

# NEWSLETTER

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## 1. Outsourced Workers to Receive Equal Treatments

Section 11/1 of the Labor Protection Act, B.E. 2541 (1998) as amended by the Labor Protection Act (No 2), B.E. 2551 (2008) (the "Act") provides that a business operator must arrange for an outsourced employee who works under the same nature as business operator's own employee under a direct employment agreement with the business operator to receive the rights, benefits and welfare in a fair and nondiscriminatory manner (in comparison with those received by the business operator's own employee under a direct employment agreement). Obviously Section 11/1 of the Act seems to take away the benefit of the manpower outsourcing, i.e. keeping the costs down by offering the benefits and welfare to an outsourced worker less generous than those offered to an employee under a direct employment agreement.

### **Section 11/1 of the Act**

*"In the event that a business operator has entrusted any individual to recruit a person to work that is not a business of employment services, and such work is any part of manufacturing process or business operation under the business operator's responsibility, and regardless of whether such person supervises or is responsible for paying the wages to the person who performs work or not, the business operator shall be deemed as an Employer of such worker.*

*The business operator shall arrange for a contract employee performing work in the same manner as an employee under a direct employment contract to receive the rights, benefits and welfare that are fair and nondiscriminatory."*

In this 2012 case, one factory (the “Company”) engaged an outsourcing company (the “Outsourcing Company”) to procure the 79 workers to work in its automobile parts production line instead of hiring its own employees to perform this task. The Company did not offer these workers who were directly employed by the Outsourcing Company certain benefits that the Company was offering to its own employees under direct employment agreements.



79 workers went offensive and filed the lawsuits against the Company and the Outsourcing Company demanding the below benefits, which allegedly the Company was offering to its own employees under direct employment agreements, but not to Outsourcing Company’s workers:

- (i) a monthly food expense of Baht 350;
- (ii) a monthly allowance living expense of Baht 1,200;
- (iii) a monthly diligence per diem of Baht 560;
- (iv) a monthly travel expense of Baht 300; and
- (v) a 6 month bonus.

The Supreme Court affirmed that as a business operator under Section 11/1 the Company had to offer Outsourcing Company’s workers the same benefits that the Company was offering its own employees under direct employment agreements. It was held the 79 workers were entitled to receive the above benefits from the Company with the exception of the monthly diligence per diem under Section 11/1 of the Act because the Company could prove that the 79 workers were unqualified to receive the monthly diligence per diem under the Company’s per diem paying condition.

Another interesting aspect of this decision is that the Supreme Court did not hold the Outsourcing Company jointly liable with the Company for paying these four benefits to these 79 workers. The Supreme Court stated that Section 11/1 of the Act explicitly holds the business operator only, which is a direct employer, not an outsourcing company, liable for offering the fair and nondiscriminatory treatments. Thus a claim against the Outsourcing Company was dismissed by the Supreme Court.

With this Supreme Court precedent, a company may be held liable for failure to give its manpower outsourcing's workers any benefits that the company normally offers to its own employees under direct employment agreements. Those in corporate Thailand who utilizes manpower outsourcing companies' workers may have to revise this strategy.

For more information, please contact our lawyers for consultation.

#### LEGAL UPDATE

## 2. Incorporation of Out of Province Company Can Now be Registered Nationwide

The Department of Business Development now allows partners and incorporators to register a formation of a partnership and an incorporation of a limited company at any office of the Department nationwide. Previously a formation of a partnership or an incorporation of a limited company had to be registered with the Department's office in the province where the juristic person is headquartered. However this out-of-province service is only applicable for a formation of a partnership and an incorporation of a limited company. Any subsequent registration such as change of director, capital increase or any change to other particulars must be registered at the Department's office in the province where the juristic person is headquartered.

Forming a partnership or incorporating a limited company with the objectives subject to the special regulations, such as securities, goods warehouse, freeze storage, silo, insurance broker, and asset management still have to be registered with the Department's office in the province where juristic person's head office is located.

For more information, please contact our lawyers for consultation.

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Other Business Disputes

## TAX

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