless of whether they are working remotely or are onsite employees; and

- the Amended LPA also provides that employees working remotely will be entitled to the same rights and benefits as employees working onsite or at the employer business premises.

This requirement is relatively broad and a conservative approach would be that the employees in the same role and position should be entitled to the same rights and benefits enshrined in the Labour Protection Act, regardless of whether they are working remotely or on-site. However, it is not clear whether this would prevent an employer from paying remote employees a different salary from onsite employees.

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On the whole, the enactment of the Amended LPA is encouraging since remote working arrangements can have societal benefits such as resolving traffic congestion and reducing energy consumption according to the remarks of the Amended LPA. However, there are drawbacks for some industries, not least office leasing businesses as the demand for leased corporate premises declines. We will follow with interest how the industry responds to changing working models.

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