

Termination of Employment Relationship

Understanding Taiwan Labor Regulations

This document is prepared to help explain the tax and legal obligations of the employer when terminating an employment relationship in Taiwan.

Reasons for Termination

Article 12 of the Labor Standards Act :

an employer may dismiss an employee without advance notice if one of the following six conditions exists :

(I)In any of the following situations, an employer may terminate a labor contract without advance notice:

1. Where a worker misrepresents any fact at the time of signing of a labor contract in a manner which might mislead his/ her employer and thus caused him/her to sustain damage therefrom.
2. Where a worker commits a violent act against or grossly insults the employer, his /her family member or agent of the employer, or a fellow worker.
3. Where a worker has been sentenced to temporary imprisonment in a final and conclusive judgment, and is not granted a suspended sentence or permitted to commute the sentence to payment of a fine.

4. Where a worker is in serious breach of the labor contract or in serious violation of working rules.

5. Where a worker deliberately damages or abuses any machinery, tool, raw materials, product or other property of the employer or deliberately discloses any technical or confidential information of the employer thereby causing damage to the employer.

6. Where a worker is, without good cause, absent from work for three consecutive days, or for a total six days in any month.

(II)Where an employer desires to terminate a labor contract pursuant to Subparagraphs 1 and 2, Subparagraphs 4 to 6 of the preceding Paragraph, he/she shall do so within thirty days from the date he/she becomes aware of the particular situation.

Article 11 of the Labor Standards Act :

No employer shall, even by advance notice to a worker, terminate a labor contract unless one of the following situations arises:

1. Where the employer's business is suspended or has been transferred.

2. Where the employer's business suffers an operating loss, or business contraction.
3. Where force majeure necessitates the suspension of business for more than one month.
4. Where the change of the nature of business necessitates the reduction of workforce and the terminated employees cannot be reassigned to other suitable positions.
5. A particular worker is clearly not able to perform satisfactorily the duties required of the position held.

If an employment contract is terminated pursuant to Article 11 of the Labor Standards Act, the employer is required to provide the employee with advance notice and severance pay.

Calculation of termination payments under the old system (Before 1 July 2005):

Severance pay under the old system is computed as the average of one month's wages for one year of services for periods worked by employees prior to 1 July 2005. The old system will also continue to apply for employees who elect to stay with the old pension system after 1 July 2005.

If the period of service is less than one year, severance pay should be calculated on a pro-rata basis. If the period of service is less than one month, it should be counted as one month (See article 17 of the Labor Standards Act and Ruling Lau Don 4 –1010132306).

There is no cap on severance payments.

For example, if an employee's average monthly wage is NTD 30,000 and he worked 3 years 6 months and 15 days in total service. His severance pay under the old system equates to:

$$\text{NTD } 30,000 \times \{3y + [(6m + 1m) \div 12m] \} = \text{NTD } 107,500$$

Calculation of termination payments under the new system (After 1 July 2005):

Severance pay is computed as half a month of wages for each year of service after 1 July 2005.

If the period of service is less than one year, severance pay should be calculated on a pro-rata basis. If the period is less than one full month, it should be pro-rata based on the actual days (Ruling Lau Don 4 – 1010132304).

The maximum cap for severance payments under the new system is 6 months of wages.

For example, if an employee's average monthly wage is NTD 30,000 and he worked 3 years 6 months and 15 days in total service. His severance pay under the new system equates to:

$$\begin{aligned} &\text{NTD } 30,000 \times 1/2 * \{3y + [(6m + 15d / 30d) \div 12m] \} \\ &= \text{NTD } 30,000 \times (1 \text{ and } 37/48) \quad \text{※} (1 \text{ and } 37/48) \\ &\text{do not exceed } 6 \quad \text{※} \\ &= \text{NTD } 53,125 \end{aligned}$$

Average monthly wage computation method:

As per various rulings by the Executive Yuan, the average one-month wage means the average of the past 6 months' salary. It should be computed by taking the gross salary for the past 6 months and dividing it by 6.

Definition of wage:

It is important to note that Article 2 of the Labor Standards Law defines wages as follows:

Wage means the remuneration which a worker receives for his/her services rendered, including wages, salaries and bonuses, allowances and any other regular payments regardless of the name which may be computed on an hourly, daily, monthly and piecework basis, whether payable in cash or in kind.

Article 10 of the Enforcement Rules of the Labor Standards Act excludes the following from the definition of regular wage.

1. Dividends.
2. Bonuses, viz. of year-end bonuses, competition bonuses, research or invention bonuses, bonuses for outstanding performances, long-service bonuses, bonuses for the saving of fuel and other raw materials, and other bonuses of an irregular character.
3. Special payment for Spring Festival, May Festival and Moon Festival.
4. Subsidies for medical expenses and education expenses of workers and their children.
5. Service charges directly paid to the worker by a customer.
6. Presents donated by the employer in the event of a marriage or celebration, or monetary condolences in the event of funeral services.
7. Compensation for occupational accidents.
8. Premiums for labor insurance and for any commercial insurance of the employer, in which the worker is covered as the insured person.
9. Travel expenses, travel allowance, public relation allowances.
10. Work uniforms, tools, and reimbursement for conversion.
11. Other matters designated by the Central Competent Authority in conjunction with the Central Competent Authority for specific business purpose.

In practice, it can seem vague when deciding whether a pay item should be considered as regular wage or not. If in doubt, please consult a payroll expert for specific advice.

Date of payment:

In accordance with Article 17 of the Labor Standards Act, severance pay should be paid to employees within 30 days from the date of termination of the employment agreement.

Advance notification, Payment in lieu of notice, and Job searching leave during the notice period

Article 16 of the Labor Standards Act :

(I)Where an employer terminates a labor contract pursuant to Article 11 or the provisions of Article 13, the provisions set forth below shall govern the minimum period of advance notice:

1. Where a worker has worked continuously for more than three months but less than one year, the notice shall be given ten days in advance.
2. Where a worker has worked continuously for more than one year but less than three years, the notice shall be given twenty days in advance.
3. Where a worker has worked continuously for more than three years, the notice shall be given thirty days in advance.

(II)After receiving the advance notice referred to in the preceding Paragraph, a worker may, during hours of work, ask for leave of absence for the purpose of finding a new job. Such leave of absence may not exceed two working days per week. Wages shall be paid during such leave of absence.

Where an employer terminates the contract without serving an advance notice within the time limit prescribed in the first paragraph of this article, he/she shall pay the worker wages for the advance notice period.

As per MOF ruling Tai Tsai Suei 831604301, advance notification pay should be grouped under the severance payout when computing the tax-free limit.

Annual Leave:

Article 38 , Paragraph 1 of the Labor Standards Act :

A worker who has worked continually for the same employer or business entity for a certain period of time shall be granted annual paid leaves on an annual basis based on the following conditions:

1. Three days for service of six months or more but less than one year.
2. Seven days for service of one year or more but less than two years.
3. Ten days for service of two years or more but less than three years.
4. Fourteen days for service of three years or more but less than five years.
5. Fifteen days for service of five years or more but less than ten years.
6. One additional day for each year of service over ten years up to a maximum of thirty days.

Unused leave payouts:

In accordance with the news "Unused Leave Payouts" released by the Taipei National Tax Administration Office on February 20, 2004, unused leave payout is a type of overtime pay.

Article 14 Category 3 subparagraph 4 of the Income Tax Act states: "The money received for performing duties for the employer as travelling expenditures, daily allowance, and overtime pay not in excess of the prescribed amounts and the incomes which are exempt from income tax." Furthermore, MOF 74/05/29 Tai Tsai Suei 16713

also states: "Money received for performing duties for the employer during the leave period not in excess of the limit as set by Article 24 and Article 32 of the Labor Standard Law shall be exempt from income tax. Overtime hours worked during the leave period shall be excluded from computing the extension of the working hours limit."

Based on the above, unused leave payout can be tax-free if the amount so paid is within the limit as prescribed in the Labor Standards Act. The right of the employee to receive tax-free income from cashing out unused leave is not affected by his or her status being an "active employee" or "terminated employee."

As per Article 39 of the Labor Standards Act, the rate payable to employees for working during leave periods shall be double the normal rate. Accordingly, any amount paid to employees to cash out unused leave in excess of double the normal salary rate shall become the taxable income of the employee.

Termination of Statutory Benefits

Upon termination, employers should advise the Health and Labor Insurance Bureaus on the matter.

Tax Implications

There is a special formula for termination payments. In the case of retrenchment, the once-off lump sum severance pay is tax-free up to the following limit (Effective from 1 January 2022).

1. If the employee received payment in one lump sum:
 - A. First Bracket: NT\$ 188,000 * number of years of service (tax-free)
 - B. Second Bracket: Amount in excess of NT\$ 188,000 but less than NT\$ 377,000*number of years of service (50% tax-free)
 - C. 3rd Bracket: Amount in excess of NT\$ 377,000* years of service (taxable).

2. If severance pay is paid in installments, any amount in excess of NT\$ 814,000 per annum would be taxable.
3. If a portion of the separation income is received in one lump sum and portioned by installments, the deductible amount mentioned above shall be calculated in proportion to the amounts received in one lump sum and by installments respectively.

Tax-free means that the employer can pay the employee the gross amount without withholding tax. The employer also does not need to issue a tax certificate to the employee at year-end for the tax-free amount.

In computing the number of years of service, per MOF ruling Tai Tsai Swei 0910453971, this is based on the number of years for which the employer actually paid separation income. For example, an employee worked for ABC Company, 3 years in Taiwan and 5 years in the Philippines respectively. If the company decided to pay him separation income for the total 8 years working, then in this case the number of years of services is 8, not 3 years, when calculating his income tax.

In addition, less than 6 months will be treated as 0.5 years, whereas more than 6 months will be treated as one year.

Per MOF ruling Tai Tsai Swei 831604301, advance notification pay should be grouped under severance payout for computing tax-free limit.

Per MOF ruling Tai Tsai Swei 0900457847, If the company paid separation income to an employee on more than one payment, all of the separation income in different payments should be added together to calculate the tax.

Reporting Severance details to the Government Authority

Per Article 33 of the Employment Service Act, employers have obligations to report details of retrenched employees to the Competent Authority at least 10 days prior to the date of retrenchment. If retrenchment is due to

unforeseen circumstances, employers must notify the Competent Authority within 3 days from the date of retrenchment. Failure to comply with this requirement would result in a penalty being levied ranging from TWD 30,000 ~ TWD 150,000 per Article 68 of the Employment Service Act.

Additional Regulation Requirements for Mass Retrenchment

Article 2 of the Act for Worker Protection of Mass Redundancy :

For the purposes of this Act, "mass redundancy of workers" is defined as the condition under which a business entity must lay off workers due to any circumstances outlined in Article 11 of the Labor Standards Act, such as mergers and restructurings, and meets any of the following criteria:

1. A site with fewer than 30 workers intends to lay off more than 10 workers within a 60-day period.

2. For sites with 30 to 199 workers:

- The layoff of more than one-third of the total workforce within a 60-day period, or

- The layoff of more than 20 workers within a single day.

3. For sites with 200 to 499 workers:

- The layoff of more than one-fourth of the total workforce within a 60-day period, or

- The layoff of more than 50 workers within a single day.

4. For sites with 500 or more workers:

- The layoff of more than one-fifth of the total workforce within a 60-day period, or

- The layoff of more than 80 workers within a single day.

5. The business entity intends to lay off more than 200 workers within a 60-day period or more than 100 workers within a single day.

The counting of employed and laid-off workers mentioned in the preceding Paragraph shall not include the fixed-term workers prescribed in Article 46 of the Employment Service Act.

If there is a mass retrenchment situation as per the definition above, the employer has an obligation to file a mass retrenchment plan with the Government Authorities and also make a public announcement 60 days in advance of the event. The forgoing 60-day requirement shall not apply to cases where the cause thereof is due to an act of God, calamity, or accident.

Employers must conduct labor negotiations with employees within 10 days of filing the mass retrenchment plan. If no agreement can be reached with affected employees, the government authority shall within 10 days call for another round of negotiation and can propose an alternative solution if deemed appropriate.

Per Article 12 of the Act for Worker Protection of Mass Redundancy, please note that in the case of mass retrenchment, if there are outstanding wages, severance pay, or pension payments owed to employees, the responsible person of the Company can be prohibited from leaving Taiwan.

Unpaid leave

It is not legally permissible for an employer to implement an unpaid leave program to retain employees during a difficult time period. However, it is possible to roll out a “reduced working hour rest program” in Taiwan subject to mutual consent. Under such a program, the employee must still be paid at least the minimum wage per month. This agreement between the employer and employee can only be valid for 3 months. If there is a need to extend such a program after the end of the 3 month period, another agreement has to be signed. If such a

program is implemented without the employee’s consent, the employer can be fined between TWD 20,000 ~ TWD 1,000,000. The employer also has the obligation to report such a program to the Labor Bureau so that the government office can offer needed assistance to affected employees.

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