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Thailand's Labor and Employment Law: Balancing the Demands of a Newly Industrializing State

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I. INTRODUCTION: THE ECONOMIC AND POLITICAL CLIMATE FOR LAW REFORM IN THAILAND

Thailand received international attention in 1992 as conflicts between the Thai military and civilian demonstrators led to a new focus on political reform. In May 1992, a Bangkok population made restive by the unpopular military takeover of February 1991 erupted in demonstrations in the streets. When the military sought to quell the demonstrations with force on May 18th, at least fifty-two people were killed, launching a nationwide inquiry and reconsideration of the military's role.¹

The military has long played a unique role in Thailand's political economy, asserting itself when the civilian government has pursued do-

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¹ Raphad Pura, *Thailand's May Crisis Didn't Damage Business Confidence in Nation's Future*, WALL ST. J., June 29, 1992, at B2B [hereinafter Pura].

mestic economic policies not favored by military leaders. The military's disfavor often has been incurred by civilian efforts to enact labor law reform measures which extend entitlements to workers.²

Early assessments held that the May 1992 violence did not chill business confidence in the nation's future.³ Despite its progress toward industrialization, Thailand has experienced eighteen coups since the end of the absolute monarchy in 1932, leading some observers to conclude that domestic political maneuvers can be dismissed as irrelevant adjuncts to sustained economic progress.⁴ The May 1992 confrontation may, however, prove to be a watershed event in the development of stronger democratic institutions. At the time of this writing, the civilian government was implementing a reform policy aimed at reducing the military's role in domestic affairs. If such political reforms are successful, a new domestic law reform agenda may evolve in which the demands for industrial growth are balanced by greater attention to the employees' welfare.

This article provides a comparative overview of Thailand's labor law, one of the principal considerations for prospective investors. The legal system is analyzed from the perspective of a U.S. investor; to provide a familiar frame of reference, comparisons are made throughout the analysis to labor law in the United States. Observations also are offered on the important extra-legal aspects of employment in Thailand, such as the implications of Thai culture for the employer-employee relationship.

The major laws treated in this article include the Law on Hire of Services,⁵ the Law on General Labour Protection,⁶ the Law on Minimum Wages,⁷ the Law on Safety in Working,⁸ the Social Security Act,⁹ the Law on Labour Relations,¹⁰ the Labour Courts Act,¹¹ the Alien

² See, e.g., Rodney Tasker, *Social Insecurity*, FAR E. ECON. REV., July 26, 1990, at 10.

³ *Id.*

⁴ Victor Mallet, *Dreams, Nightmares, Breathing Space*, FIN. TIMES, Dec. 3, 1991, at 15.

⁵ CIVIL AND COMMERCIAL CODE, Book III, Title VI, §§ 575-586, translated in INT'L TRANSLATIONS OFFICE (Bangkok, Thailand), LABOUR LAWS 1-2 (Rev. 1989) [hereinafter LABOUR LAWS]. Also translated in Nikom Chandravithun, *Legislation Thailand* 13-14, in LEGIS. 5 INT'L ENCYCLOPAEDIA FOR LABOUR LAW AND INDUS. REL. (Dr. Roger Blanpain, ed. 1989) [hereinafter *Legislation Thailand*].

⁶ Announcement of the Revolutionary Party No. 103, 16 Mar. 1972 [hereinafter Labour Protection Announcement No. 103], translated in LABOUR LAWS, *supra* note 5, at 3.

⁷ *Id.*; Notification of the Ministry of Interior; Re: Prescribing Minimum Wages (No. 17), 12 Dec. 1988, translated in LABOUR LAWS, *supra* note 5, at 68.

⁸ Labour Protection Announcement No. 103, *supra* note 6, translated in LABOUR LAWS, *supra* note 5, at 3. See generally *Law on Safety in Working*, in LABOUR LAWS, *supra* note 5, at 71-171, containing translated compilation of Thai worker safety laws.

⁹ Social Security Act, August 11, 1990; English Translation in SOCIAL SECURITY ACT B.E. 2533, Int'l Translations Office (Bangkok).

¹⁰ Labour Relations Act, 14 Feb. 1975 [hereinafter Labour Relations Act], translated in LABOUR LAWS, *supra* note 5, at 228-270; *Legislation Thailand*, *supra* note 5, at 109-174.

Work Permit Act,¹² the Vocational Assistance to Thais Act,¹³ and the Employment Agencies and Employment Seekers Protection Act.¹⁴ By way of background, the following provides a brief overview of the Thai political-legal system and the general scheme for regulating foreign investment.

Thailand's rapid modernization continues to progress in a hospitable legal climate for foreign investors. The Thai economy is one of the fastest growing in the world, enjoying an average annual growth rate of approximately seven percent over the past twenty years.¹⁵ The growth rate in trade and services jumped to ten percent or better each year during the period 1987 through 1990, and returned to a more sustainable 7.9% in 1991.¹⁶ This impressive record of economic activity was due in large part to Thailand's industrious, inexpensive and well-educated workforce.¹⁷ At the time of this writing, it was estimated that the Thai economy would grow between seven and eight percent in 1992.¹⁸

By the early 1990s, Thailand was widely viewed as an emerging member of the newly industrialized countries of East Asia. Exports and foreign investment capital drove the nation's economic expansion during the decade of the 1980s, transforming the economy from agricultural to semi-industrial.¹⁹ The total value of Thailand's exports in 1990 were

¹¹ Act on Establishment of Labour Courts and Labour Court Procedure, 30 Apr. 1979 [hereinafter Labour Courts Act], translated in *LABOUR LAWS*, *supra* note 5, at 287.

¹² Alien Work Permit Act, 8 July 1978 [hereinafter Alien Work Permit Act], translated in *LABOUR LAWS*, *supra* note 5, at 328.

¹³ Vocational Assistance To Thais Act, 13 Feb. 1956 §§ 1, 5, 8, translated in *LABOUR LAWS*, *supra* note 5, at 361-62.

¹⁴ Employment Agencies and Employment Seekers Protection Act, 17 Aug. 1985 §§ 1, 4, 5 [hereinafter Employment Agency Act], translated in *LABOUR LAWS*, *supra* note 5, at 364-65.

¹⁵ THE AMERICAN CHAMBER OF COMMERCE, THAILAND IN BRIEF 2 (1992).

¹⁶ OFFICE OF THE BOARD OF INVESTMENT & OFFICE OF THE PRIME MINISTER, KEY INVESTMENT INDICATORS OF THAILAND 3 (Sept. 1991) [hereinafter KEY INVESTMENT INDICATORS]. The reduced growth rate in 1991 may be attributed in part to the economic fallout from the Gulf War and the general state of the World economy. However, it also may be explained as a natural correction which should relieve some of the infrastructural pressures generated by an overheated economy. THE AMERICAN CHAMBER OF COMMERCE IN THAILAND, COUNTRY PAPER 1 (Bangkok, Mar. 1992).

¹⁷ KEY INVESTMENT INDICATORS, *supra* note 16, at 3. The adult literacy rate in 1985 was 87.7%. BUREAU OF INT'L LABOR AFFAIRS, U.S. DEP'T OF LABOR, FOREIGN LABOR TRENDS: THAILAND 1 (1990) [hereinafter FOREIGN LABOR TRENDS 1990]. For wage rates, see *infra* notes 187-194 and accompanying text. In 1991, it was estimated that Thailand had a total population of 57.6 million persons, with a labor force of 31.8 million persons and a gross domestic product per capita of U.S. \$1,652. KEY INVESTMENT INDICATORS, *supra* note 16, at 3.

¹⁸ COUNTRY PAPER, *supra* note 16, at 3; Pura, *supra* note 1, at B2B.

¹⁹ Agriculture's share of the gross domestic product (GDP) dropped from 23.2% in 1980 to a provisionally estimated 12.4% in 1990. During the same period, the manufacturing sector's share of the GDP rose from 21.3% to 26.1%. KEY INVESTMENT INDICATORS, *supra* note 16, at 5. However, the largest single source of employment in Thailand continues to be agriculture, followed by

provisionally estimated at U.S. \$ 22.79 billion, reflecting a growth rate over the previous year of 14.4%; the value of imports was U.S. \$ 32.52 billion, reflecting a growth of 28.5%.²⁰ Thailand's substantial trade deficit continued through 1991.²¹

Foreign investment in Thailand has increased dramatically in recent years. Of the registered capital of firms granted certificates by the Thailand Board of Investment in 1990, more than thirty percent was of foreign origin.²² This included 5,730 wholly-owned foreign investments, and 13,097 joint ventures with foreign investment capital.²³ Japan, Hong Kong and Taiwan are the largest sources of investment.²⁴ The United States has long enjoyed a cordial relationship with Thailand, and it is not surprising that U.S. investors increasingly are considering Thailand as a highly desirable investment site.²⁵ The improved prospects for peace among Thailand's Southeast Asian neighbors should enhance Thailand's attraction for Western investment.

Pursuing a so-called "omni-directional" foreign policy, Thailand has demonstrated considerable flexibility and pragmatism since the mid-1970s as it has developed stronger economic ties with the United States, Japan and China. In doing so, it has assured continued growth of markets for Thai goods. Although it borders the less stable states of Burma,

manufacturing, services, and commerce. The percentage of persons employed in each sector is as follows: Agriculture (57.1%), manufacturing (12.4%), commerce (11.6%), services (11.6%), transport (2.6%), construction and utilities (4.5%), mining (0.1%), unknown (0.1%). *Id.* at 25.

²⁰ *Id.* at 3.

²¹ *Id.*

²² *Id.* at 12.

²³ *Id.*

²⁴ *See id.* Japan for many years has been the largest foreign investor in Thailand, with an accumulated total during the 1960-1989 period of 54.8% of total foreign investment. *Id.* During the same period, United States firms represented only 7.0% of total foreign investment. *Id.* In 1990, Japanese firms represented 19.2% of total investment in Thailand, while the United States represented 7.7%. *Id.* at 13. Hong Kong recently has become a major investment source, providing 50.7% of all foreign investment in 1990. *Id.* Other substantial foreign investors in 1990 included Taiwan (5.4%), the United Kingdom (2.7%), Singapore (4.2%), India (2.9%), and West Germany (2.8%). *Id.*

²⁵ Investments from the United States in Thailand are highly concentrated; the top 20 U.S. firms account for approximately 80% of total U.S. investment. About half is in the energy sector, with the remainder in manufacturing, finance and insurance, and trade. THAILAND IN BRIEF, *supra* note 15, at 3. Fiscal considerations generally auger well for American enterprises in Thailand. The exchange rate between the baht and the dollar has remained relatively stable in recent years, and the consumer price increase for 1991 was estimated at only 6.1%, making Thailand one of the few industrializing countries with a stable monetary system. KEY INVESTMENT INDICATORS, *supra* note 16, at 3. Thailand has double taxation agreements with a number of countries; at the time of this writing, it was negotiating an agreement with the United States that would place the taxpayer/investor in a more favorable position for Thai income tax purposes by providing that profits shall only be taxable if the taxpayer has a "permanent establishment" in Thailand. *Id.* at 29.

Laos and Cambodia, and is very near Vietnam, Thailand is a key member of the Association of Southeast Asian Nations (ASEAN) and has had a stabilizing influence on the region. Soon after Chatichai Choonharan was elected as prime minister in 1988, he launched an initiative to change Southeast Asia from a battlefield to a marketplace, and immediately began developing commercial ties with Vietnam. Although the aggressiveness of that policy was softened by his successor, the emphasis upon closer economic ties in the region has continued. The withdrawal of Vietnamese military forces from Cambodia, beginning in 1989, followed by the recent establishment of a U.N.-sponsored coalition government in Cambodia, augurs a future of increased stability throughout Southeast Asia.

Thailand is a constitutional monarchy with a parliamentary form of government; the King serves as titular head of state.²⁶ The King, who is highly revered by Thais, exercises power in conjunction with the National Assembly, the Council of Ministers, and the courts. Actual power over government is highly centralized in the office of Prime Minister, whose cabinet makes up the Council of Ministers. Government is tripartite, with legislative, executive and judicial branches.

There are a number of governmental and non-governmental institutions which establish the institutional framework for relations among labor, employers and government. The most prominent government player is the Ministry of Interior, which traditionally has had authority on labor matters through its Labour Department.²⁷ Thailand is one of the few countries in Asia without a labor ministry. Since 1987, the United States Government has urged the Thai Government to create a separate labor ministry to more effectively protect worker rights. Concern has focused primarily on the fact that the Interior Ministry has many responsibilities other than labor, and it has not been perceived as effective or aggressive in enforcing the labor laws.

In January, 1991, the Thai Cabinet approved a bill which would upgrade the Department of Labour to full ministry status. However, this effort was aborted when the military overthrew the Chatichai government. On March 15, 1992, the military government passed a law, over

²⁶ The original constitution was adopted in 1932, and the thirteenth constitution was adopted on December 22, 1978. Marut Bunnag & Linda Dougherty, *Thailand* vi, xvii, in 18 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gisbert H. Flanz, eds. 1990) [hereinafter Blaustein & Flanz]. The military coup of February 1991 abolished the 1978 Constitution, and promulgated a new Provisional Constitution on March, 1, 1991. Carol Tenney, *Thailand Supplement 1*, in Blaustein & Flanz, *supra* (Supp. May 1991).

²⁷ BUREAU OF INT'L LABOR AFFAIRS, U.S. DEP'T OF LABOR, FOREIGN LABOR TRENDS: THAILAND 11 (1992) [hereinafter FOREIGN LABOR TRENDS 1992].

the opposition of organized labor, which split the Department of Labour into two new departments: the Skilled Labour Development Department and the Labour Welfare and Protection Department.²⁸

There are a number of tripartite bodies which promote harmonious labor relations. The most important is the National Labour Development Advisory Board (NLDAB) a policy-making body consisting of representatives of labor, management and government. Of the board's twenty members, ten are from government and academia, and five each are contributed by labor and management.²⁹ Management representatives on the NLDAB are drawn from membership of the leading employer confederation, the Employers' Confederation of Thailand (ECOT). The labor representatives are appointed from membership of the labor federation.³⁰

The Labour Relations Committee (LRC) is a tripartite body empowered under Thai law to mediate labor disputes. In practice, the LRC has intervened only in those more serious disputes which threaten the national economic security.³¹

The Labour Courts also are structured on a tripartite basis. The Associate Justices of the Labour Court are selected from both labor and management in annual elections, and serve for two year terms. The Labour Courts frequently mediate individual grievances between employers and employees.³²

Foreign investors generally are treated the same as Thai companies, and there is no law specifically governing the legal rights and duties of foreign companies. However, certain laws provide for special treatment or limitations for foreigners and foreign companies. For example, the Alien Business Law is designed to encourage foreign investment in certain industries and to limit investment in others so as to protect domestic firms.³³ Incentives are provided to both foreign and domestic investors in certain types of investment activities under the Investment Promotion Act.³⁴

The Treaty of Amity and Economic Relations between Thailand and the United States provides that U.S. nationals and companies acquir-

²⁸ *Id.*

²⁹ FOREIGN LABOR TRENDS 1990, *supra* note 17, at 4.

³⁰ *Id.* Dr. Nikom Chandravithun served as Chairman of the Board until April 25, 1989, when his term expired and he was succeeded by Dr. Chira Hongladarom, the Vice Rector of Thammasat University and Executive Director of Thammasat's Human Resources Institute.

³¹ *Id.*

³² FOREIGN LABOR TRENDS 1990, *supra* note 17, at 4.

³³ Alien Business Law (National Executive Council Decree No. 281), 26 Nov. 1972.

³⁴ The Investment Promotion Act, 29 Apr. 1977.

ing interests in commercial, industrial, financial and other business enterprises in Thailand are entitled to all the rights and privileges enjoyed by Thai nationals.³⁵ The effect of this "national treatment" guarantee in the treaty is that many U.S. investors are exempt from the Alien Business Law. However, the treaty does not cover businesses in communications, transport, fiduciary functions, depository banking, exploitation of land or natural resources, or domestic trade in indigenous agricultural products.

The joint venture is the most important vehicle for foreign investment in Thailand, although the legal system also accommodates foreign branch offices and wholly foreign-owned enterprises. There is no special statutory treatment for the joint venture, which essentially is a contractual relationship, with no special characteristics under Thai law. A joint venture can be organized under five different forms according to the Civil and Commercial Code of Thailand: (1) ordinary partnership; (2) registered ordinary partnership; (3) limited partnership; (4) private limited company; and (5) public limited company.³⁶

Regardless of the form taken by the foreign investment enterprise, it is most likely to hire many of its workers under individual employment contracts, without the intervention of a union. Part II, which follows, will address the individual employment relationship. Part III will focus on union representation of employees.

II. EMPLOYMENT CONTRACTS

Employers in the United States are accustomed to exercising broad discretion in the employment and discharge of workers. Employment contracts are virtually unregulated by federal law and only a minority of the state legislatures have enacted statutes to establish employment contract guidelines or impose limitations upon the termination of such contracts.³⁷ Although there has been a growing trend among the courts of some states to engraft exceptions on the traditional common law employment-at-will doctrine, most states still allow an employer in private industry to discharge an employee at any time, for any reason or for no reason at all, absent an employment contract specifying a definite term of employment.³⁸ Most private sector employees in the United States therefore must rely upon their own greater bargaining power, or labor organi-

³⁵ Treaty of Amity and Economic Relations, May 29, 1966, U.S.-Thail., 19 U.S.T. 5843.

³⁶ See generally Weerawong Chittmitrapap, *Joint Ventures in Thailand* (pts. I & II), 12 E. ASIAN EXEC. REP. 21 (1990), 13 E. ASIAN EXEC. REP. 8 (1991).

³⁷ At the federal level, the 1988 Plant Closing Law, Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109 (1988), provides a notable exception, as do the various laws prohibiting discipline or discharge on the basis of discrimination.

³⁸ H.G. WOOD, MASTER AND SERVANT § 134 (1877).

zations, to negotiate contractual agreements regulating discharge and discipline. The situation is totally different in Thailand, where special national statutory limitations and protections apply to individual employment contracts.

The Thailand Civil and Commercial Code governs "hire of services" of employees.³⁹ A "hire of service" is defined by the Code as a contract whereby an employee agrees to render services to an employer in return for remuneration for the duration of the services.⁴⁰ A hire of service contract exists when agreement is reached involving remuneration for employment. The most important feature is the vesting of control of the employer over the employee. The relative responsibilities of employers and employees normally are dependent on the specific terms of the contract. Generally speaking, the principle underlying the relationship between an employer and an employee is one of mutual cooperation, *i.e.*, the employer has a duty to pay wages to the employee and the employee is bound to work for the employer. With respect to the performance of duties, the employee is expected to work with due care and diligence and the employer is expected to reasonably look after the employee. In practice, the hire of services for general workers often does not result in the issuance of a written contract negotiated by the parties. The employer simply stipulates the conditions, duties and responsibilities of employment.

Where a contract is formed pursuant to the Code, the employment contract may be transferable with the consent of the other party.⁴¹ The employment contract is extinguished upon the death of the employer if the relationship is "one in which the personality of the employer forms an essential part of such contract."⁴² The employer may terminate the contract under the following circumstances:⁴³

- (1) The employee either expressly or impliedly warrants special skill on his part, and such skill is absent;⁴⁴
- (2) The employee willfully disobeys or habitually neglects the lawful commands of his employer;
- (3) The employee absents himself from service;⁴⁵

³⁹ CIVIL AND COMMERCIAL CODE, Book III, Title VI §§ 575-586, *translated in* LABOUR LAWS, *supra* note 5, at 1-2.

⁴⁰ *Id.* § 575, *translated in* LABOUR LAWS, *supra* note 5, at 1.

⁴¹ *Id.* §§ 575-578, *translated in* LABOUR LAWS, *supra* note 5, at 1.

⁴² *Id.* § 584, *translated in* LABOUR LAWS, *supra* note 5, at 2.

⁴³ *Id.* § 583, *translated in* LABOUR LAWS, *supra* note 5, at 2.

⁴⁴ *Id.* § 578, *translated in* LABOUR LAWS, *supra* note 5, at 1.

⁴⁵ The law specifically provides that the absence of the employee from service for a reasonable cause and during a reasonably short period does not entitle the employer to terminate the contract. *Id.* § 579, *translated in* LABOUR LAWS, *supra* note 5, at 1.

- (4) The employee is guilty of gross misconduct; or
- (5) The employee otherwise acts in a manner incompatible with the due and faithful discharge of his duty.

Upon termination of employment, unless otherwise provided in the contract, the employer is obligated to pay the cost of the return journey of an employee who has been brought from elsewhere at the expense of the employer, unless the contract has been terminated by reason of the act or fault of the employee.⁴⁶

The law also contains provisions which establish the time of remuneration and duration of the contract, if such details are not specifically provided in the contract.⁴⁷ The law further provides that either party may terminate a contract without fixed duration by giving notice at or before any time of payment, to take effect at the following time of payment.⁴⁸

As the following Part III will show, most Thai employees may voluntarily choose to be represented by a union in their contractual relationship with employers. Obviously, this empowers the employee to apply more bargaining power to the negotiation of additional benefits and protections beyond the minimal protections provided by the Civil and Commercial Code.

III. LABOR-MANAGEMENT RELATIONS AND COLLECTIVE BARGAINING

A. Introduction

The normative structure for labor-management relations in Thailand is thorough and comprehensive, drawing upon many of the labor law notions familiar to American employers and unions. In some respects, the Thai Labour Relations Act resembles the United States National Labor Relations Act, which was initially promulgated by the Wagner Act of 1935.⁴⁹ The Thai Labour Relations Act originally was broad in coverage, although it exempted agricultural workers and civil servants; state enterprise employees also were exempted on April 19, 1991.

Both in concert and independently, the Thai labor organizations continued through the early 1990s to press the traditional labor issues of wages and salaries, opposition to privatization of state enterprises, and

⁴⁶ *Id.* at § 586, translated in *LABOUR LAWS*, *supra* note 5, at 2.

⁴⁷ *Id.* at §§ 580-582, translated in *LABOUR LAWS*, *supra* note 5, at 1.

⁴⁸ *Id.* at § 582, translated in *LABOUR LAWS*, *supra* note 5, at 1-2. No more than three months notice is required. *Id.*

⁴⁹ Codified as 29 U.S.C. § 151 (originally enacted July 5, 1935).

improved social security protections.⁵⁰ However, the organized labor movement in Thailand also continued to be fragmented and fractionalized, with one of the lowest levels of unionization in the region. In 1989, less than three percent of the industrialized work force was organized into unions.⁵¹ The number of registered union members in 1989 numbered only 309,000, up by five percent from the previous year.⁵² During the same period, there were 593 registered local labor unions.⁵³ In 1990 union membership grew by seven percent to 330,000, and the number of registered unions proliferated to 732.⁵⁴

More than half of the total union membership was concentrated in the state enterprise sector, the source of greatest strength for the largest unions. However, organized labor was discouraged by actions of the National Peacekeeping Council (NPKC), the military government which took over the government in a coup d'état on February 23, 1991. On April 15, 1991, the National Legislative Assembly appointed by the NPKC met in special session and passed a bill which removed state enterprise workers from coverage under the Labour Relations Act, and a second bill which established a separate labor law for state workers.⁵⁵

Even before the assumption of power by the NPKC, however, there were a number of explanations for the traditionally low rate of unionization in Thailand. Culturally, the Thais are not as prone to adversarialness as are their counterparts in the Western countries, particularly those in the United States. The relationship between the Thai employee and his employer tends to be paternalistic, and workers take for granted the ultimate power of management. Moreover, neither the normative rules of labor law nor the enforcement efforts of government provide effective barriers to unfair dismissals for union activities.⁵⁶ Particularly where employees are unrepresented, they have little bargaining power in an economic climate of rising unemployment and underemployment.⁵⁷

⁵⁰ FOREIGN LABOR TRENDS 1990, *supra* note 17, at 4. A new Social Security Law was finally passed in 1990. See *infra* part V.

⁵¹ FOREIGN LABOR TRENDS 1990, *supra* note 17, at 3. In 1987, only 2.6% of the Thai workforce was organized in unions. This number rose by 7.3%, to a total unionization rate nationwide of 2.8% in 1988. See *id.* at 1.

⁵² *Id.* at 3.

⁵³ *Id.*

⁵⁴ FOREIGN LABOR TRENDS 1992, *supra* note 27, at 8.

⁵⁵ *Id.* at 21. The new State Enterprise Labour Act provides significantly fewer protections to state workers' organizations than did the Labour Relations Act.

⁵⁶ FOREIGN LABOR TRENDS 1990, *supra* note 17, at 3.

⁵⁷ The official unemployment rate in 1990 was 3.8%, rising to 4.2% in 1991. While the underemployment rate has remained unreported, it is widely known that it is substantial. FOREIGN LABOR TRENDS 1992, *supra* note 27, at 1.

The Thai Labour Relations Act,⁵⁸ promulgated by the King with the advice and consent of the National Legislative Assembly on February 14, 1975, created a labor-management relations system administered by the Ministry of Interior. The Ministry has the power to issue ministerial regulations. It also is empowered to appoint a Registrar to supervise the Central Registration Office, and conciliators and arbitrators to perform labor dispute resolution functions under the Act.⁵⁹

The Act also created the Office of Labour Relations Committee within the Ministry, which has the statutory authority to (1) carry out preliminary investigations of facts concerning demands and labor disputes, (2) carry out resolutions of the Labour Relations Committee, and (3) exercise "other authority and duties."⁶⁰ An Office of Labour Dispute Arbitrators was established within the Ministry to provide lists of qualified arbitrators to the parties and to supervise and carry out the technical and political aspects of labor dispute arbitration.⁶¹

Directives are given in the Act to employers and employees relating to terms and conditions of contracts that must be agreed upon and registered with the Labour Department.⁶² Any place of business with twenty or more employees must have an agreement on terms of employment as prescribed by the Act.⁶³

When an employer or group of employees wish to change or amend their employment contract, they must submit a written demand for discussion and negotiation to the opposite party.⁶⁴ A labor dispute results when the parties cannot reach an agreement on proposed changes.⁶⁵ The conciliation officer of the Labour Department then is called upon to mediate, with the directive to reach a settlement within five days.⁶⁶ If a settlement cannot be achieved within this period, the employees and employer may mutually agree to the appointment of an arbitrator to resolve the dispute.⁶⁷

⁵⁸ Labour Relations Act, *supra* note 10, translated in *LABOUR LAWS*, *supra* note 5, at 228.

⁵⁹ *Id.* § 6, translated in *LABOUR LAWS*, *supra* note 5, at 230.

⁶⁰ *Id.* § 8, translated in *LABOUR LAWS*, *supra* note 5, at 230.

⁶¹ *Id.* § 9, translated in *LABOUR LAWS*, *supra* note 5, at 230.

⁶² *Id.*, ch. 1, § 18, translated in *LABOUR LAWS*, *supra* note 5, at 234.

⁶³ *Id.*, ch. 1, § 10, translated in *LABOUR LAWS*, *supra* note 5, at 231. By special decree, the Labour Relations Act does not apply to the Bank of Thailand. Royal Decree Prescribing Business Not Being Applied to by the Labour Relations Act, 14 Feb. 1975, 20 Sept. 1980 [hereinafter *Royal Decree*], translated in *LABOUR LAWS*, *supra* note 5, at 325.

⁶⁴ Labour Relations Act, *supra* note 10, ch. 1, § 13, translated in *LABOUR LAWS*, *supra* note 5, at 231-32.

⁶⁵ *Id.*, ch. 2, § 21, translated in *LABOUR LAWS*, *supra* note 5, at 234.

⁶⁶ *Id.*, ch. 2, § 22, translated in *LABOUR LAWS*, *supra* note 5, at 234.

⁶⁷ *Id.*, ch. 2, §§ 22, 25, translated in *LABOUR LAWS*, *supra* note 5, at 234-35, 236.

Labor disputes involving public utilities, hospitals, and clinics or other types of employers designated by Ministerial Regulations are referred to a special "Labour Relations Committee" for resolution.⁶⁸ The Minister of Interior also may refer disputes that affect the national security to the Labour Relations Committee for adjudication.⁶⁹

B. Party Representatives — Notice — Elections

The Act contains specific and detailed requirements regarding the identification of each party's negotiations representatives. The employer's negotiations team may consist of no more than seven persons, including "itself" (which presumably means the owner) or appointees, including a director, shareholder, partner or permanent employee, or a committee member of the employers' association or federation.⁷⁰

Similarly, the employees' negotiations team must be identified, and may consist of no more than seven persons. The employees' representatives must be elected by the employees, to hold office for a stated period. Elections are to be conducted pursuant to the rules and procedures prescribed by ministerial regulations,⁷¹ and may be conducted by the labor dispute conciliator appointed by the Ministry. Members of the employees' team must be "employees concerned with such demands," or committee members of the employees' labor union or labor federation. All employees concerned are entitled to vote in the election.⁷²

C. Negotiation Procedures

The procedure for negotiation of collective bargaining agreements is described in detail in the statute. First, the moving party must submit its demands in writing to the other party.⁷³ The employees' demands must be made by employees of the firm, and must be supported by at least fifteen percent of the workforce concerned.⁷⁴

After the initial exchange of written demands, each party must then submit to the other a written list of the name or names of their negotiator. Thereafter, negotiations must take place within three days.⁷⁵ The employer may serve as negotiator or choose another person to be his representative. The employer's representative can be a director, share-

⁶⁸ *Id.*, ch. 2, § 23, translated in *LABOUR LAWS*, *supra* note 5, at 235.

⁶⁹ *Id.*, ch. 2, § 24, translated in *LABOUR LAWS*, *supra* note 5, at 235-36.

⁷⁰ *Id.*, ch. 1, § 13, translated in *LABOUR LAWS*, *supra* note 5, at 232.

⁷¹ *Id.*

⁷² *Id.*, ch. 1, § 14, translated in *LABOUR LAWS*, *supra* note 5, at 232.

⁷³ *Id.*, ch. 1, § 13, translated in *LABOUR LAWS*, *supra* note 5, at 231-32.

⁷⁴ *Id.*

⁷⁵ *Id.*, ch. 1, § 16, translated in *LABOUR LAWS*, *supra* note 5, at 233.

holder, partner, staff member, or a committee member of an employers' association or employers' federation.⁷⁶

If the moving party's demands are met by the other party, then a collective agreement must be signed by the representatives of both parties.⁷⁷ The terms of the agreement are binding when it has been signed by both the employer and the employees.⁷⁸ To be binding on the employees, at least two-thirds of the total number of employees, or a labor union representing two-thirds of the employees, must have supported their representative's written demands.⁷⁹

After signing, the employer must publicly post the agreement in the workplace for a period of thirty days.⁸⁰ Within fifteen days after the agreement is reached, the employer also must register the new agreement with the Labour Department.⁸¹ This collective agreement is enforceable for the duration as agreed to by the parties, not to exceed a period of three years.⁸² If no length of time has been stipulated in the agreement, then the contract shall be enforceable for one year.⁸³

D. Agreements Relating to Conditions of Employment

An employer with a business having more than twenty employees is required by law to provide the employees with a written agreement addressing the terms of employment, including working conditions, working hours, wages, welfare, and conditions for termination of employment.⁸⁴ This employment agreement, as is the case with a collective agreement negotiated by a union, is enforceable for an agreed duration not to exceed three years, or if no time is specified, for one year.⁸⁵

E. Conciliation

Conciliation is the method adopted for resolving a labor dispute when the parties have not commenced negotiations within the prescribed three days after an opposing party has presented its written demands. Within twenty-four hours of the expiration of this three-day period, a written request should be made to the labor dispute conciliator of the

⁷⁶ *Id.*, ch. 1, § 13, translated in *LABOUR LAWS*, *supra* note 5, at 231-32.

⁷⁷ *Id.*, ch. 1, § 18, translated in *LABOUR LAWS*, *supra* note 5, at 233-34.

⁷⁸ *Id.*, ch. 1, § 19, translated in *LABOUR LAWS*, *supra* note 5, at 234.

⁷⁹ *Id.*

⁸⁰ *Id.*, ch. 1, § 18, translated in *LABOUR LAWS*, *supra* note 5, at 233-34.

⁸¹ *Id.*

⁸² *Id.*, ch. 1, § 12, translated in *LABOUR LAWS*, *supra* note 5, at 231.

⁸³ *Id.*

⁸⁴ *Id.*, ch. 1, § 11, translated in *LABOUR LAWS*, *supra* note 5, at 231.

⁸⁵ *Id.*, ch. 1, § 12, translated in *LABOUR LAWS*, *supra* note 5, at 231.

Labour Department, who then will attempt to effect a settlement where negotiations have failed.⁸⁶ The conciliation officer is directed to establish facts, and apply statutory provisions in an effort to resolve the dispute.

F. Voluntary Arbitration

When the parties cannot reach a settlement through negotiation, the employer and employees may voluntarily agree to submit the dispute to one or more arbitrators,⁸⁷ who will consider the explanations, testimony of witnesses and other evidence submitted by the parties.⁸⁸ After due consideration, the arbitrators are directed to notify the parties of their written decision, including a statement of facts, issues, and the reasoning behind the decision.⁸⁹ The arbitrators' decision is binding for one year and must be registered with the Labour Department.⁹⁰

G. Compulsory Arbitration

Compulsory arbitration is mandated when the unresolved labor dispute involves public utilities, which is defined to include railways, port activities, telephone or telecommunication, production or distribution of energy or electricity, waterworks, oil production or refining, or hospital and clinic work.⁹¹ In such cases, the conciliation officer must refer the dispute to the Labour Relations Committee for arbitration.⁹² Should the parties involved not agree with the decision of the Labour Relations Committee, they may appeal to the Minister of Interior.⁹³ If there is no appeal, the decision of the Labour Relations Committee is binding for one year.⁹⁴

H. Lockouts, Strikes and Other Labor Disruptions

Thai law allows lockouts and strikes in private industry, provided the proper procedures are followed.⁹⁵ However, both lockouts and strikes are specifically prohibited when the parties are participating in negotiations, conciliation or arbitration, or when one of the parties is in

⁸⁶ *Id.*, ch. 2, § 21, translated in LABOUR LAWS, *supra* note 5, at 234.

⁸⁷ *Id.*, ch. 2, § 26, translated in LABOUR LAWS, *supra* note 5, at 236.

⁸⁸ *Id.*, ch. 2, §§ 27, 28, translated in LABOUR LAWS, *supra* note 5, at 236.

⁸⁹ *Id.*, ch. 2, § 29, translated in LABOUR LAWS, *supra* note 5, at 237.

⁹⁰ *Id.*, ch. 2, §§ 29, 30, translated in LABOUR LAWS, *supra* note 5, at 237.

⁹¹ *Id.*, ch. 2, § 23, translated in LABOUR LAWS, *supra* note 5, at 235; Ministerial Regulation No. 2, 20 Oct. 1976, translated in LABOUR LAWS, *supra* note 5, at 281.

⁹² Labour Relations Act, *supra* note 10, ch. 2, § 23, translated in LABOUR LAWS, *supra* note 5, at 235.

⁹³ *Id.*

⁹⁴ *Id.*, ch. 2, § 30, translated in LABOUR LAWS, *supra* note 5, at 237.

⁹⁵ *Id.*, ch. 3, §§ 34-36, translated in LABOUR LAWS, *supra* note 5, at 239-40.

the process of implementing the requirements of collective agreement or arbitration award.⁹⁶ Additionally, the Labour Relations Act specifically denies the right to engage in lockouts or strikes in disputes involving employees of railways, ports, telephone and telecommunications, production or distribution of energy or electricity for the public, water works, oil production or refinery, hospital and clinics, and private schools.⁹⁷

It is highly unusual for private sector industrial employees in Thailand to engage in strikes and other work stoppages. Only six official strikes were reported during 1989 and none of those involved major industries or enterprises.⁹⁸ Where strikes have occurred, they generally have been in response to employee dissatisfaction over poor wages and benefits.⁹⁹

The State Enterprise Labour Relations Act (SELRA), passed on April 15, 1991 by the military government, prohibits state enterprise employees from engaging in work stoppages or slowdowns.¹⁰⁰ Violators are subject to a one-year prison term and a substantial fine.

I. Labour Relations Committee

Pursuant to the Labour Relations Act, a Labour Relations Committee was established by the Minister of Interior.¹⁰¹ The Committee consists of a chairman and at least eight but no more than fourteen committee members.¹⁰² At least three of the members must represent employees and three must represent employers.¹⁰³ The term of office for committee members is three years.¹⁰⁴ The powers and duties of the committee are prescribed by law, and include: (1) giving opinions, making decisions or issuing regulations on labor disputes, arbitrations, and arbitration decisions, and (2) appointing temporary or permanent labor relations committees for inquiry into issues assigned to them.¹⁰⁵

At the end of the first year of the initial period of appointment, one-third of the committee members are retired by the drawing of lots; the

⁹⁶ *Id.*, ch. 3, § 34, translated in *LABOUR LAWS*, *supra* note 5, at 239.

⁹⁷ *Id.*, ch. 3, § 35, translated in *LABOUR LAWS*, *supra* note 5, at 239; Ministerial Regulation No. 2, 20 Oct. 1976, translated in *LABOUR LAWS*, *supra* note 5, at 281.

⁹⁸ *FOREIGN LABOR TRENDS* 1990, *supra* note 17, at 7.

⁹⁹ *Id.*

¹⁰⁰ *FOREIGN LABOR TRENDS* 1992, *supra* note 27, at 21.

¹⁰¹ Labour Relations Act, *supra* note 10, ch. 4, § 37, translated in *LABOUR LAWS*, *supra* note 5, at 240.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*, ch. 4, § 38, translated in *LABOUR LAWS*, *supra* note 5, at 240.

¹⁰⁵ *Id.*, ch. 4, §§ 41-42, 44, translated in *LABOUR LAWS*, *supra* note 5, at 242.

vacant positions are then filled by appointment.¹⁰⁶ Thus, committee members serve for staggered terms, so that the committee always will include experienced members.

J. Employees Committee

The adversarial nature of labor-management relations in the United States is memorialized in the National Labor Relations Act, which requires U.S. employers to subscribe to a "hands-off" policy with respect to union internal affairs.¹⁰⁷ Consequently, the National Labor Relations Board and the courts have had a difficult challenge in reconciling this strict injunction of the NLRA against employer domination of or interference with labor organizations¹⁰⁸ with the new developments in labor-management cooperation which emerged during the late 1980s and early 1990s. In contrast, European states have a long history of encouraging labor participation in the management of enterprises.¹⁰⁹

In Thailand, employees of a company with fifty or more employees *may* voluntarily establish an "Employees Committee."¹¹⁰ This committee acts as an agent for the employees.¹¹¹ It meets at least once every three months, or more often should the need arise, to discuss workplace issues and grievances and thus foster a good working relationship.¹¹² Should a dispute arise that the committee and employer are unable to resolve, the committee can request adjudication of the issue by the Labour Court.¹¹³

The number of members on the Employees Committee varies according to the number of workers employed by the company. For example, a business with more than fifty but less than 100 employees will have five committee members, while a business with 1,500 employees will have a committee consisting of fifteen members.¹¹⁴

The procedure for appointing members to the Employees Committee is prescribed by the Director General.¹¹⁵ However, when one-fifth of the total number of employees of the business are members of a labor

¹⁰⁶ *Id.*, ch. 4, § 38, translated in *LABOUR LAWS*, *supra* note 5, at 241.

¹⁰⁷ See National Labor Relations Act, 29 U.S.C. §§ 151, 158(a)(1)-(3) (1988).

¹⁰⁸ 29 U.S.C. § 158(a)(2) (1988).

¹⁰⁹ See generally Gerhard Schnorr, *European Communities*, in *COMPARATIVE LABOUR LAW AND INDUS. REL.* 111-128 (Roger Blanpain, ed., 2d rev. ed. 1985).

¹¹⁰ Labour Relations Act, *supra* note 10, ch. 5, § 45, translated in *LABOUR LAWS*, *supra* note 5, at 243.

¹¹¹ *Id.*, ch. 5, § 50, translated in *LABOUR LAWS*, *supra* note 5, at 244-45.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*, ch. 5, § 46, translated in *LABOUR LAWS*, *supra* note 5, at 243.

¹¹⁵ *Id.*

union, then the union may appoint more members than those appointed by non-union members.¹¹⁶ In a business where over one-half of the employees are union members, then the union may appoint all the members of the Employees Committee.¹¹⁷

K. Employers Association

An Employers Association can be established by three or more employers of Thai nationality who are engaged in similar businesses by registering with the Registrar at the Central Registration Office.¹¹⁸ The purpose of the Association generally is to negotiate with employees or labor unions and to carry out other activities that benefit its members.¹¹⁹ The law prescribes in great detail the formation, make-up, auditing, by-law formation, administration and dissolution procedures for the employer association.

L. Labor Unions

By 1990, there were five major labor unions in Thailand: The Thai Trade Union Congress (TTUC); the Labour Congress of Thailand (LCT); the National Congress of Thai Labour (NCTL); the National Free Labour League (NFLL); and the State Enterprise Labour Relations Group (SELRG). The SELRG, which was a loose coalition of state enterprise unions, was the strongest single labor organization in the country.¹²⁰ An additional federation of labor, led by Senator Preecha Simisap, a prominent metal workers union leader, was formed in 1989, but had not achieved any significant role at the national level.

By the time the military staged its successful coup in 1991, there had been little cooperative effort to achieve common goals among the five national unions. Several of the unions, especially the TTUC, had been torn by internal rivalries and factional in-fighting. One of the few exceptions was organized labor's general opposition to the privatization of the state enterprise sector. This issue was a particularly troublesome point of contention between labor and the government. It also was the source of the most serious employment disruptions in the state enterprise sector, particularly those involving port workers.¹²¹

When the military government dissolved the State Enterprise La-

¹¹⁶ *Id.*, ch. 5, § 45, translated in *LABOUR LAWS*, *supra* note 5, at 243.

¹¹⁷ *Id.*

¹¹⁸ *Id.*, ch. 6, § 55, translated in *LABOUR LAWS*, *supra* note 5, at 246.

¹¹⁹ *Id.*, ch. 6, §§ 54, 66, 67, translated in *LABOUR LAWS*, *supra* note 5, at 246, 249.

¹²⁰ *FOREIGN LABOR TRENDS* 1990, *supra* note 17, at 3.

¹²¹ *Id.*

bour Relations Groups in April 1991, the following major labor congresses remained: the Thai Trade Union Congress, the Labour Congress of Thailand, the National Congress of Thai Labour, the National Free Labour Union Congress, the Thailand Council of Industrial Labour, and the National Labour Congress.¹²² Weakened by the breakup of the most powerful state enterprise union, organized labor continued to be fractionalized with little bargaining power. Thailand's legislative branch includes few direct representatives of the labor movement. In 1989-1990, the Senate had four members from the trade union movement,¹²³ the House of Representatives had none.¹²⁴ After the 1991 coup, the National Peacekeeping Council appointed four labor leaders to the National Legislative Assembly (three of whom were state enterprise unionists), and five labor leaders to the Senate.¹²⁵

The Thai Labour Relations Act contains detailed provisions on the formation, powers and duties of labor unions. Labor unions may be established by employees with the objective of protecting the employees' interests in conditions of employment, and the promotion of good relations between the employers and the employees, and among the employees themselves.¹²⁶ A labor union must be registered with the Central Registration Office in order to submit demands to the employer and carry out other activities for the benefit of the union membership.¹²⁷ Labor unions may negotiate settlements of employment disputes, acknowledge arbitral awards, and call and assist in employee strikes.¹²⁸ To the extent of its participation in these and other activities allowed by law, the labor union is exempt from criminal prosecution and civil litigation.¹²⁹

A labor union may be established by at least ten promoters or principals. Each principal must have reached the age of majority and be of Thai nationality.¹³⁰ There are two types of labor unions: those formed within a single company or factory, and those formed from among simi-

¹²² FOREIGN LABOR TRENDS 1992, *supra* note 27, at 21.

¹²³ The four Senators from the Trade Union movement were: Thanong Podhiarn, President of the LCT; Thawee Prapai, former TTUC Vice President from the state railway of Thailand; Preecha Simisap, of the Metal Workers' Confederation; and Somchai Keowan. Dr. Nikom Chandravithun was appointed to the Senate by Prime Minister Chatichai Choonharan in April of 1989, along with Thanong and Thawee. *Id.* at 14.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Labour Relations Act, *supra* note 10, ch. 7, § 86, translated in LABOUR LAWS, *supra* note 5, at 254-55.

¹²⁷ *Id.*, ch. 7, § 87, translated in LABOUR LAWS, *supra* note 5, at 255.

¹²⁸ *Id.*, ch. 7, §§ 98, 99, translated in LABOUR LAWS, *supra* note 5, at 257-58.

¹²⁹ *Id.*, ch. 7, § 99, translated in LABOUR LAWS, *supra* note 5, at 258.

¹³⁰ *Id.*, ch. 7, § 88, translated in LABOUR LAWS, *supra* note 5, at 255.

lar trades and industries.¹³¹ To be eligible for membership in a union, an employee must be at least fifteen years of age and be employed by the same employer with whom the union negotiates or be employed in the same category of employment as represented in the union.¹³² Specifically prohibited from membership are supervisory employees whose responsibilities include recruitment, promotion, termination of employment or imposition of sanctions on employees.¹³³ Only Thai nationals (by birth) who have attained at least twenty years of age may be elected as committee or sub-committee members of the union.¹³⁴

Thailand is an important center for commercial activity in Southeast Asia, and consequently has frequent contact with a number of international labor groups. The International Labor Organization (ILO) of the United Nations maintains its Asia-Pacific headquarters in Bangkok, encouraging close contacts with and assistance to the Thai government, local unions and employers.¹³⁵ International labor confederations which maintain close ties with Thailand include the International Confederation of Free Trade Unions (ICFTU), which is based in Brussels; the World Confederation of Labor (WCL), a Catholic organization also based in Brussels; and the World Federation of Trade Unions (WFTU), a Communist organization based in Prague. Each maintains contacts in Bangkok.¹³⁶

Through the Asian-American Free Labor Institute, (AAFLI) the AFL-CIO has maintained a permanent presence in Thailand since the early 1970s. The objectives of the AAFLI in Thailand have included the promotion of democratic pluralism, training, organization, and democratic values in the trade union movement. The AAFLI has provided important support to Thai labor organizations as they have sought to improve labor law reform, attention to industrial health and safety, member services such as credit unions and child care centers, pursuit of options to privatization, political lobbying, organization of private sector workers, and the promotion of worker rights in general.¹³⁷

M. Employers' and Labour Federations, Congresses

The Labour Relations Act recognizes and provides procedures for the establishment and administration of Labour Federations, Employers'

¹³¹ *Id.*

¹³² *Id.*, ch. 7, § 95, translated in *LABOUR LAWS*, *supra* note 5, at 257.

¹³³ *Id.*

¹³⁴ *Id.*, ch. 7, § 101, translated in *LABOUR LAWS*, *supra* note 5, at 258.

¹³⁵ *FOREIGN LABOR TRENDS* 1990, *supra* note 17, at 9.

¹³⁶ *Id.*

¹³⁷ *Id.*

Federations, Labour Congresses and Employers' Congresses.¹³⁸ Two or more labor unions whose members are employees of the same employer (regardless of whether or not they are employees in the same type of work activity), or whose members perform the same type of work for different employers, may establish a Labour Federation by agreement and subsequent registration.¹³⁹ A majority of the members of the individual labor unions must vote to approve establishment of a Labour Federation.¹⁴⁰

An Employers' Federation can be established under a similar procedure.¹⁴¹ The purpose of the Employers' Federation is to promote good relations between Employers' Associations and protect the interests generally of employers and their associations.¹⁴²

The Labour Congress and Employers' Congress are, respectively, fashioned from the Labour Federations and Employers' Federations. A Labour Congress can be formed by fifteen or more Labour Federations.¹⁴³ Similarly, five or more Employers' Associations can form an Employers' Congress.¹⁴⁴ The main function of the Labour Congress is to promote education of the work force and good labor relations.¹⁴⁵ Neither the Employers' Congress nor the Labour Congress are authorized to directly engage in collective bargaining.

N. Unfair Labor Practices

The Labour Relations Act contains special provisions which protect employees from unfair labor practices by employers.¹⁴⁶ The following specific injunctions apply to employers:

- (1) An employer may not terminate employment or take any action which may result in the employee's (or representative of employees, committee member of labor unions or labor federations) inability to continue working where the employee (or labor union) has called or is about to call a rally, file a complaint, submit a demand, negotiate or institute a lawsuit, be a witness, join a labor union, or provide evidence to government officers, labor arbitrators or Labour Relations Committee or Labour Court;

¹³⁸ Labour Relations Act, *supra* note 10, ch. 8, §§ 112, 113, *translated in* LABOUR LAWS, *supra* note 5, at 261.

¹³⁹ *Id.*, ch. 8, § 113, *translated in* LABOUR LAWS, *supra* note 5, at 261.

¹⁴⁰ *Id.*, ch. 8, § 114, *translated in* LABOUR LAWS, *supra* note 5, at 261-62.

¹⁴¹ *Id.*

¹⁴² *Id.*, ch. 8, § 112, *translated in* LABOUR LAWS, *supra* note 5, at 261.

¹⁴³ *Id.*, ch. 8, § 120, *translated in* LABOUR LAWS, *supra* note 5, at 262-63.

¹⁴⁴ *Id.*, ch. 8, § 119, *translated in* LABOUR LAWS, *supra* note 5, at 262.

¹⁴⁵ *Id.*, ch. 8, § 120, *translated in* LABOUR LAWS, *supra* note 5, at 262-63.

¹⁴⁶ *Id.*, ch. 9, § 121-127, *translated in* LABOUR LAWS, *supra* note 5, at 263-64.

- (2) An employer may not prevent an employee from organizing a labor union or labor federation, or from becoming a member of a labor union;
- (3) An employer may not interfere with the operation of a labor union or labor federation without lawful authority;
- (4) An employer may not directly or indirectly force or threaten an employee to resign his membership in a labor union; and
- (5) No person may directly or indirectly force or threaten an employee to become a member or resign from membership in a labor union.¹⁴⁷

Further, an employer is prohibited from dismissing an employee (including a representative of employees, member of the committee or sub-committee or member of a labor union or member of the committee or sub-committee of a labor federation) who is involved in submitting a demand for changes in the conditions of employment or for the duration the arbitral decision.¹⁴⁸ However, an employer is exempt from this prohibition when an employee:

- (1) performs his duties dishonestly or intentionally commits a criminal offense against the employer;
- (2) intentionally causes damage to the employer;
- (3) violates regulations, rules or lawful orders of an employer who has given a written warning or caution to the employee, except in serious cases where the employer is not required to give a warning or caution (provided the regulations, rules or orders were not issued in order to prevent the employee from taking action relating to the demand);
- (4) neglects his duties for three consecutive days without justification; or
- (5) performs any act that incites, encourages or persuades a violation of agreed-upon terms of an employment or arbitral decision.¹⁴⁹

Should an employer violate any of the above prohibitions designated as unfair labor practices, an employee may register a complaint with the Labour Relations Committee.¹⁵⁰ The committee then has ninety days to issue an arbitral decision.¹⁵¹

Chapter 10 of the Labour Relations Act, entitled "Penalty Provisions" prescribes the punishment for violations of the unfair labor practices provisions of the Act, and specifies the amounts of fines and terms of imprisonment, where applicable, for each violation. For example, representatives of employees or employers are prohibited from taking money or property as an inducement for agreement on an opposing party's demands during negotiations, or acknowledgment of an unfavorable decision, or loss of benefits due.¹⁵² If an employee or employer representative

¹⁴⁷ *Id.*, ch. 9, §§ 121, 122, translated in *LABOUR LAWS*, *supra* note 5, at 263.

¹⁴⁸ *Id.*, ch. 9, § 123, translated in *LABOUR LAWS*, *supra* note 5, at 264.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*, ch. 9, § 125, translated in *LABOUR LAWS*, *supra* note 5, at 264.

¹⁵¹ *Id.*

¹⁵² *Id.*, ch. 10, § 128, translated in *LABOUR LAWS*, *supra* note 5, at 265.

is found guilty of such violations, he shall be punished by a set fine or imprisonment or both.¹⁵³ Fines or imprisonment also may be assessed against an employer, employee association, labor union, employers' federation or labor federation which fails to comply or violates a decision of the Labour Relations Committee or an appeal decision of the Minister.¹⁵⁴

Employers may be fined or imprisoned if they terminate or otherwise punish (unless excepted under section 31 of the Labour Relations Act) those employees who are involved in the presentation of demands in a labor dispute.¹⁵⁵

Violation by employers or employees of the prohibitions against lock-outs or strikes are punishable by imprisonment not exceeding six months or fines not exceeding ten thousand baht.¹⁵⁶

IV. GENERAL LABOR STANDARDS AND PROTECTION

A. Introduction

Employees in the United States do not enjoy extensive protections under federal law regarding minimum labor standards. The principal statute, passed during the Depression era, is the Fair Labor Standards Act (FLSA) of 1938.¹⁵⁷ The FLSA contains provisions on minimum wage, overtime, child labor and record keeping requirements of employers. Special provisions are made in federal law for the regulation of wages and hours of employees employed by government contractors.¹⁵⁸ The Occupational Safety and Health Act¹⁵⁹ and other more specialized statutes impose workplace standards to protect safety and health.

Overall, however, an assessment of labor practice legislation in the United States must lead one to conclude that Congress continues to subscribe to a relatively "free-market" philosophy of employer-employee relations, relying upon voluntary collective bargaining to establish employee benefits, and eschewing government intervention in the determination of wages, hours and conditions of employment.

Thailand's government pursues a much more paternalistic philosophy, regulating in greater detail the employer-employee relationship.

¹⁵³ *Id.*, ch. 10, § 129, translated in *LABOUR LAWS*, *supra* note 5, at 265.

¹⁵⁴ *Id.*, ch. 10, § 132, translated in *LABOUR LAWS*, *supra* note 5, at 265.

¹⁵⁵ *Id.*, ch. 10, § 136, translated in *LABOUR LAWS*, *supra* note 5, at 266.

¹⁵⁶ *Id.*, ch. 10, § 139, translated in *LABOUR LAWS*, *supra* note 5, at 266.

¹⁵⁷ 29 U.S.C. §§ 201-219 (1988).

¹⁵⁸ See, e.g., the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1982 & Supp. V 1987); the Davis-Bacon Act, 40 U.S.C. §§ 276a - a-5. (1982 & Supp. V 1987).

¹⁵⁹ 29 U.S.C. §§ 651-678 (1988).

The Thai Labour Protection Law,¹⁶⁰ promulgated in 1972 by the National Executive Council, empowered the Ministry of Interior to issue regulations governing labor standards and related matters for labor protection. Minimum standards relating to working hours, rest periods, holidays, wages, and benefits, and restrictions on the employment of women and children have been established pursuant to the Labour Protection Law by a series of regulations ("notifications") issued by the Ministry of Interior. By 1989, fifteen such ministerial regulations had been promulgated. Many of the regulatory guidelines as to hours, work restrictions, and rest periods can be waived by special application or appeal to the designated governmental administrator.¹⁶¹

B. Hours of Work

The first labor protection notification (regulation) promulgated under the Labour Protection Law was issued in 1972; it prescribes limitations on working hours, according to the type of work.¹⁶² For example, it provides that the "normal" working hours may be fixed at not more than forty-eight hours per week for employees engaged in industrial operations,¹⁶³ and at not more than eight hours per day for those employed in transportation-related jobs.¹⁶⁴ However, with written permission from the Director-General or persons authorized by him, the employer is allowed to work transportation employees beyond the prescribed eight-hour day.¹⁶⁵

The Minister of Interior also has the authority to identify certain work as harmful to the health or person of employees, and to limit those employees to work no more than forty-two hours per week in such work.¹⁶⁶

Work that does not fall within the above areas of industrial transportation or harmful employment is generally classified as "commercial employment," which is assigned a normal work week of fifty-four hours.¹⁶⁷ The Civil Code designates employment in banking, insurance,

¹⁶⁰ Labour Protection Announcement No. 103, *supra* note 6, translated in *LABOUR LAWS*, *supra* note 5, at 3.

¹⁶¹ The applicable provision of the Labour Protection Law will outline the procedure for securing an exception from the general rule. The law is conveniently organized into sections; the initial part of each section contains definitions of terms.

¹⁶² Notification of the Ministry of Interior; Re: Labour Protection, 16 Apr. 1972 [hereinafter *Labour Protection Notification*], translated in *LABOUR LAWS*, *supra* note 5, at 8-31.

¹⁶³ *Id.*, ch. 1, cl. 3(1), translated in *LABOUR LAWS*, *supra* note 5, at 10.

¹⁶⁴ *Id.*, ch. 1, cl. 3(2), translated in *LABOUR LAWS*, *supra* note 5, at 10.

¹⁶⁵ *Id.*, ch. 1, cl. 4, translated in *LABOUR LAWS*, *supra* note 5, at 11.

¹⁶⁶ *Id.*, ch. 1, cl. 3(3), translated in *LABOUR LAWS*, *supra* note 5, at 10.

¹⁶⁷ *Id.*, ch. 1, cl. 3(4), translated in *LABOUR LAWS*, *supra* note 5, at 11.

real estate, personnel, and warehousing as commercial employment.¹⁶⁸ Certain "industrial operations" fall under these higher allowable limits allowed for commercial employment: mining, manufacturing, repairing, assembling, packing, generating and distributing goods, construction, and utilities operations.¹⁶⁹ Employment that involves a mix of commercial and industrial work falls within the fifty-four hour per week restriction if the major part of the mix is commercial.¹⁷⁰ The Minister of Interior may exercise discretion under a catch-all provision to bring within the fifty-four-hour work week other activities not specifically categorized in the Civil Code.¹⁷¹

It is only in transportation that the hours of work are regulated on a daily basis; hours in all other types of employment are regulated on a weekly basis. The distinction is based on a recognition that certain types of work are continuous and may necessarily overlap calendar days. Again, however, all of the aforementioned working hours limitations may be waived with the written permission of the Director-General or his designee.¹⁷²

C. Mandatory Rest Periods

In contrast to the United States, where there is no general federal law governing such details of the workplace as rest periods,¹⁷³ Thai national law is very specific in requiring that an employee must be allowed to rest for at least one hour after five hours of work.¹⁷⁴ The term "rest period" is defined to require the complete cessation of work, and is not included in the computation of basic working hours. However, businesses which are unable to arrange a full one-hour rest period for employees (e.g., businesses engaged in continuous processing activities) may satisfy the requirement with a twenty-minute rest period after more than five hours of work, as long as the total rest period for a day is not shorter than one hour.¹⁷⁵

¹⁶⁸ *Id.*, ch. 1, cl. 3(4)(3)(a), translated in *LABOUR LAWS*, *supra* note 5, at 11.

¹⁶⁹ *Id.*, ch. 1, cl. 3(4)(1)(a)-(c), translated in *LABOUR LAWS*, *supra* note 5, at 11.

¹⁷⁰ *Id.*, ch. 1, cl. 3(4)(3)(b), translated in *LABOUR LAWS*, *supra* note 5, at 11.

¹⁷¹ *Id.*, ch. 1, cl. 3(4)(1)(d), translated in *LABOUR LAWS*, *supra* note 5, at 11.

¹⁷² *Id.*, ch. 1, cl. 4, translated in *LABOUR LAWS*, *supra* note 5, at 11.

¹⁷³ See, e.g., JAMES W. HUNT, *THE LAW OF THE WORKPLACE: RIGHTS OF EMPLOYERS AND EMPLOYEES* 24-25 (1984).

¹⁷⁴ Labour Protection Notification, *supra* note 162, ch. 1, cl. 6, translated in *LABOUR LAWS*, *supra* note 5, at 12.

¹⁷⁵ *Id.*

D. Holidays

One day per week must be set aside as a holiday for Thai employees, and the interval between weekly holidays cannot exceed six days.¹⁷⁶ The employer is allowed to have this holiday fall on any day of the week,¹⁷⁷ although employers generally arrange for the holiday to fall on Sundays. Exceptions are allowed for those types of businesses where it is not practical to regularly arrange normal weekly holidays (e.g., hotel, transportation, work at inconvenient sites, and fisheries). In such cases, the employer and the employee may agree to postpone the accumulated weekly holidays, provided the accumulation does not exceed four consecutive weeks.¹⁷⁸

In addition to the guaranteed holiday, which is scheduled every six days, the employer must allow employees thirteen traditional holidays annually,¹⁷⁹ including National Labour Day, which falls on the first of May.¹⁸⁰ Traditional holidays include government holidays (such as the King's birthday), New Year's Day, religious holy days and holidays relating to certain customs (e.g., Chinese New Year's Day). The employer has the discretion to arrange dates for all the traditional holidays except National Labour Day.¹⁸¹ For those holiday dates which are not definitely fixed by law, the employer must give his employees three days advance notice of the holiday date and file a seven-day advance notice with the labor inspection official.¹⁸² If a traditional holiday falls on a weekly holiday, then it must be observed on the next working day.¹⁸³

In addition to the above holidays, employees who have worked for one year for the same employer also are entitled to six annual leave days which are fixed by the employer.¹⁸⁴ If the employer agrees, such annual leave may be accumulated to the following year, provided that the total number of days accumulated does not exceed twenty-four days.¹⁸⁵

¹⁷⁶ *Id.*, ch. 1, cl. 7, translated in *LABOUR LAWS*, *supra* note 5, at 12.

¹⁷⁷ *Id.*, ch. 1, cl. 8, translated in *LABOUR LAWS*, *supra* note 5, at 12.

¹⁷⁸ *Id.*, ch. 1, cl. 7, translated in *LABOUR LAWS*, *supra* note 5, at 12.

¹⁷⁹ *Id.*, ch. 1, cl. 9, translated in *LABOUR LAWS*, *supra* note 5, at 122; Notification of the Ministry of Interior; Re: Labour Protection (No. 6), 31 July 1978, translated in *LABOUR LAWS*, *supra* note 5, at 50.

¹⁸⁰ Notification of the Ministry of Interior; Re: Prescribing the National Labour Day, 16 Apr. 1972, translated in *LABOUR LAWS*, *supra* note 5, at 36.

¹⁸¹ Labour Protection Notification, *supra* note 162, ch. 1, cl. 9, translated in *LABOUR LAWS*, *supra* note 5, at 12.

¹⁸² *Id.*, ch. 1, cl. 8, translated in *LABOUR LAWS*, *supra* note 5, at 12.

¹⁸³ *Id.*, ch. 1, cl. 9, translated in *LABOUR LAWS*, *supra* note 5, at 12.

¹⁸⁴ *Id.*, ch. 1, cl. 10, translated in *LABOUR LAWS*, *supra* note 5, at 13.

¹⁸⁵ *Id.*

E. Minimum Wages

The average annual personal income in Thailand in 1987 was U.S. \$673.00, rising by 15.6% to U.S. \$778.00 in 1988. The percentage of the population beneath the poverty level in 1988 was estimated at 25.2% of the population, with a heavy concentration of low wage earners in the Northeast.¹⁸⁶ One factor depressing the average wage was the low pay of civil servants, who received less than the minimum wage until reforms were implemented on January 1, 1989, providing the first salary increase in over six years.¹⁸⁷ This increase was due in part to a campaign by organized labor to obtain national increases in wages. Subsequent minimum wage increases went into effect on April 1, 1989; April 1, 1990,¹⁸⁸ April 1, 1991; and April 1, 1992.¹⁸⁹

Minimum wage levels were first established in April 1973, one year after the legalization of unions, but those levels only applied to the Bangkok area.¹⁹⁰ Today, however, the entire country is divided into three regions, each having slightly different prevailing minimum pay scales based on the types of employment activities.¹⁹¹ These rates generally cover unskilled labor; agricultural and government administration employees are exempt.¹⁹² The minimum wage is set by the Minimum Wages Committee, which is made up of representatives of employers, employees and the government as appointed by the Minister of Interior.¹⁹³

¹⁸⁶ FOREIGN LABOR TRENDS 1990, *supra* note 17, at 1.

¹⁸⁷ *Id.* at 4.

¹⁸⁸ *Id.* at 4-5.

¹⁸⁹ FOREIGN LABOR TRENDS 1992, *supra* note 27, at 15-16. The minimum daily wage rates effective on April 1, 1992 were as follows:

Region	Baht	U.S. Dollar
(1) Bangkok, Samut Prakan, Nonthaburi, Pathum Thani, Phuket, Nakhon Pathon, Samut Sakhon	115	\$4.60
(2) Phang-nga and Ranong	107	\$4.28
(3) Chonburi, Saraburi, Nakhon Ratchasima and Chiang Mai	101	\$4.04
(4) Remaining 60 Provinces	94	\$3.76

Source: *Id.* at 16.

¹⁹⁰ FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, THAILAND: A COUNTRY STUDY 133 (Barbara L. LePoer, ed., 6th ed. 1st prtg. 1989).

¹⁹¹ *Id.*

¹⁹² *Id.*; Notification of the Ministry of Interior; Re: Prescribing Minimum Wages (No.17), 12 Dec. 1988, cl. 3, *translated in* LABOUR LAWS, *supra* note 5, at 68.

¹⁹³ Notification of the Ministry of Interior; Re: Prescribing Minimum Wages (No. 2), 30 Dec. 1975, cl. 3, *translated in* LABOUR LAWS, *supra* note 5, at 65.

F. Overtime and Holiday Work

Salaried employees must be paid the regular pay rate for holidays.¹⁹⁴ Hourly or piece-work employees are exempt from this requirement.¹⁹⁵ Further, employers are forbidden to deduct debts against regular wages or overtime and holiday pay.¹⁹⁶

For overtime work on regular working days, an hourly or piece-work employee is entitled to an overtime rate of one and one-half times his regular pay.¹⁹⁷ For work performed during holidays, he is entitled to double the regular pay rate.¹⁹⁸ For overtime work on holidays, the employee must be paid three times the rate of his regular pay.¹⁹⁹ If the employee is required to perform holiday work at a place other than his regular place of employment, he is entitled to an additional amount equal to his regular pay.²⁰⁰ These overtime pay requirements do not apply to supervisory-level employees, who are not entitled to overtime pay unless the employer has agreed otherwise.²⁰¹

Overtime is allowed for work performed on a continuous basis, work that cannot be stopped without harm to the employer, and work of an emergency nature.²⁰² In such cases, the employer may require an employee to work more than the normal forty-eight or fifty-four weekly hours, as applicable, or to work on holidays or annual leave.²⁰³ Whenever such work activities require overtime or holiday work on a regular basis, the employer shall seek written approval from the Director-General or the person assigned approval responsibility in the Labour Department.²⁰⁴ Work on holidays is specifically permitted for hotels, transportation, restaurants, club houses, associations and entertainment complexes.²⁰⁵

G. Sick Leave

Employees are entitled by law to thirty days of sick leave per

¹⁹⁴ Labour Protection Notification, *supra* note 162, ch. 4, cls. 32, 33, translated in LABOUR LAWS, *supra* note 5, at 19.

¹⁹⁵ *Id.*, ch. 4, cl. 32(1), translated in LABOUR LAWS, *supra* note 5, at 19.

¹⁹⁶ *Id.*, ch. 4, cl. 30, translated in LABOUR LAWS, *supra* note 5, at 18.

¹⁹⁷ *Id.*, ch. 4, cl. 34, translated in LABOUR LAWS, *supra* note 5, at 19.

¹⁹⁸ *Id.*, ch. 4, cls. 39, 40, translated in LABOUR LAWS, *supra* note 5, at 21.

¹⁹⁹ *Id.*, ch. 4, cl. 42, translated in LABOUR LAWS, *supra* note 5, at 21.

²⁰⁰ *Id.*, ch. 4, cl. 37, translated in LABOUR LAWS, *supra* note 5, at 20.

²⁰¹ *Id.*, ch. 4, cl. 38, translated in LABOUR LAWS, *supra* note 5, at 20.

²⁰² *Id.*, ch. 1, cl. 11, translated in LABOUR LAWS, *supra* note 5, at 13.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

year,²⁰⁶ to be paid at the regular rate of pay.²⁰⁷ However, an employee must provide a first-class medical certificate when the illness exceeds three days. The employer must be notified if the employee is unable to consult a first class physician. When an employer provides a physician, this physician shall issue the certificate after an examination.²⁰⁸

H. Severance Pay

Employees are entitled to severance pay upon discharge, unless the employee is within a probationary period or was employed only for a definite period.²⁰⁹ The rate of severance pay is determined by the length of service: workers who have worked for more than 120 days, but less than one year, are entitled to 30 days pay at the last wages rate; those who have worked for more than one year but less than three years shall earn not less than 90 days severance pay; and those with three years or more of employment are entitled to not less than 180 days severance pay.²¹⁰

However, an employee is not entitled to severance pay if he is discharged for dishonesty, intentionally causing damage to the employer, violating rules or regulations after a written warning has been given, absence from work for three consecutive days without prior notice, negligently causing serious damage to the employer, or conviction of a felony.²¹¹

I. Workers' Compensation

The Department of Labour administers a fund for payment of workers' compensation. All employers in activities covered by the law having twenty employees or more must contribute annually to the fund at the prescribed rate.²¹² Contributions vary with the risk attached to working

²⁰⁶ *Id.*, ch. 1, cl. 12, translated in LABOUR LAWS, *supra* note 5, at 13.

²⁰⁷ *Id.*, ch. 4, cl. 33, translated in LABOUR LAWS, *supra* note 5, at 19.

²⁰⁸ *Id.*, ch. 1, cl. 12, translated in LABOUR LAWS, *supra* note 5, at 13.

²⁰⁹ *Id.*, ch. 5, cl. 46, translated in LABOUR LAWS, *supra* note 5, at 22, repealed and replaced by Notification of the Ministry of Interior; Re: Labour Protection (no. 6), 31 July 1978, cl. 2, translated in LABOUR LAWS, *supra* note 5, at 50-51.

²¹⁰ *Id.*

²¹¹ Labour Protection Notification, *supra* note 162, ch. 5, cl. 47, translated in LABOUR LAWS, *supra* note 5, at 22-23.

²¹² *E.g.* Notification of the Ministry of Interior; Re: Category, Size of Business and Locality in which the Employer Shall Contribute to the Compensation Fund, 11 June 1973, cl. 2, translated in LABOUR LAWS, *supra* note 5, at 175. See generally *Law on Compensation Fund*, in LABOUR LAWS, *supra* note 5, at 172-227, containing translated collection of Thai workers' compensation fund regulations.

in its industry and may be as high as 4.5% of the firm's total payroll.²¹³

Employers must provide workers' compensation benefits to cover medical and funeral costs.²¹⁴ When an employee suffers injury or sickness arising directly from his work, the employer must provide the necessary medical treatment.²¹⁵ Further, the employer must notify the Labour Department Compensation Officer of the employee's injury, illness or death within fifteen days.²¹⁶ The affected employee must promptly submit a claim for compensation to the compensation officer.²¹⁷ In case of death of the employee, his or her parents, spouse, or child may submit the claim.²¹⁸ Should the eligible relative not apply for funeral arrangements within forty-eight hours of the employee's death, then the employer is obligated to make such funeral arrangements.²¹⁹

The compensation officer is required to conduct a prompt examination of the employee's injury, sickness or death, and when necessary, direct the employer to pay compensation to the employee.²²⁰ A party who disagrees with the compensation officer's order may appeal to the Director General of the Labour Department within fifteen days from the date of learning of the order.²²¹ Any further appeal must be filed with the Labour Court within fifteen days of learning of the Director General's order.²²²

Generally, employers are required to pay a qualifying employee compensation equal to between 50% to 60% of the average monthly wage according to the prescribed period.²²³ The compensation may be paid in a lump sum or over a specified period, but the employer is not allowed a discount exceeding 4% per annum or at a rate specified by the

²¹³ See Notification of the Ministry of Interior; Subject: Rates and Procedures for Collection of Monetary Compensation by the Compensation Fund Office and Appeals (No. 2), 20 Nov. 1974, tbl. 1 (1974), translated in *LABOUR LAWS*, *supra* note 5, at 215.

²¹⁴ Labour Protection Notification, *supra* note 163, ch. 6, cl. 52, translated in *LABOUR LAWS*, *supra* note 5, at 24, repealed and replaced by Notification of the Ministry of Interior; Re: Labour Protection (No. 9), 25 Aug. 1982, cl. 1, translated in *LABOUR LAWS*, *supra* note 5, at 55.

²¹⁵ *Id.*, ch. 6, cl. 51, translated in *LABOUR LAWS*, *supra* note 5, at 24.

²¹⁶ *Id.*, ch. 6, cl. 48, translated in *LABOUR LAWS*, *supra* note 5, at 23.

²¹⁷ *Id.*, ch. 6, cl. 49, translated in *LABOUR LAWS*, *supra* note 5, at 23.

²¹⁸ *Id.*, ch. 6, cls. 49, 50, translated in *LABOUR LAWS*, *supra* note 5, at 23.

²¹⁹ *Id.*, ch. 6, cl. 53, translated in *LABOUR LAWS*, *supra* note 5, at 25.

²²⁰ *Id.*, ch. 6, cls. 56, 57, 59, translated in *LABOUR LAWS*, *supra* note 5, at 26-27.

²²¹ *Id.*, ch. 6, cl. 60, translated in *LABOUR LAWS*, *supra* note 5, at 27, repealed and replaced by Notification of Ministry of Interior; Re: Labour Protection (No. 9), 25 Aug. 1982, cl. 3, translated in *LABOUR LAWS*, *supra* note 5, at 56-57.

²²² *Id.*

²²³ Labour Protection Notification, *supra* note 162, ch. 6, cl. 54, translated in *LABOUR LAWS*, *supra* note 5, at 25-26.

Minister of Interior.²²⁴ Compensation for injury requires the employer to pay the actual amount of the medical treatment, but not in excess of 30,000 baht.²²⁵ In the case of employee death, the employer must pay for funeral expenses up to triple the employee's monthly wages, but not less than 5,000 baht, nor more than 10,000 baht.²²⁶ However, the employer is not obligated to pay compensation to an employee who has consumed intoxicants in amounts exceeding the limit of self-control, has intentionally inflicted injury to himself or others, or has allowed another person to inflict injury upon him.²²⁷

J. Sanitation, Medical, and Welfare Benefits

Employers must provide all employees with clean drinking water, toilet facilities, medical treatment, medical facilities, doctors, nurses and transportation as determined by the Ministry of Interior.²²⁸ The law is very specific on these requirements, and the number of employees determines the level of benefits. For instance, a business with more than ten employees must provide at least a set of first-aid equipment with medicine and the necessary accessories of at least twenty-three items.²²⁹ A business with more than two hundred employees must provide at least a nurse and a doctor to examine employees on a regular basis.²³⁰ For businesses of more than one thousand employees, the employer must provide the full-time services of a first class doctor on the work premises.²³¹

K. Sex Discrimination — Employment of Women

The United States has a strongly articulated congressional policy to prohibit sex discrimination in the workplace, implemented by a variety of complementary statutes.²³² In comparison, the provisions of Thai law

²²⁴ *Id.*; Notification of the Ministry of Interior; Re: Prescribing Payment of Compensation, 16 April 1972, cl. 5, translated in *LABOUR LAWS*, *supra* note 5, at 41.

²²⁵ Labour Protection Notification, *supra* note 162, ch. 6, cl. 52, translated in *LABOUR LAWS*, *supra* note 5, repealed and replaced by Notification of the Ministry of Interior; Re: Labour Protection (No. 10) 23 Jan. 1985, cl. 3, translated in *LABOUR LAWS*, *supra* note 5, at 58-59.

²²⁶ *Id.*

²²⁷ Labour Protection Notification, *supra* note 162, ch. 6, cl. 55, translated in *LABOUR LAWS*, *supra* note 5, at 26.

²²⁸ *Id.*, ch. 7, cls. 63-65, translated in *LABOUR LAWS*, *supra* note 5, at 28; Notification of the Ministry of Interior; Re: Prescribing Welfare in Connection with the Health and Sanitation of Employees, 16 Apr. 1972, cls. 1, 2, translated in *LABOUR LAWS*, *supra* note 5, at 44-46.

²²⁹ Notification of the Ministry of Interior; Re: Prescribing Welfare in Connection with the Health and Sanitation of Employees, 16 Apr. 1972, cl. 2(1), translated in *LABOUR LAWS*, *supra* note 5, at 45.

²³⁰ *Id.*, cl. 2(2), translated in *LABOUR LAWS*, *supra* note 5, at 45.

²³¹ *Id.*

²³² The principal statutes include Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e et

are much less ambitious. Wage discrimination based on the sex of the employee is prohibited, but the law does not contain the detailed treatment of sex discrimination in employment as found in U.S. law. The Thai Civil Code states that the same wages must be paid, regardless of sex, for work of similar nature and duration.²³³

There are a number of protective restrictions imposed on the employment of women. Women must not be employed in dangerous work activities, such as the cleaning of machinery or engines while in operation, mining, scaffolding work of more than ten meters in height, work relating to circular saws, or the manufacture or transportation of explosives or inflammable materials.²³⁴

Physically taxing work is regulated in that a woman may not be employed to lift, carry, pull or push weights in excess of thirty kilograms for work on level ground, twenty-five kilograms for work ascending stairs or elevated places, six hundred kilograms for pulling or pushing items on wheels with rails, or three hundred kilograms for pulling items on wheels without rails.²³⁵

Employment protections are differentiated based upon the female employee's age or marital status. For example, an unmarried woman under eighteen may not be employed in a place of entertainment.²³⁶

Working hours for women also are specifically regulated. A woman cannot be employed to work between 12:00 midnight and 6:00 a.m., except in shift work, or when the work is of a continuous nature or must be performed during other time periods.²³⁷

If a woman has been employed continuously for a period of not less than 180 days, she is entitled to 60 days maternity leave, 30 days of which is with pay.²³⁸ If the woman is unable to resume working after delivery, she is entitled to up to 30 additional days of unpaid leave.²³⁹ A female employee is entitled to maternity leave in addition to the normal thirty days of paid sick leave.²⁴⁰ If a pregnant employee obtains a physi-

seq.; the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k); the Equal Pay Act, 29 U.S.C. § 206(d); and the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991); Federal law is reinforced by a host of State laws containing similar prohibitions. See generally 1 ARTHUR LARSON & LEX K. LARSON, EMPLOYMENT DISCRIMINATION: SEX ch. 2, §§ 9.00-9.70 (1992).

²³³ Labour Protection Notification, *supra* note 162, ch. 4, cl. 26, translated in LABOUR LAWS, *supra* note 5, at 17.

²³⁴ *Id.*, ch. 2, cl. 13, translated in LABOUR LAWS, *supra* note 5, at 14-15.

²³⁵ *Id.*, ch. 2, cl. 14, translated in LABOUR LAWS, *supra* note 5, at 15.

²³⁶ *Id.*, ch. 2, cl. 15, translated in LABOUR LAWS, *supra* note 5, at 15.

²³⁷ *Id.*, ch. 2, cl. 16, translated in LABOUR LAWS, *supra* note 5, at 15.

²³⁸ *Id.*, ch. 2, cl. 18, translated in LABOUR LAWS, *supra* note 5, at 15-16.

²³⁹ *Id.*

²⁴⁰ *Id.*

cian's certificate stating that she is unable to perform her current work, her employer may transfer her temporarily to a more appropriate work activity consistent with her physical condition.²⁴¹

L. Employment of Children

Thai labor laws regulate the employment of children. A child of less than twelve years of age is not allowed to work.²⁴² Children between twelve and fifteen are allowed limited work in newspaper delivery; sports; the collection, sale or delivery of flowers, fruits, groceries, and non-alcoholic drinks; and jobs which involve lifting of less than ten kilograms.²⁴³ However, upon proper application, approval may be granted by the Labour Department, allowing a child twelve to fifteen years of age to perform additional work activities that are not included in the above list.²⁴⁴ A child between twelve and fifteen years of age is not allowed to work between 10:00 p.m and 6:00 a.m., except for work involving the theater, films or activities of a similar nature.²⁴⁵ A child under fifteen years of age is not allowed to work on holidays.²⁴⁶ Finally, a youth between fifteen and eighteen years of age is prohibited from work involving the cleaning of machinery or engines while in operation; underground or underwater work; manufacture or transportation of dangerous chemicals, explosives or inflammable materials; or radiation-connected work.²⁴⁷

V. SOCIAL SECURITY

Reformists have long advocated a social security system for Thai workers. Because large numbers of the work force only earn the modest minimum wage, many employees find it difficult to support themselves and their families when income is disrupted by illness, injury, pregnancy, disability, old age or unemployment. Frustrated efforts to pass a social security law span a period of more than 36 years, from 1954 until the law was finally approved in 1990.²⁴⁸

²⁴¹ *Id.*, ch. 2, cl. 19, translated in *LABOUR LAWS*, *supra* note 5, at 16.

²⁴² *Id.*, ch. 3, cl. 20, translated in *LABOUR LAWS*, *supra* note 5, at 16.

²⁴³ *Id.*, ch. 3, cl. 21, translated in *LABOUR LAWS*, *supra* note 5, at 16; Notification of the Ministry of Interior; Re: Prescribing Works which Children at the Age from Twelve Years to Fifteen Years of Age May be Employed by Employers, 16 April 1972, translated in *LABOUR LAWS*, *supra* note 5, at 37.

²⁴⁴ Labour Protection Notification, *supra* note 162, ch. 3, cl. 22, translated in *LABOUR LAWS*, *supra* note 5, at 16.

²⁴⁵ *Id.*, ch. 3, cl. 23, translated in *LABOUR LAWS*, *supra* note 5, at 17.

²⁴⁶ *Id.*, ch. 3, cl. 24, translated in *LABOUR LAWS*, *supra* note 5, at 17.

²⁴⁷ *Id.*, ch. 3, cl. 25, translated in *LABOUR LAWS*, *supra* note 5, at 17.

²⁴⁸ Social Security Act B.E. 2533, published in the Government Gazette Sept. 1, 1990; *English Translation* available from International Translations Office (Bangkok, Thailand).

Previously, Thai workers enjoyed some benefits, although they were generally considered inadequate. A modest form of social security was provided in 1972 when the workers' compensation fund was established.²⁴⁹ However, the workers' compensation law does not require either the government or the employee to contribute to the fund.

The Provident Fund was established in 1984 to authorize the establishment of private voluntary pension funds which provide benefits to participating employees upon their resignation or retirement.²⁵⁰ Such funds are jointly contributed by employers and employees at various rates which are determined by individual companies. The funds are normally invested in bonds, treasury bills and promissory notes, and are maintained as fixed deposits or other deposits in portfolio investment. They generally have been well managed and provide a source of retirement income for participating employees. By June 1990, there were 573 such private retirement plans covering 185,000 members with a total of six billion baht in accumulated funds.²⁵¹ By 1991, approximately 1,113 companies had established and registered Provident Funds with a combined value of approximately seven billion baht. There are also a large number of non-registered Provident Funds. However, most employees are not covered by Provident Funds, particularly the lower-paid employees who are the most vulnerable to the loss of income. Clearly, a more comprehensive social security system was needed.²⁵²

The idea of a Social Security Act for Thailand was promoted by a number of prominent individuals in the early 1950s. Field Marshall P. Phiboonsongkram responded by acting in his capacity as the Interior Minister to obtain approval by the House of Representatives of the Draft Social Security Act of 1954. At the time, however, many were opposed to a social security law because of the perceived burdens it would have on the government; moreover, most of the employers were farmers with limited resources. Consequently, the Royal Decree which was necessary for

²⁴⁹ Companies with more than 20 employees are required by law to contribute to the fund, which provides coverage for work-related illness or injury. Depending upon the type of the business enterprise, the employer's contribution rate ranges from 0.2% to 4.5% of the employee's salary. See *supra* notes 213-228 and accompanying text.

²⁵⁰ The modern form of Provident Funds was established by Ministerial Regulation No. 162, issued by the ministry of Finance in 1984. This regulation set forth guidelines for the establishment, operation and investment of registered Provident Funds and granted tax benefits to both employees and employers to the extent of fund participation. More recently, Ministerial Regulation No. 162 was replaced by new ministerial regulations which were issued under the Provident Fund Act B.E. 2530, in June 1990. See *The A-Z Guide to Provident Fund Management*, Tisco Securities Report (March 1991) at 10.

²⁵¹ Thailand's Social Security System: *Another Step to Upgrade Living Standard*, Tisco Securities Report (March 1991) [hereinafter Tisco Securities Report] at 6.

²⁵² Approximately 140 countries throughout the world already had social security laws by 1990.

the law's enforcement was never issued and the effort was abandoned. Numerous other attempts were made during the next 36 years to pass a Social Security law, but success was not achieved until the economic gains enjoyed by Thailand during the 1980s created a more favorable climate for passage of employee protection legislation. Chatichai Choonharan assumed the post of Prime Minister on August 24, 1988. In September of 1988, Chatichai and his cabinet gave approval in principle to the draft Social Security Act that had been prepared by the previous administration. The House of Representatives later passed the Act unanimously and it became effective on September 2, 1990.

The Social Security Act of 1990 provides a program of "economic insurance" maintained by the government through compulsory payments from employers and employees. The payments are used to form a common fund to which the government also contributes. Unlike the private pensions under the Provident Fund, the social security fund is a compulsory plan organized and administered exclusively by the government, making Thailand's principal instrument of social welfare policy.

The Act was designed to progressively increase both coverage and benefits during the first few years after its passage. Initially, the Act applied only to employers with at least 20 employees; coverage will be extended to employers with ten or more employees within three years of the Act's implementation.²⁵³

Benefits will be phased in as follows: upon implementation of the Act, only four types of benefits are available — child delivery, death, sickness and accident or disability occurring outside the work relationship. The second phase, which begins in 1996, provides benefits for family allowances and old age pension. Finally, unemployment benefits will be provided on a date to be determined by royal decree.²⁵⁴

The Act requires employers to register eligible employees with the Social Security Office²⁵⁵; failure to register or pay contributions may result in severe penalties.²⁵⁶ Specifically excluded from coverage are regular government employees (who already receive certain employee benefits from the government) and private school teachers (who are eligible for benefits under the Teachers' Welfare Fund). Other specific exclusions include self-employed persons; employees of foreign governments and international organizations; employees who have been posted overseas; and

²⁵³ Social Security Act, *supra* note 248, art. 103.

²⁵⁴ *Id.*, arts. 103-104.

²⁵⁵ *Id.*, art. 34.

²⁵⁶ *Id.*, arts. 49-53.

student trainees in schools, universities, and hospitals.²⁵⁷

If an employer already was providing all seven types of benefits as now provided under the Social Security Act, and such benefits were greater than those offered under the Act, employees of such an employer are exempt.²⁵⁸ If an employer provides some but not all compensation benefits, it is allowed to contribute less than the standard contribution rate, subject to individual approval by the Social Security Committee.²⁵⁹

It has been estimated that approximately 1.8 million employees working for 12,000 private employers fell within coverage of the law when it was initially implemented. The total number of insured employees is expected to increase by another three million within three years, when the law is applied to employers who have at least ten employees.²⁶⁰

The Act provides the following seven types of compensation benefits:

Injury or illness benefits cover expenses for medical examination, treatment, hospital accommodation, medicine, patient transportation, and other medical services as are deemed necessary.²⁶¹ The insured employee also is entitled to compensation for loss of income from injury or sickness at 50% of his or her salary for up to 90 days of medical treatment, with a maximum of 100 days in a calendar year. This benefit does not apply in cases of injury sustained during working hours or illness arising from work-related causes; such cases are covered by the Worker's Compensation Law. To be eligible for this benefit, the employee must have made contributions for a minimum of 90 days within the fifteen months preceding receipt of medical services.²⁶²

Maternity benefits include medical and hospital benefits similar to those described above for cases of injury or illness.²⁶³ The employee also is entitled to compensation for the loss of income equal to 50% of her salary for a maximum period of 60 days. Benefits are limited to only two periods of confinement.²⁶⁴ Eligibility is based upon a minimum period of contributions of 210 days within the fifteen months preceding receipt of medical services.²⁶⁵

²⁵⁷ Self-employed persons will be allowed to participate in the social security program within four years of the Act's initial implementation date, although they will be required to contribute to the fund at twice the rate required for others.

²⁵⁸ Social Security Act, art. 55.

²⁵⁹ *Id.*

²⁶⁰ Tisco Securities Report, *supra* note 251, at 7.

²⁶¹ Social Security Act, Section II.

²⁶² *Id.*, art. 62.

²⁶³ *Id.*, Section III.

²⁶⁴ *Id.*, art. 65.

²⁶⁵ *Id.* art. 65.

Physical disability benefits include expenses similar to those received in cases of injury or illness, above, plus entitlement to 50% of salary for physical disability for up to fifteen years.²⁶⁶ Eligibility is based upon a minimum period of contributions by the employee of 90 days within the fifteen months preceding the disability.²⁶⁷

Death benefits to cover funeral expenses are paid at the rate of 100 times the legal minimum daily wage to the employee's survivors when an insured employee dies as the result of a non-occupational injury or illness. Eligibility is based upon a minimum period of contributions by the employee of 30 days within the six-month period preceding death.²⁶⁸

Child welfare ("family allowance") benefits compensate employees for certain cost of living, school fee, medical treatment, and other necessary child care expenses.²⁶⁹ Benefits are available for no more than two children. Eligibility is based upon a minimum period of contributions by the employee of one year.

Old age pension benefits are available to insured employees having attained the age of 55 years.²⁷⁰ The benefit amount is variable, depending on the amount and period that contributions have been made to the fund.²⁷¹ Eligibility is based upon a minimum period of contributions by the employee of fifteen years.²⁷²

Unemployment compensation is provided through the Employment Office beginning from the eighth day after the previous employment was terminated.²⁷³ Eligibility is based upon a minimum period of contributions by the employee of six months within the fifteen-month period preceding the unemployment.²⁷⁴

Most countries place the social security system under the administration of the nation's public health ministry or its equivalent. Thailand's social security system was placed under the Labor Department of the Interior Ministry. Pursuant to the Act, the Labor Department established a Social Security Office to discharge the administrative responsibilities under the Act,²⁷⁵

The Act also specifies that a Social Security Committee will formu-

²⁶⁶ *Id.*, Section IV.

²⁶⁷ *Id.*, Section IV.

²⁶⁸ *Id.*, art. 73.

²⁶⁹ *Id.*, Section VI.

²⁷⁰ *Id.*, Section VII.

²⁷¹ *Id.*, art. 77.

²⁷² *Id.*, art. 76.

²⁷³ *Id.*, Section VIII.

²⁷⁴ *Id.*, art. 78.

²⁷⁵ Social Security Act, art. 19.

late policies and measures to implement the law.²⁷⁶ The Social Security Committee is chaired by the Secretary General of the Social Security Office, and consists of one representative each from the Finance Ministry, Public Health Ministry, and Budget Bureau. Additionally, five representatives each are selected from employers and employees. The Committee is assisted by a team of five advisors who have experience in labor, law, medicine and other related areas.²⁷⁷

Social Security officials have the power to enter and search job sites, to issue letters of inquiry, summon persons to give information, and to confiscate and attach employer properties.²⁷⁸

Any person receiving an order issued by the Social Security Office may appeal to an Appeal Committee appointed by the Minister of Social Security within thirty days.²⁷⁹ If dissatisfied with the disposition by the Appeal Committee, the appellant may appeal to the Labor Court within thirty days.²⁸⁰

The Act established a Social Security Fund under supervision of the Social Security Office to provide benefits for insured persons.²⁸¹ The fund consists primarily of contributions from the government, employers and employees.²⁸² When the system reaches full implementation, each of the three will contribute 9.5% of the employee's salary to the fund. To ease the transition to this full contribution level, the Act provides for implementation in three stages, with the contribution rate for each increasing from an initial 1.5% to 4.5%, and finally to 9.5%.²⁸³

VI. OCCUPATIONAL SAFETY AND HEALTH

The principal federal legislation on occupational safety and health in the United States is the Occupational, Safety and Health Act (OSHA).²⁸⁴ The statute is comprehensive in its coverage, and is supplemented by extensive regulations.

In contrast, the relevant law in Thailand was promulgated through the administrative regulatory process. Pursuant to its authority, granted under the Labour Protection Law, the Ministry of Interior has issued a

²⁷⁶ Social Security Act, arts. 8, 15.

²⁷⁷ Social Security Act, art. 8.

²⁷⁸ *Id.*, art. 80.

²⁷⁹ *Id.*, arts. 85-86.

²⁸⁰ *Id.*, art. 87.

²⁸¹ *Id.*, art. 21.

²⁸² *Id.*, art. 22. The fund also receives registration fees, interest, donations or subsidies, fines, and other miscellaneous incomes pursuant to the Act. *Id.*

²⁸³ Social Security Act, Appendix ("Rate of Contribution").

²⁸⁴ 29 U.S.C. §§ 651-678 (1988).

series of detailed "notifications" (regulations) addressing workplace safety and health issues.²⁸⁵ The notifications contain detailed specifications and methods regarding the promotion of safety in various industries and for the prevention of accidents and illness by the institution of improved working conditions. The topics addressed include: protective clothing; hair length; safety devices for the switching off of machinery; temperature; noise restrictions and lighting requirements in the workplace; and safety shields. The main provisions cover: safety measures regarding scaffolding for construction work;²⁸⁶ safe use of machinery;²⁸⁷ environmental conditions;²⁸⁸ electricity;²⁸⁹ diving²⁹⁰ and safety arrangements generally for workers.²⁹¹

Employers with 100 or more employees in each place of operation are required to have one work safety officer performing his or her duty at that place while work activity is proceeding.²⁹² The work safety officer's duties include: (1) insuring that employee safety is observed; (2) giving advice and suggestions to employer and employee regarding work safety; (3) supervising the use and operational condition of safety equipment; (4) inspecting and reporting, for purposes of improved safety, the working conditions and employee performance; (5) keeping records and making reports of accidents and diseases that occur in relation to work; and (6) promoting and supporting safety activities.²⁹³

The employer must notify the Director-General of the person assigned to the position of work safety officer.²⁹⁴ The employer must also submit proof that this work safety officer possesses a Bachelor's degree in a discipline connected to work safety, or has passed studies and tests on work safety from the Labour Department or an institution certified by

²⁸⁵ Labour Protection Announcement No. 103, *supra* note 6, translated in *LABOUR LAWS, supra* note 5, at 3. See also translated compilation of Thai labor laws and regulations in *Law on General Labour Protection and Law on Safety in Working, in LABOUR LAWS, supra* note 5, at 8-59, 71-171.

²⁸⁶ Notification of the Ministry of Interior; Re: Working Safety in Construction Work Relating to Scaffolding, 30 June 1982, translated in *LABOUR LAWS, supra* note 5, at 142-152.

²⁸⁷ Notification of the Ministry of Interior; Re: Safety in Working with Machinery, 23 July 1976, translated in *LABOUR LAWS, supra* note 5, at 71-79.

²⁸⁸ Notification of the Ministry of Interior; Re: Working Safety in Respect to Environmental Condition, 12 Nov. 1976, translated in *LABOUR LAWS, supra* note 5, at 80-85.

²⁸⁹ Notification of the Ministry of Interior; Re: Safety in Connection with Electricity, 7 March 1979, translated in *LABOUR LAWS, supra* note 5, at 96-126.

²⁹⁰ Notification of the Ministry of Interior; Re: Working Safety in Respect to Environmental Condition (Diving), 17 Sept. 1980, translated in *LABOUR LAWS, supra* note 5, at 127-136.

²⁹¹ See generally *Law on Safety in Working, in LABOUR LAWS, supra* note 5, at 71-171, containing translated compilation of Thai worker safety laws.

²⁹² Notification of the Ministry of Interior; Re: Employees' Work Safety, 6 May 1985, cl. 6, translated in *LABOUR LAWS, supra* note 5, at 154-155.

²⁹³ *Id.*

²⁹⁴ *Id.*, cl. 8, translated in *LABOUR LAWS, supra* note 5, at 155.

the Labour Department.²⁹⁵

The employer is responsible for sending reports every six months on the proceedings of work safety and on the performance of the work safety officer to the Labour Department.²⁹⁶

VII. FOREIGNERS WORKING IN THAILAND

Foreigners working in Thailand are governed by the Alien Work Permit Act of 1978,²⁹⁷ which requires them to obtain a work permit issued by the Labour Department.²⁹⁸ The granting of a work permit is discretionary,²⁹⁹ and a number of factors designed to protect the job market for native Thais are considered in determining whether the work permit will be issued. These factors include: whether a Thai national could perform this work, whether the work meets the requirements and needs of Thailand, and whether the foreigner meets all the necessary qualifications specified under the law. An additional factor to be considered when the job is highly specialized is the number of Thais employed by the company in relation to the number of foreigners.

When foreigners are employed under the Investment Promotion Act³⁰⁰ or contract with the government, they will have little difficulty obtaining work permits, which in some cases will be issued immediately.³⁰¹ Further, aliens engaged in organizing seminars, meetings and exhibits jointly with the government or state enterprises are exempt from compliance with the Alien Work Permit Act for a period of less than thirty days.³⁰²

The duration of the work permit varies and is dependent on the length of the foreigner's visa.³⁰³ However, for many types of foreigners, the length of the permit is generally limited to one year.³⁰⁴ If a foreigner was issued a work permit before the Alien Work Permit Act of 1978 went into effect, the permit is good for life. Another special provision

²⁹⁵ *Id.*, cl. 7, translated in *LABOUR LAWS*, *supra* note 5, at 155.

²⁹⁶ *Id.*, cl. 10, translated in *LABOUR LAWS*, *supra* note 5, at 155.

²⁹⁷ Alien Work Permit Act, 8 July 1978 [hereinafter Alien Work Permit Act], translated in *LABOUR LAWS*, *supra* note 5, at 328-60.

²⁹⁸ *Id.* §§ 4, 5, 8, translated in *LABOUR LAWS*, *supra* note 5, at 328-29.

²⁹⁹ *Id.* §§ 9, 16, translated in *LABOUR LAWS*, *supra* note 5, at 330, 332.

³⁰⁰ *Id.* § 10, translated in *LABOUR LAWS*, *supra* note 5, at 330.

³⁰¹ *Id.*

³⁰² Royal Decree, Prescribing that Aliens Performing Certain Duties or Activities in the Kingdom Need Not be Subject to the Control of the Aliens Occupation Act, 8 July 1978 (No. 2), 13 July 1985, translated in *LABOUR LAWS*, *supra* note 5, at 359.

³⁰³ Alien Work Permit Act, *supra* note 299, § 13(3), translated in *LABOUR LAWS*, *supra* note 5, at 331.

³⁰⁴ *Id.* § 13, translated in *LABOUR LAWS*, *supra* note 5, at 331.

applies to those foreigners permitted to work under the Investment Promotion Act; they will receive a permit with a specified duration as governed by the certificate of promotion.³⁰⁵ Generally, whatever the duration, a permit can be renewed if one applies before the permit expiration date.³⁰⁶

To be granted a work permit, a foreigner must be a current resident or at least have been granted a stay in Thailand on a temporary basis.³⁰⁷ In other words, a tourist or someone in transit is not eligible for a permit. In addition, the foreigner must have training and ability to perform the work designated on the application. The applicant must be of sound mind and not mentally disturbed, and must not be suffering from any infectious disease or drug addiction. Moreover, any applicant who has been convicted and imprisoned for any crime involving the Immigration Law or Alien Work Permit Act during the year prior to the application will be disqualified.³⁰⁸

The work permit is issued to a specific individual, for a specific type of work and for a specific work place. To change jobs or place of work, a foreigner must apply in advance for approval from the provincial registrar where the business is located.³⁰⁹ Should the application for change or renewal of a permit be denied, the foreign applicant may appeal the denial.³¹⁰ This appeal must be submitted in writing, within thirty days of the notice of denial, to the Minister of Interior through the Director-General or Registrar, specifying the reasons for appeal.³¹¹

A foreigner is expected to comply with the conditions attached to the work permit and to carry it with him/her while working.³¹² He/she also is prohibited from changing his/her place of work or type of work to something other than that allowed by the permit.³¹³ If the permit is lost, stolen or damaged, he/she should apply for a substitute within fifteen days from the date of knowledge of such loss or damage.³¹⁴ The permit holder is required to return the permit to the Labour Department within

³⁰⁵ *Id.* § 13(1), translated in *LABOUR LAWS*, *supra* note 5, at 331.

³⁰⁶ *Id.* § 15, translated in *LABOUR LAWS*, *supra* note 5, at 331.

³⁰⁷ *Id.* § 11(1), translated in *LABOUR LAWS*, *supra* note 5, at 330.

³⁰⁸ *Id.* § 11(2), translated in *LABOUR LAWS*, *supra* note 5, at 330; Notification of the Minister of Interior; Re: Prescribing Qualification or Forbidden Qualifications of and Conditions for Aliens Applying for Work Permits, 5 Feb. 1979, translated in *LABOUR LAWS*, *supra* note 5.

³⁰⁹ Alien Work Permit Act, *supra* note 297, § 23, translated in *LABOUR LAWS*, *supra* note 5, at 333.

³¹⁰ *Id.* § 17, translated in *LABOUR LAWS*, *supra* note 5, at 332.

³¹¹ *Id.*

³¹² *Id.* § 18, translated in *LABOUR LAWS*, *supra* note 5, at 333.

³¹³ *Id.* § 21, translated in *LABOUR LAWS*, *supra* note 5, at 333.

³¹⁴ *Id.* § 19, translated in *LABOUR LAWS*, *supra* note 5, at 333.

seven days from the date of termination of the holder's assignment.³¹⁵ There are a number of occupations for which permits will not be issued to foreigners.³¹⁶

VIII. LABOUR COURTS

Thailand's contemporary Labour Courts were created by the Establishment of Labour Courts and Labour Court Procedures Act of 1979 (Labor Courts Act).³¹⁷ Both the Minister of Justice and the Minister of Interior have the power to issue Ministerial Regulations in order to implement provisions of this Act.³¹⁸ The Act provides for three divisions of Labour Courts.³¹⁹ The Central Labor Court is located in Bangkok; its jurisdiction includes the nearby areas.³²⁰ The remaining two divisions are identified as Regional Labour Courts and Provincial Labour Courts, and are established by separate Royal Decrees which specify the area included in their jurisdictions.³²¹ The cases that come before the Labour Court include the following:

- (1) Disputes concerning rights and duties relating to employment, or agreements relating to employment;
- (2) Disputes concerning rights and responsibilities in accordance with the laws relating to labor protection or labor relations;
- (3) Appeals from decisions of officers under the Labour Protection Act, or the Labour Relations Committee, or the Minister of Interior in accordance with the Labour Relations Law; and
- (4) Labor disputes registered by the Minister of Interior in accordance with

³¹⁵ *Id.* § 20, translated in *LABOUR LAWS*, *supra* note 5, at 333.

³¹⁶ Included are: occupations involving manual work; agriculture, animal husbandry, forestry or fishing (except work requiring specialized knowledge or farm supervision); brick-laying, carpentry or other construction work, wood-carving, driving motor vehicles or vehicles which do not use machinery or mechanical devices, except piloting an aircraft international; selling in a shop; auction sales; supervising, auditing or providing accountancy services except for occasional internal auditing; cutting or polishing precious or semi-precious stones; hair-cutting, hair dressing or cosmetology; Thai handicrafts, cottage industries and other artcrafts (including Thai musical instruments, religious artifacts, niellow work, goldsmith, silversmith, or gold and copper alloysmith and Thai silk weaving); brokerage or agency (except brokerage or agency for international trading); civil engineering (concerning design and calculation, systematization, analysis, planning, testing, construction supervision, or consulting services excluding work requiring specialized techniques); architectural design, drafting, cost estimation or consulting services; guide or tour conductor; vending or peddling goods; lay-out and printing of work in the Thai alphabet; clerical and secretarial work; and law practice. Royal Decree; Stipulating Work in the Occupation and Profession Which are Prohibited to Aliens, 11 May 1979, sched., translated in *LABOUR LAWS*, *supra* note 5, at 340-341.

³¹⁷ Labour Courts Act, *supra* note 11, translated in *LABOUR LAWS*, *supra* note 5, at 287.

³¹⁸ *Id.* § 4, translated in *LABOUR LAWS*, *supra* note 5, at 287.

³¹⁹ *Id.*, ch. 1, §§ 5-7, translated in *LABOUR LAWS*, *supra* note 5, at 288.

³²⁰ *Id.*, ch. 1, § 5, translated in *LABOUR LAWS*, *supra* note 5, at 288.

³²¹ *Id.*, ch. 1, §§ 6, 7, translated in *LABOUR LAWS*, *supra* note 5, at 288.

Labour Relations Law.³²²

The final decision as to whether a case is within the jurisdiction of the Labour Courts rests with the Chief Judge of the Labour Court.³²³ The Labour Courts are under the administration of the Ministry of Justice,³²⁴ unlike the labor courts of municipalities, where the majority are special courts that are independent of the normal courts of justice.

Verbal as well as written complaints may be brought before judges of the Labour Courts or of the Provincial Labour Courts.³²⁵ The Labour Courts are directed by the Labour Courts Act to mediate between the parties in an attempt to compromise and reach an agreement.³²⁶ This mediation can occur at any time during the trial.³²⁷

The Labor Courts resemble Civil Law Courts, in that the judges are authorized to perform certain activities which make them active participants in the case proceedings. For instance, the judges may call witnesses, including experts, and may ask questions.³²⁸ The court also may issue orders beyond the scope of the issues before the court, provided the court determines that such action is necessary.³²⁹ Decisions of the Labour Court may be appealed to the Supreme Court within fifteen days of the judgment.³³⁰ However, this appeal to the Supreme Court does not automatically stay the execution of the judgment.³³¹ To receive a stay, the moving party must apply to the Labour Court.³³²

The number of cases handled by the Labour Court has increased significantly during recent years, as the following statistics show:

1986: 7,744 new cases 1985: 7,583 new cases 1984: 5,427 new cases 1983:
3,761 new cases 1982: 3,598 new cases³³³

Nearly 95% of the cases are brought by employees with complaints against employers. In 1985, these employee complaints were seeking severance payments 52% of the time; wages, overtime, or holiday pay 33% of the time; and provident funds 7% of the time. In 1986, demands for

³²² *Id.*, ch. 1, § 8, translated in LABOUR LAWS, *supra* note 5, at 288.

³²³ *Id.*, ch. 1, § 9, translated in LABOUR LAWS, *supra* note 5, at 289.

³²⁴ *Id.*, ch. 1, § 10, translated in LABOUR LAWS, *supra* note 5, at 289.

³²⁵ Prescription of the Labour Court Governing Due Process in the Labour Court, 27 Feb. 1980, cls. 1, 2, translated in LABOUR LAWS, *supra* note 5, at 311.

³²⁶ Labour Courts Act, *supra* note 11, ch. 3, pt. 2, §§ 35, 38, translated in LABOUR LAWS, *supra* note 5, at 294, 295.

³²⁷ *Id.*, ch. 3, pt. 2, § 43, translated in LABOUR LAWS, *supra* note 5, at 296.

³²⁸ *Id.*, ch. 3, pt. 2, §§ 45, 47, translated in LABOUR LAWS, *supra* note 5, at 297.

³²⁹ *Id.*, ch. 3, pt. 2, § 52, translated in LABOUR LAWS, *supra* note 5, at 298.

³³⁰ *Id.*, ch. 4, § 54, translated in LABOUR LAWS, *supra* note 5, at 298-99.

³³¹ *Id.*, ch. 4, § 55, translated in LABOUR LAWS, *supra* note 5, at 299.

³³² *Id.*

³³³ KANUNG-PROK ASSOCIATES, GUIDE TO THAI LABOUR LAW 29 (Coopers & Lybrand 1987).

compensation totaled some 1,000 million Baht.³³⁴

IX. LAWS ON VOCATIONAL ASSISTANCE AND EMPLOYMENT AGENCIES

The Vocational Assistance to Thais Act allows the government to require employers of ten or more employees to keep records on official forms concerning their employees.³³⁵ Generally, the records insure that employers have the required number of employees of Thai nationality as fixed by Royal Decree.³³⁶ These records must be kept up to date and available to government officials.³³⁷ Periodic reporting of these employee records also is required.³³⁸ The particulars of these records are prescribed by ministerial regulations.³³⁹ Failure to keep these records or violations of the officially mandated quotas can result in the employer being fined or imprisoned.³⁴⁰

The Employment Agencies and Employment Seekers Protection Act (Employment Agency Act) specifically authorizes the Minister of Interior to appoint a registrar and other officials, issue regulations regarding employment agencies, and set compensation fees for employment finding services.³⁴¹ The Employment Agency Act establishes an Employment Office within the Labour Department, with the duty of assisting the public without charge in finding employment.³⁴²

The Employment Agency Act also establishes detailed licensing requirements and procedures for those engaging in the business of employment agencies.³⁴³ Licenses are issued for prescribed periods of time and must be displayed by the employment agent.³⁴⁴ The Minister shall prescribe the rate that may be charged for providing such domestic employment services.³⁴⁵

Only limited companies and public limited companies meeting specific criteria are eligible for a license permitting them to recruit Thais for

³³⁴ *Id.*

³³⁵ Vocational Assistance to Thais Act, 13 Feb. 1956, §§ 1, 5, 8, *translated in* LABOUR LAWS, *supra* note 5, at 361-362.

³³⁶ *Id.* § 7, *translated in* LABOUR LAWS, *supra* note 5, at 362.

³³⁷ *Id.* §§ 5, 8, *translated in* LABOUR LAWS, *supra* note 5, at 361-62.

³³⁸ *Id.* § 5, *translated in* LABOUR LAWS, *supra* note 5, at 361.

³³⁹ *Id.* § 8, *translated in* LABOUR LAWS, *supra* note 5, at 362.

³⁴⁰ *Id.* §§ 10-12, *translated in* LABOUR LAWS, *supra* note 5, at 362.

³⁴¹ Employment Agencies and Employment Seekers Protection Act, 17 Aug. 1985, §§ 1, 4, 5 [hereinafter Employment Agency Act], *translated in* LABOUR LAWS, *supra* note 5, at 364-65.

³⁴² *Id.*, ch. 1, § 7, *translated in* LABOUR LAWS, *supra* note 5, at 366.

³⁴³ *Id.*, ch. 2, § 8, *translated in* LABOUR LAWS, *supra* note 5, at 366.

³⁴⁴ *Id.*, ch. 2, § 11, *translated in* LABOUR LAWS, *supra* note 5, at 368.

³⁴⁵ *Id.*, ch. 2, § 26, *translated in* LABOUR LAWS, *supra* note 5, at 372.

employment abroad.³⁴⁶ Thais who are sent abroad may not be paid at a rate lower than or employed at a job different from that prescribed by the employment contract.³⁴⁷ Should such vacancies occur, the law specifies the required course of action for the employment agency.³⁴⁸ Similarly, the law also prescribes the course of action when an employee who has been sent abroad fails to comply with the employment contract.³⁴⁹ The law allocates responsibility for the paying of transportation costs to and from the foreign host country.³⁵⁰ Thais may directly enter employment abroad without seeking work through an employment agency, provided they inform the Director-General of their intent to work abroad, not less than ten days before their departure.³⁵¹

Employers based in Thailand who are not using an employment agency must obtain express permission from the Director to take Thai employees abroad to work.³⁵² In contrast, an employer based in a foreign country is only permitted to recruit Thais to work abroad through an employment office or through the Thailand Labour Department.³⁵³ When working abroad, the Thai employee is required to provide specific written information to the Thai Labour Office located in that country, or if there is none, to the Royal Thai Embassy or Consular Office responsible for overseeing Thai nationals.³⁵⁴ The employee is required to exit Thailand through designated inspection stations.³⁵⁵ The employment agency or the employee (if there is no agency) is responsible for any delay resulting from improper documents.³⁵⁶

The Labour Department maintains a fund entitled, "The Fund in Aid of Employment Seekers to Work Abroad," from which monies are dispersed by a specially constituted board to test and train Thais prior to their departure to work abroad, arrange return travel for Thai employees working abroad who are abandoned, and otherwise assist Thais seeking work abroad.³⁵⁷

Penalties for failure to abide by the Employment Agency Act include fines, imprisonment, suspension or loss of employment license, or a

³⁴⁶ *Id.*, ch. 3, §§ 30-34, translated in *LABOUR LAWS*, *supra* note 5, at 373-74.

³⁴⁷ *Id.*, ch. 3, §§ 39, 40, translated in *LABOUR LAWS*, *supra* note 5, at 376-77.

³⁴⁸ *Id.*

³⁴⁹ *Id.*, ch. 3, §§ 44, 45, translated in *LABOUR LAWS*, *supra* note 5, at 379.

³⁵⁰ *Id.*, ch. 3, §§ 39-45, translated in *LABOUR LAWS*, *supra* note 5, at 376-79.

³⁵¹ *Id.*, ch. 4, § 48, translated in *LABOUR LAWS*, *supra* note 5, at 380.

³⁵² *Id.*, ch. 4, § 49, translated in *LABOUR LAWS*, *supra* note 5, at 380.

³⁵³ *Id.*, ch. 4, § 50, translated in *LABOUR LAWS*, *supra* note 5, at 380.

³⁵⁴ *Id.*, ch. 4, § 51, translated in *LABOUR LAWS*, *supra* note 5, at 381.

³⁵⁵ *Id.*, ch. 6, § 62, translated in *LABOUR LAWS*, *supra* note 5, at 383.

³⁵⁶ *Id.*

³⁵⁷ *Id.*, ch. 6, §§ 53, 54, 60, translated in *LABOUR LAWS*, *supra* note 5, at 381-83.

combination of the above, depending on the severity of its violation.³⁵⁸

X. CONCLUSION - CONTEMPORARY LABOR REFORM ISSUES

A number of labor-related problems continued to confront the government, employers and labor leaders during 1992. A labor issue with significant political implications is the privatization of public sector enterprises. Prem Tinsulanonda, who served as Prime Minister for eight years until August 1988, attempted to implement an amorphous and poorly articulated policy to privatize the state employment sector.³⁵⁹ The principal motivation behind privatization was the increasing need for investment in Thailand's inadequate infrastructure, including roads, rails, ports, power, phones, water, and air transportation. The Thai government's self-imposed annual limit of \$1.2 billion for borrowing imposed an increasingly urgent incentive to attract private equity capital.³⁶⁰

When Chatichai Choonharan assumed the office of Prime Minister in August, 1988, he continued to pursue the goal of privatization. However, he encountered increasing opposition from the concentrated strength of organized labor in the state enterprises. Privatization also was resisted by management for the sixty-one state enterprises and by the Thai military forces. The State Enterprise Labour Relations Group (SELRG) spearheaded labor's opposition to privatization. This resistance was based on fear of loss of benefits and job security, coupled with appeals based on national security concerns.³⁶¹

Unable to reach an accommodation with the opponents of privatization, Chatichai announced in March 1990 that the privatization efforts would be postponed pending the creation of a tripartite State Enterprise Labour Relations Promotion Committee. The major task of the committee was to achieve consensus and search for a broader range of policy options on privatization. The major turning point against privatization was the success the port unions enjoyed in their protests against the privatization of the Laem Chabang port.³⁶²

The privatization process will likely continue. It is too early to tell whether the weakening of the State Enterprise Union movement by the State Enterprise Labor Relations Act will facilitate the acceleration of the privatization process.

Another continuing issue is the imbalance in labor resources. By

³⁵⁸ *Id.*, ch. 7, §§ 73-93, translated in *LABOUR LAWS*, *supra* note 5, at 386-88.

³⁵⁹ *FOREIGN LABOR TRENDS* 1990, *supra* note 17, at 2.

³⁶⁰ *Id.*

³⁶¹ *Id.* at 5.

³⁶² *Id.*

the late 1980s, the Thai labor market was suffering from certain imbalances which threatened to slow economic growth.³⁶³ The serious shortages of qualified engineers, technicians, and middle managers continued through 1992 despite wage increases.³⁶⁴ One source of the problem is the over-centralization of investment in the Bangkok area, coupled with the city's declining ability to absorb new migrants.

The nationwide demand for engineers in 1992 was roughly twice the number of engineering graduates. This shortage of technical skills is particularly acute at this time when Thailand is attempting to complete major infrastructure projects. The problem is exacerbated by a loss of large numbers of Thai engineers to other countries, resulting in an increased reliance on foreign engineers and internal training by companies.³⁶⁵

Shortages of unskilled labor in the services, retail and manufacturing sectors also continue.³⁶⁶ Shortages in the services industry have been particularly acute in tourism, an important income-producing sector which almost doubled in the 1986-1990 period, making it an increasingly critical earner of foreign exchange.³⁶⁷

Child labor issues also continue to attract national and international attention. Due in part to external pressures, there has been increased enforcement in recent years of child labor protections. In July 1991 the International Labor Organization's Committee on Applications and Standards issued a report charging that the problems of child labor were worsening.³⁶⁸ One of the most vocal critics of child labor practices in Thailand has been the AFL-CIO, which has supported petitions against Thailand under provisions of the U.S. trade law amending the U.S. generalized system of preferences (GSP) in 1987, 1988, and 1989. However, the United States government has declined to interrupt Thailand's eligibility for those market preferences because of the progress being made by Thailand to improve child labor protection.³⁶⁹

Downturns in the availability of foreign jobs for Thai workers recently has added new strains on the domestic labor market. Overseas markets for Thai workers traditionally have been important, but significant problems have arisen in recent years, particularly in East Asia and the Middle East, which are the most important markets providing foreign jobs to Thai workers. Income from foreign employment was the

³⁶³ *Id.* at 2.

³⁶⁴ FOREIGN LABOR TRENDS 1992, *supra* note 27, at 29-30.

³⁶⁵ *Id.* at 7.

³⁶⁶ *Id.* at 1.

³⁶⁷ KEY INVESTMENT INDICATORS, *supra* note 16, tbl. 27, at 26.

³⁶⁸ FOREIGN LABOR TRENDS 1992, *supra* note 27, at 24.

³⁶⁹ FOREIGN LABOR TRENDS 1990, *supra* note 17, at 6-7.

second largest non-merchandise source of foreign exchange during 1989-1990, exceeded only by tourism.³⁷⁰ On January 1, 1989, it was estimated that the total number of overseas Thai workers in the Middle East were 201,500 and the total number in East Asia was 66,000.³⁷¹ Following the onset of the Gulf War, the number of Thai workers in the Middle East and East Asia declined by almost 40%.³⁷²

The prospects for peace in Southeast Asia have been enhanced by the U.N.-backed coalition government established in Cambodia. Should this result in a lasting peace, there will be a resurgence of interest among U.S. business in investment prospects for the region. Thailand, as one of the United States' staunchest allies and trading partners in Southeast Asia, offers one of the most attractive investment sites for U.S. business.

As this article has shown, the Thai legal system regulating labor and employment reflects the distinctive features of Thai culture, social organization, and economic realities. To that extent, Thai labor and employment law establishes a legal regime that is quite different from the "free labor market" to which U.S. business is accustomed. However, in its organization and broader structural features, Thai labor and employment law should be very familiar to U.S. investors and their attorneys. It represents a blending of government protections with a capitalist, free market orientation in which U.S. and other foreign investors should thrive.

³⁷⁰ *Id.* at 8.

³⁷¹ *Id.* at 9.

³⁷² FOREIGN LABOR TRENDS 1992, *supra* note 27, at 33. The distribution of Thai workers in those areas on January 1, 1992 was estimated as follows:

<i>Location</i>	<i>No. of Workers</i>
Saudi Arabia	30,000
Libya	18,000
Kuwait	2,800
Israel	2,300
Qatar	2,000
United Arab Emirates	1,500
Bahrain	1,600
Others	2,000
Subtotal - Middle East	60,200
Singapore	27,000
Japan	25,000
Malaysia	10,000
Brunei	11,000
Taiwan	7,000
Hong Kong	15,500
Others	10,000
Subtotal - East Asia	105,500
TOTAL - Asia/Middle East	165,700

Source: *Id.* at 33.