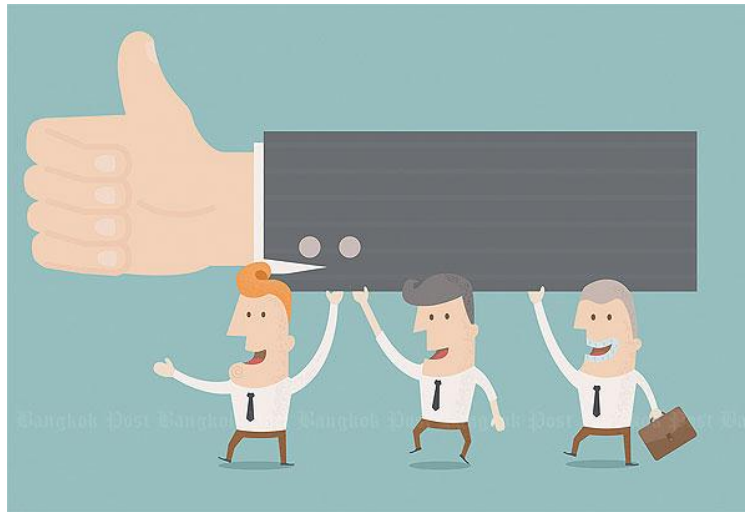


Aliens have Landed Part 2

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Last week we introduced the Alien Working Act and outlined the requirements for an employer that wants to hire foreign labor and the steps for that foreigner to obtain a valid work permit. Today, we will take a look at the application of the work permit rules in real life, how they can affect those of us who are employed or just want to do a bit of maintenance around the house, and the penalties one could face if caught in violation.



All foreigners that engage in any type of work require a work permit from the Department of Labor. “Work,” according to the Alien Working Act is defined as “exerting energy or using knowledge whether or not in consideration of wages or other benefits.” However, an exception does exist if you are only in Thailand for a brief business purpose of an “urgent and essential nature”, such as to attend meetings or work at a conference. You do not need a work permit to perform temporary (less than 15 days) work that is of an “urgent and essential nature,” provided that both you and your employer have previously submitted a written notification to the ministry. Practically, this is done upon arrival in Thailand. Once your notification is accepted, you can proceed with the proscribed work for the determined period under any type of visa.

According to the Alien Working Act, an employer is only able to employ a foreigner for the work, and at the location, specified in the work permit. While performing your job duties, you must always have your work permit available for inspection, as officers of the Ministry of Labour do not need a warrant to inspect any place of employment or arrest any foreigner who is suspected of working without a proper work permit. Even if you have a valid work permit, but are engaging in a type of work not specified by that permit, you could face a financial penalty or even imprisonment.

Foreigners are prohibited from engaging in unskilled labor and other proscribed types of work stated in a B.E. 2522 (1979) royal decree on determining type of works prohibited to foreigners. According to the decree, unskilled labor is prohibited unless a permit is granted or the employment is made in accordance with an international agreement between Thailand and a foreign government. In effect, under this exception temporary work permits are granted to seasonal unskilled laborers from bordering countries. In addition, there are 39 listed occupations or professions in which foreigners cannot engage including architectural work, driving a motorized vehicle except an aircraft, gem making or cutting, hair dresser, clerical work and manual labor.

If a foreigner is found engaging in work without an associated permit, the fines can range from 2,000 to 100,000 baht and up to five years' imprisonment. The Act allows for any foreigner who agrees to plead guilty and to leave Thailand within 30 days of the arrest to be fined without facing trial. Employers of foreigners who are working without permits face fines ranging from between 10,000 to 100,000 baht. However, the employer does not face imprisonment. All foreigners who possess a work permit contribute to the "Alien Out-of-Kingdom Repatriation Fund" which could also be called the Alien Deportation Fund. Similar to taxes and social security, contributions to the Fund are deducted directly from your paycheck. The fruits of this fund are used to cover the expenses associated with deporting foreigners who are convicted of violating the Alien Working Act. So, by following the proper steps for employment and obtaining a work permit, you are automatically required to provide a portion of your monthly salary to the government for banishing those individuals who attempted, and failed, to skirt the law.

In short, Thailand is not one of the countries to which a student can go for a gap year with visions of waiting tables at night and snorkeling during the day. Only those with qualifications relating to skilled professions for which there is a shortage of suitable Thai candidates need apply.

Angus Mitchell (angus.mitchell@dfdl.com)
Matthew Christensen (matthew.c@dfdl.com)
Pavitra Sakulchaimongkol (Pavitra@dfdl.com)



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