



Employer's Duty of Care When Employees are Assigned Overseas – A Thai Perspective

International SOS
Foundation



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Overview

The Thai economy has been experiencing significant growth during the last several decades. This has been caused by several factors, including the reduction of trade boundaries, flow of services and the mobilisation of a skilled workforce globally.

This change has resulted in employees increasingly being assigned overseas to diverse locations with different levels of risk represented by medical threats, security hazards, infectious diseases, terrorist attacks and natural disasters.

In order to prevent unforeseeable risks, companies based in Thailand have a duty of care to protect their employees - both locally and overseas by providing them with prompt risk assessments, advice, and constant assistance before, during and after their business trip.

When employees travel overseas on business, they often have to face a number of increased risks, such as stress, road traffic accidents and problems resulting from chronic existing medical conditions (such as cardiovascular disease and diabetes).

The purpose of this article is to provide a useful resource for Thai employers regarding their responsibilities when assigning their employees to work overseas. This article also offers advice to employers to help prevent accidents and comply with the law, thereby achieving a return on their prevention measures through business sustainability, competitiveness and maintaining a good corporate reputation.



Legal Framework Occupational Safety, Health and Environment Act (2011) (OSHEA)

Minimum Standards

Under this Act, employers are required to provide their employees with a safe working environment. Employers are also required to administer, manage and operate Occupational Health & Safety (OH & S) in strict compliance with the standards stipulated in the Ministerial Regulations. Examples include:

Hazardous Chemicals - An employer must provide their employees with relevant knowledge concerning how to safely work, handle, control and dispose of such dangerous chemicals.

Fire Safety & Prevention - An employer must provide a fire prevention and control system in the workplace, provide fire prevention and evacuation training to staff, and provide fire evacuation signage in the workplace.

If an employer fails to comply with these standards they could be subject to imprisonment of not more than one year or a fine not exceeding four hundred thousand Baht, or both.

Duty to Inform, Train and Warn Employees to Mitigate Risks and Dangers

If an employer assigns an employee to work in an environment that could risk their physical or psychological health, their employer is legally bound to inform the employee about such risks and dangers.

Additionally, employers have the duty to provide training on OH&S and environment issues through prevention policies and emergency plans. This must be attended by a member of management, a supervisor and an employee.

If employers fail to comply with this duty they could be subject to serious penalties, including imprisonment of not more than six months or a fine not exceeding two hundred thousand Baht, or both.

Moreover, employers are required to post warning notices and OH&S and environment signs in highly visible locations in their workplace. Given this requirement, we recommend that employers should be aware of the whereabouts of their staff deployed overseas in case it is necessary to send them alerts or warnings regarding hazardous developments which may arise while they are working outside of Thailand.

Employer's Duty of Care When Employees are Assigned Overseas

The OSHA does not contain specific provisions indicating if it applies to employers who send their staff overseas for work. However, it is suggested that this Act does extend to overseas work locations and that employers in Thailand (including companies) must also comply with this legislation when their staff are sent overseas for work.

Workmen's Compensation Act (1994)

An employer's liability arises under this Act when employees are protecting their employer's interests or acting under their employer's commands or instructions. If an employee suffers an injury outside of work hours which is not related to their work, the employer will not be liable.

Medical Treatment and Industrial Rehabilitation

If an employee suffers from injuries or sickness when working or protecting the interests of their employer, then their employer is required to pay:

a. Industrial Rehabilitation Expenses – Expenses will depend on the type of employment prescribed in the Regulations, however, the expenses are capped at a maximum of 24,000 Baht.

b. Medical Rehabilitation Expenses – Expenses for physiotherapy are capped at a maximum of 24,000 Baht.

c. Surgery / Operations Expense – Expenses for surgery / operations are capped at a maximum of 40,000 Baht, however, in the event the expenses exceed 40,000 Baht, the Medical Committee has a discretion to increase the maximum amount, but any increase shall not exceed 110,000 Baht.

d. Rehabilitation Materials and Equipment - Expenses related to rehabilitation materials and equipment, such as artificial limbs, crutches and leg braces, are capped at a maximum of 160,000 Baht.

Monthly Indemnity

If an employee suffers from injuries, sickness or otherwise disappears the employer is required to pay a monthly indemnity to the employee. In the event the employee dies, the indemnity is to be paid to the parents, spouse or children (in certain circumstances).

Employers' Liabilities When Employees are Assigned Overseas

If a Thailand based employer sends an employee overseas for a work assignment, and whilst overseas the employee sustains an injury or dies in the course of their employment, then the employee or their family (as the case may be) could arguably claim under this Act. However, if they did submit a claim it is likely that they would need to prove several things, including:

i) Such employee was employed by the Thai employer and their injury or death resulted from protecting their employer's interests, or by following instructions or orders.

ii) Such employee was legitimately sent overseas by their employer for the work assignment; and

iii) If the employee died overseas then the family of the deceased would need to get the death certificate confirming this matter and have it translated into Thai.

Case Study – A Diligent Employer

A male Thai employee of a Thai corporation was assigned to a work placement in Ho Chi Minh City, Vietnam. Prior to the assignment, his company provided him with a country guideline, which included medical information and travel advice. While on assignment, he felt abdominal discomfort for which he took medication for two days, but did not recover.

The employee made a phone call to his corporation's medical and travel security assistance centre to seek advice.

The doctor at the Assistance Centre referred the employee to their clinic in Ho Chi Minh. The medical team in Ho Chi Minh arranged an appointment for the employee on the same day and also guaranteed his medical expense on behalf of his company's insurer.

When assessing the employee's medical condition after conducting scans, the treating doctor diagnosed the employee with appendicitis. The Assistance Centre's doctor - then recommended an urgent evacuation to the nearest location with higher medical standards to treat his condition. The Assistance Centre facilitated a bed to bed transfer from Ho Chi Minh to Bangkok, Thailand. The employee was successfully transported to the receiving hospital in Bangkok where he received medical attention immediately.

The Bangkok Assistance Centre monitored the employee's medical treatment and inpatient care until the employee was discharged and returned to Ho Chi Minh.

In this case, the employee received the urgent treatment he required. He might have experienced a ruptured appendix, which may have caused death if he failed to receive medical attention in time.

Conclusion

The expansion of the Thai economy's influence worldwide has played an influential role in the integration of the ASEAN region into the global economic community, where the mobilisation of skilled workforce is projected to be regulated by the commonality of disparate national labour laws.

Due to this global landscape, employees and their families are required to travel on work assignments to remote locations, where risks can turn unpredictable. This makes assignees especially vulnerable to physiological disorders, infectious diseases and security hazards.

In response to travel related threats, employers must ensure the implementation of duty of care measures, based on applicable Thai law. By doing this, companies are not only preventing injuries or damages on the assignee, but also preventing civil litigation, expensive compensation and the failure of a costly assignment.

Given the scenario above, it is advisable for employers before, during and after an employee's assignment to:

1. Assess industry-specific hazards.
2. Provide access to pre-travel medical and security advice and training.
3. Supply medication and equipment.
4. Carry out medical check-ups to verify that employees are fit to travel.
5. Assess local health hazards and medical infrastructure for a particular project site or location.
6. Implement pandemic preparedness programs.
7. Constantly communicate and track the whereabouts of assignees to update them about any hazards.
8. Develop effective emergency plans to respond to crises.

In conclusion, being aware of Thai legislation and duty of care best practice will help companies to get a return on prevention to avoid direct costs (evacuation, repatriation and post incident medical costs), indirect costs (salary costs, administrative costs and productivity losses) and human costs (talent retention) of a failed international assignment.

Finally, once risks are controlled, mitigated, minimized and even eliminated - thanks to prevention, preparation and proactive intervention - Thai-based companies are ready to expand their business operations worldwide represented by their most important asset, their employees.

This brochure is developed by:

- International SOS Foundation
- Employers' Confederation of Thailand
- Dharmniti Law Office

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