

Outsource Employees and Changes in Their Relationship with Business Operators

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Outsource employees are personnel provided by a third-party to a business operator to aid the operator's production process or business activities and to whom the operator is responsible for as stipulated by Section 11/1 of the Labour Protection Act B.E. 2541 (1998) ("**Labour Protection Act**"). This section of the Act is not novel, but in fact came into existence when the Labour Protection Act was enacted in 1998. Here, under Section 5, in the definition of "Employer", Subsection (3) stated the following:

"where the business operator has engaged an employee by a lump sum payment and has assigned any person to supervise the work and to be responsible for payment of wage to the employee, or has assigned any person to procure employee to work, which is not a business operator for the procurement of employment, and such work is a part or the whole of the production process or the business within the business operator's responsibility, the business operator shall also be deemed an employer of such employee".

When considering Section 5(3) of the Labour Protection Act, the Supreme Court ruled that the liability of a business operator who is considered the "Deemed Employer" of outsource employees is to not exceed the rights, benefits and welfare which the outsource employees received from their employer (the outsource provider). Moreover, the Court ruled that the outsource employees are not considered employees of the business operator (Supreme Court Judgment No.197-199/2550).



Ten years later, in 2008, the Labour Protection Act (No. 2) B.E. 2551 (2008) was enacted and Section 5 of the Labour Protection Act was amended whereby Subsection (3) was replaced by Section 11/1. The first paragraph of Section 11/1 has the same meaning as the prior Section 5 (3), however, has an additional second paragraph, which states that "the business operator shall arrange for an employee hired for wages who works in the **same** manner as employees under a direct employment contract to, without discrimination, receive fair rights, benefits and welfare".

After Section 11/1 was enacted, the liability of the business operator to the outsource employees changed from being limited only to the rights, benefits and welfare received from their employer to being arranged without discrimination to fair rights, benefits and welfare to the outsource employees. Although the phrase "without discrimination" does not necessarily mean "equal", the Supreme Court has ruled that a business operator shall pay leave allowance, car allowance, meal allowance and bonus to the outsource employees the same as it does to its employees (Supreme Court Judgment no. 22326-22404/2555).

In the Supreme Court Judgment No.1987-2026/2558, the Supreme Court ruled that outsource employees shall have normal working hours a day the same as the business operator's employees. In this case, under the work rules of the business operator, employees had normal working hours of 7.5 hours a day and work five days a week, Monday to Friday. However, the work rules of the employer of outsource employees were different: they had normal working hours 8 hours a day and worked six days a week, Monday to Saturday. The outsource employees alleged that the work rules of the business operator regarding the normal working hours 7.5 hours a day working five days a week from Monday to Friday, should be applied to the outsource employees and the times 0.5 hour a day for Monday to Friday and 8 hours for Saturday should be calculated to wages and paid to outsource employees. The Supreme Court agreed with these submissions from the outsource employees.

Furthermore, the Supreme Court in both cases ruled that only the business operator is to be liable to the outsource employees: therefore, the business operator shall treat the outsource employees equally to its employees, including having the same rights, benefits and welfare as the business operator's employees.

This article covers Part 1 of our discussion on outsource employees and the liability of the business operator. In Part 2, we will discuss strategies on how business operators may seek to reduce their risk of the liability under Section 11/1 of the Labour Protection Act.

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