

Implementing Global Anti-Harassment Policies in Thailand: What Employers Need to Know



Nathee Silacharoen
Partner

nathee.s@morihamada.com



Ratthai Kamolwarin
Counsel

rattthai.k@morihamada.com



Supheemon Vajakijt
Associate

supheemon.v@morihamada.com

Introduction

Global enterprises increasingly prioritise the creation of a safe, respectful workplaces and the protection of their corporate reputation by implementing stringent anti-harassment policies. These policies are often designed to apply uniformly across all jurisdictions, including Thailand, and typically adopt a zero-tolerance approach to harassment.

However, applying such policies in Thailand presents unique challenges due to specific interpretations of Thai labour law and societal norms. Under the Thai legal framework, the Thai labour court has significant discretionary power in determining whether an act of harassment constitutes a "serious offense" warranting immediate termination of employment under Section 119 of the Labour Protection Act B.E. 2541 (A.D. 1998) ("LPA"). This discretion is crucial, as conduct that an international company might unequivocally classify as harassment may not be recognized as such by a Thai labor court. Consequently, relying solely on an international policy, regardless of its comprehensiveness, may be inadequate in the Thai legal context.

This article highlights two (2) major issues drawn from our past experience, that employers should consider when implementing global anti-harassment policies in Thailand:

1. Harassment Does not Always Constitute Serious Misconduct

We have observed instances where global enterprises, including some of our clients, have terminated employees without providing statutory severance, relying on allegations of harassment classified as "serious misconduct" under Section 119 of the LPA based on the definitions of "harassment allegations" in their global policies. However, in the absence of a proper local investigation or clearly stipulated work rules classifying harassment as serious misconduct, Thai labour courts have exercised significant discretionary power and, in some cases, have found that the alleged conduct does not amount to "serious misconduct" under Section 119 of the LPA. In such cases, the termination may be deemed unfair and the employer may be required to pay severance, as the consequence could be considered disproportionate to the unilateral nature of the termination.

The interpretation of what constitutes actionable harassment often requires a higher threshold, focusing on factors such as severity, persistence, or an explicit sexual nature—thresholds that casual or isolated compliments or flirtatious behaviour may not meet. Consequently, if such conduct forms the sole basis for termination without stronger evidence of a hostile work environment or a clear violation of locally recognised severe misconduct standards, the termination could be found to be wrongful and unfair. Therefore, conduct that may qualify as harassment under a global corporate policy may not, in certain instances, be treated as "serious misconduct" by Thai labour courts, preventing employers from terminating the alleged employee's employment without severance pay.

2. Narrow Interpretation of Sexual Harassment

While international policies typically adopt a broad definition of "sexual harassment," Thai labour courts tend to interpret Section 16 of the LPA more narrowly—frequently limiting "sexual harassment" to cases where a supervisor harasses a subordinate. This narrow interpretation means that if a harassment case falls outside the strict scope of Section 16, a termination of employment based solely on the definition of sexual harassment under the company's international anti-harassment policy might not always be recognised by the Thai labour court as a termination on the grounds of "sexual harassment". Therefore, employers should exercise particular caution before proceeding with termination in such cases.

Points to Consider

To reduce legal risk and strengthen their position when addressing harassment allegations in Thailand, employers should consider the following:

- 1) Stipulate Clear Definitions of "Harassment" and Classification of "Serious Misconduct" in Work Rules:** The company's local work rules should explicitly and clearly define various forms of harassment, not limited to sexual harassment, but also encompass bullying, psychological harassment, and other inappropriate behaviours. The work rules should also clearly state that such conduct constitutes "serious misconduct," which justifies immediate termination of employment without severance pay. It is important to note, however, that even with clearly stipulated work rules, Thai labour courts retain discretionary power to determine whether certain behavior amounts to "serious misconduct" or merely "normal misconduct." Nevertheless, having explicit and well-drafted work rules significantly strengthen the company's position and supports the justification for termination during witness examination proceedings.
- 2) Establish Robust Investigation Procedures:** Work rules should outline a fair and thorough investigation process that ensures allegations are substantiated by clear evidence and that employees are given an opportunity to respond to the allegations made against them. Numerous precedents set by the Thai Supreme Court have affirmed that employees must be granted a fair opportunity to rebut such allegations. A well-documented and impartial investigation process is vital to withstand judicial scrutiny.
- 3) Ensure Lawful Termination Authority:** When proceeding with a termination, it is essential that the decision is made and executed by a director who is duly authorised under Thai law, and that the termination letter is issued in accordance with the requirements of the LPA. Failure to adhere to this organisational formality may lead to the court deeming the termination unlawful, irrespective of the underlying merits of the case.

In addition to the legal and procedural steps discussed, employers should be mindful of the potential internal repercussions of taking formal action. Court proceedings, witness examinations, or dismissals can cause unrest or diminish employee trust if not handled carefully. Any decision to escalate should be weighed not only from a legal standpoint, but also in light of workplace morale.

Chandler Mori Hamada will closely monitor these legal developments and keep you informed of any updates. If you have any questions in relation to the issues raised in this newsletter, please contact the authors listed above.