

Outsource Employees and Changes in Their Relationship with Business Operators (Part 2)

Sumit Masrungson, Senior Consultant

Continuing from Part 1 of our discussion on outsource employees and business operators' liabilities concerning them, in Part 2 we will discuss strategies on how business operators may seek to reduce the risk of liability under Section 11/1 of the Labour Protection Act.

Section 11/1 of the Labour Protection Act states: *"Where an operator authorizes a person to provide personnel to work, which is not a job placement business, and such work is part of the production process or business under the responsibility of the operator, and whether or not such person will supervise the performance of work or be responsible for payment of wages to those who do such work, the operator shall be deemed the employer of those engaged to do such work."*

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".

Under Section 11/1 of the Labour Protection Act, the factors that must be considered when assessing whether a person is an outsource employee under this section include whether or not:

- (1) The work is part of the production process or business scope under the responsibility of the business operator; and
- (2) The person in question works in the same manner as the employees under a direct employment contract ("direct employees") with the business operator.



Factor (1)

The Supreme Court has interpreted working in the production process or business under the responsibility of the business operator in Section 11/1 of the Labour Protection Act as meaning working in the production process of the core business of the business operator. The Supreme Court has also commented that the production process is an essential factor of section 11/1, as some businesses, such as automobile manufacturers, may have many steps in their production process, where each step shall be considered as part of the production process until the finished products are completed (Supreme Court Judgment No. 3659-3675/2561, 8920/2560).

Therefore, if a business operator has outsource employees not working in the production process or in the business scope under the responsibility of the business operator – for example fulfilling roles such as a manager, secretary or facilities supervisor, and do not work in the production process of the core business – then such persons will not be considered as outsource employees under Section 11/1 of the Labour Protection Act (Supreme Court Judgment No. 285-298/2561).

Factor (2)

The fact that outsource employees work in the same manner as direct employees means that such places of business have two types of workers – outsource employees and direct employees – who each carry out the same type of work in the production process of the core business of the business operator. The Supreme Court has ruled that if there is no difference between the job's nature and duties, then it is deemed that the work performed by the outsource employees and that performed by direct employees are works of the same manner (Supreme Court Judgment Nos. 22326-22404/2555, 1987-2026/2558, 3659-3675/2561).

Strategy to Reduce Risk of Liability

By contracting outsource employees, business operators expose themselves to the risk of having to compensate the outsource employees in the same manner as direct employees under Section 11/1 of the Labour Protection Act. However, outsource employees may still be a necessary resource for business operators, and business operators should look at strategies to mitigate this risk.

In order to reduce a business operator's risk of such liability, the business operator should avoid having two types of workers (outsourced employees and direct employees) who carry on the same work in the production process. If the business operator does not have outsource employees and direct employees working in the same manner in its production process, then Factor (2) is not satisfied. In such scenario, the outsource employees who work in the production process would not be considered as outsource employees under Section 11/1 of the Labour Protection Act and the business operator would not be liable to arrange working conditions without discrimination of fair rights, benefit and welfare to such outsource employees (Supreme Court Judgment Nos. Sor Por 484, 490-494/2559, Sor Por 415-426/2560, 4040/2561).

In Part 3 of this series of articles, we will discuss strategies that business operators may use to control their budgets concerning benefits and welfare by having outsource employees in their production process without liability under Section 11/1 of the Labour Protection Act.

For more information, please contact:

Sumit Masrungson | Senior Consultant
sumit@siampremier.com

Or Tel: +66 2 646 1888



SIAM PREMIER
INTERNATIONAL LAW OFFICE LIMITED

26/F The offices at Central World No. 999/9
Rama I Road, Pathumwan, Bangkok 10330

Tel: +66 (0) 2646 1888

Email: spi-info@siampremier.com