

# NO&T Thailand Legal Update

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## Official Explanatory Note to the Newly Introduced Remote Work Regulations and the Right to Disconnect (Thailand)

Yothin Intaraprasong/ Ponpun Krataykhwan

### 1. Background

Although the trend in respect of remote work is continuously increasing, the line between home life and working hours remains unclear. Many workers who work from home may feel that they need to make themselves available for work at all times, e.g., answering calls and messages, which can lead to more stress and burnout for them.

On 19 March 2023, the 8<sup>th</sup> amendment to the Labor Protection Act of 2023 (the “**Amendment**”) was published in the Royal Gazette, adding Section 23/1 to introduce new principles to support remote work by employees and the right to disconnect. The Amendment is intended to improve the Labor Protection Act of 1998 (the “**LPA**”) to support the current trend where employees may work from anywhere outside their employer’s workplace and to boost employee wellbeing and work engagement, while also solving traffic problems and reducing energy consumption.

In April 2023, the Department of Labour Protection and Welfare announced an explanatory note (the “**Explanatory Note**”) to ensure the full understanding and compliance of both employers and employees in respect of the Amendment.

This newsletter summarizes the details of the Amendment and Explanatory Note for your ease of understanding.

### 2. Remote Work and Disconnection under the Amendment

The Amendment added Section 23/1 to establish the principles in respect of remote work by employees and the right to disconnect. An unofficial translation is as follows:

**Section 23/1.** For the sake of an employer’s business operations and to boost the quality of life and work of an employee or in case it is necessary, the employer and the employee may agree that the employee may bring their work in the course of employment or as agreed with the employer, which has the nature or conditions of such work enable the employee to conveniently perform it outside the workplace or outside the employer’s office, to perform at the home or residence of the employee or agree to allow the employee to work through the use of technology from any location.

The agreement under paragraph one shall be prepared by the employer in writing or in an electronic data that can be accessed and retrieved for use without changing the meaning thereof. The details that may be agreed on are as follows:

- (1) the beginning and end of the agreed period;
- (2) the normal working days, working hours, rest periods and overtime;
- (3) the rules for working overtime and working on holidays, including types of leave;
- (4) the scope of the employee's work duties and the control or supervision by the employer; and
- (5) the duties relating to the provision of tools or working equipment, including the necessary expenses incurred from the work.

At the end of the normal working hours agreed upon by the employer and employee or at the end of the work assigned by the employer, the employee shall be entitled to refuse to communicate in any way whatsoever with the employer, supervisor, controller or inspector unless a written consent is given by the employee in advance.

The employee who works from home or residence or works through the use of technology from any location shall be entitled to the same rights as an employee working in the employer's workplace or office.

The key takeaways are as follows:

1. The Amendment does not mandate that the employer makes arrangements for remote work for the employee. Rather, it is an employment option for both the employer and employee. For example:
  - Work that is suitable for remote work: accounting, drafting or documentation.
  - Work that is not suitable for remote work or that cannot be performed remotely: manufacturing, warehousing or machinery-related tasks.
2. If the employer and the employee would like to enter into a remote work arrangement, they must enter into an agreement that permits the employee to perform the work at their home or residence or that enables the employee to work remotely from any location through the use of technology.
3. An agreement on remote work can be executed at any time, either at the beginning of the employment together with the master employment agreement or during the employment as a separate agreement or upon the request of a union under labor relation laws. However, it must be documented in writing or in an electronic file format and may contain the following details:
  - (1) the beginning and end of the remote work period;
  - (2) the normal working days, working hours, rest periods and overtime, which may be the same as or different from those of employees working in the employer's physical workplace or office;
  - (3) the rules for working overtime and working on holidays, including the various types of leave, which may be the same as or different from those of employees working in the employer's physical workplace or office;
  - (4) the scope of the employee's work duties and the control or supervision of the employer; and
  - (5) the duties relating to the provision of tools or working equipment, including the various necessary expenses incurred from the work, for example, computer expenses and internet bills.

Moreover, the agreement may contain additional conditions apart from the five items above, e.g., the requirement that a video camera be turned on during the working hours or the conditions for the employee to travel outside their home during the working hours.

4. At the end of the normal working hours or assigned work, the employee shall have the “right to disconnect” from the employer, including their supervisor, controller or inspector. However, if the employer requires the employee to remain available for communication, a written consent from the employee must be obtained in advance.

According to the Explanatory Note, this provision shall prevent the employer from punishing the employee if the employee disconnects after normal working hours. However, even if the employee waives their right to disconnect, the employer would still be obligated to obtain the employee's consent for overtime work and to provide overtime pay as required by the LPA if the employer contacts the employee to perform the work.

5. If the employee works remotely from their home or any other location, the employee shall have the same rights as an employee working in the employer's physical workplace or office.

### **3. Penalty**

The Amendment does not stipulate any punishment for any violation thereof. However, according to the Explanatory Note, if the employer fails to comply with the Amendment, such as by treating the remote employee unfairly compared to an on-site employee, a labor inspector may issue a written order requiring the employer to comply with the law under Section 139 (3) of the LPA. If the employer fails to comply with the labor inspector's order, they may be punished with a fine not exceeding THB 20,000 under Section 146 of the LPA.

### **4. Remarks**

As Section 23/1 is a newly added provision, there are currently no precedents regarding its implementation. Further, regarding this new law, several practical points remain unclear and require clarification. These include:

1. If there are a substantial number of employees, instead of entering into an agreement with each employee, would it be permissible for the employer to unilaterally prescribe and announce a remote work policy that is enforceable on all employees without their explicit consent?
2. Would it be permissible for the employer to seek implied waivers in respect of the right to disconnect?

It is worth noting that, although the principles in Section 23/1 are similar to those of the Homeworkers Protection Act of 2010 and the Ministerial Regulation Concerning the Protection of Employees in Home-Based Work of 2004 issued under the LPA, the latter two conceptually focus on local enterprise workers who are paid on a per-piece basis. Therefore, employers with remote employees should verify the laws that are applicable to their particular cases.

### **5. Conclusion**

The Amendment aims to improve the quality of life of employees and promote new ways of working in response to the current situation. However, in relation to the application of the Amendment, it will be necessary to wait for precedent cases and guidelines to clarify several practical points that remain unclear as this is a new law.

Should you require further details in respect of any measures or wish to receive further updates, please feel free to contact us.

[Authors]



**Yothin Intaraprasong**

yothin\_intaraprasong@noandt.com

Yothin Intaraprasong is a partner at Nagashima Ohno & Tsunematsu, Bangkok office. He has been involved in providing legal advice on civil and commercial laws, focusing on foreign investments in Thailand. He also represents a number of Japanese, Thai, and international clients in a wide range of ongoing business issues.



**Ponpun Krataykhwan**

ponpun\_krataykhwan@noandt.com

Ponpun Krataykhwan is a qualified lawyer based in Bangkok office. She has more than ten years of work experience practicing in corporate and commercial matters. She has extensive experience working on labour issues, foreign direct investment and mergers and acquisitions. She has a strong background in providing legal advice on regulatory compliances for industrial business. She also has been registered as Notarial Services Attorneys with the Thai Lawyer Council.

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This article enabling side-by-side comparison of local insights into legislation, regulations and codes of practice; employer duties and responsibilities; worker duties and responsibilities; workplace hazards and risk management; liabilities, enforcement and penalties; and recent trends.



### **Lexology GTDT - Real Estate 2022 – Thailand**

This article provides comparative analysis of real estate regulations in different jurisdictions worldwide, with answers to crucial questions in key areas such as: acquisition of real estate, including recording conveyance documents, foreign investors, investment entities, leases and mortgages and contracts and financing, including liens, interest, enforcement, protection of collateral, covenants and bankruptcy.

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## NAGASHIMA OHNO & TSUNEMATSU

JP Tower, 2-7-2 Marunouchi, Chiyoda-ku, Tokyo 100-7036, Japan

Tel: +81-3-6889-7000 (general) Fax: +81-3-6889-8000 (general) Email: [info@noandt.com](mailto:info@noandt.com)



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### Singapore Office

(Nagashima Ohno & Tsunematsu Singapore LLP)



6 Battery Road Level 41  
Singapore 049909  
Tel: +65-6654-1760 (general)  
Fax: +65-6654-1770 (general)  
Email: [info-singapore@noandt.com](mailto:info-singapore@noandt.com)

### Bangkok Office

(Nagashima Ohno & Tsunematsu (Thailand) Co., Ltd.)



34th Floor, Bhiraj Tower at EmQuartier  
689 Sukhumvit Road, Klongton Nuea  
Vadhana, Bangkok 10110, Thailand  
Tel: +66-2-302-4800 (general)  
Fax: +66-2-302-4899 (general)  
Email: [info-bangkok@noandt.com](mailto:info-bangkok@noandt.com)

### HCMC Office

(Nagashima Ohno & Tsunematsu HCMC Branch)



Suite 1801, Saigon Tower  
29 Le Duan Street, District 1  
Ho Chi Minh City, Vietnam  
Tel: +84-28-3521-8800 (general)  
Fax: +84-28-3521-8877 (general)  
Email: [info-hcmc@noandt.com](mailto:info-hcmc@noandt.com)

### Hanoi Office

(Nagashima Ohno & Tsunematsu Hanoi Branch)



Suite 10.04, CornerStone Building  
16 Phan Chu Trinh, Hoan Kiem District  
Ha Noi City, Vietnam  
Tel: +84-24-3266-8140 (general)  
Fax: +84-24-3266-8141 (general)  
Email: [info-hanoi@noandt.com](mailto:info-hanoi@noandt.com)

### Jakarta Office (\*Associate office)

(IM & Partners in association with

Nagashima Ohno & Tsunematsu)



Jakarta Mori Tower 14th Floor, Unit 1401  
Jalan Jenderal Sudirman Kav. 40-41  
Jakarta 10210, Indonesia  
Tel: +62-21-25098080 (general)  
Fax: +62-21-25098090 (general)  
Email: [info-jakarta@noandt.com](mailto:info-jakarta@noandt.com)

### Shanghai Office

(Nagashima Ohno & Tsunematsu

Shanghai Representative Office)



21st Floor, One ICC, 999 Middle Huaihai Road  
Xuhui District, Shanghai 200031, China  
Tel: +86-21-2415-2000 (general)  
Fax: +86-21-6403-5059 (general)  
Email: [info-shanghai@noandt.com](mailto:info-shanghai@noandt.com)

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