

New Amendments to the Work Permit Law and New Notification Requirements for Employers and Employees

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Following the enactment of the Emergency Decree on Managing the Work of Aliens B.E. 2560 (2017) (the **Decree**) back in late June 2017 [23 June 2017] as mentioned in our previous [alert](#), there has been much confusion prompting a number of foreign workers to leave Thailand due to fears of harsh penalties against offenders under the Decree. Temporary measures were implemented by the government including the issuance of the Order of the National Council for Peace and Order (the **Order**) Number 33/2560 on 4 July 2017 [s.44] to suspend certain penalties under the Decree until 31 December 2017 as explained in our [alert](#). The Order also requires the Ministry of Labour to consider amending the Decree to address the current state of confusion that workers are experiencing.

Against this backdrop, on 27 March 2018, a new amendment to the Emergency Decree on Managing the Work of Aliens B.E. 2560 (2017) (the **Amended Decree**) was enacted and took effect on 28 March 2018.

The key amendments to the Decree are as follows:

- Foreigners who perform the following activities in Thailand shall not be subject to the Decree and its requirements, including the requirement to obtain a work permit:
 - foreigners who enter Thailand occasionally to: organize or attend meetings; give opinions, lecture, or present in a meeting; participate in training sessions, tour, seminar, art or cultural exhibitions, sports competition, or any other activities as prescribed by the Cabinet;
 - foreigners who enter Thailand to engage in business or investment; or who are specialists, experts, or have skills which will help improve the country, in accordance with the Cabinet's specifications; and
 - representatives of a foreign entity which is granted a foreign business license under the Foreign Business Act.
- The definition of "work" has been revised to "performing any profession, whether or not there is an employer, excluding business operations of a foreign business license's holder under the Foreign Business Act" - comparing with the previous definition of "exerting one's physical energy or employing one's knowledge to perform a profession or perform work, whether or not for wages or other benefits".
- It is now possible to submit an application for a work permit electronically within Thailand or from outside the country. Also, the issuance of a work permit will not exceed 15 working days once a completed application has been received by the Department of Employment.
- A list of works that were eligible for an urgent duty work permit as explained in our previous [alert](#) has been cancelled [this was the 29 June 2017 Decree]. A new list of works that will be eligible for an urgent duty work permit will be issued in due course. If work under an urgent duty work permit cannot be completed within 15 days, a

foreigner may now request for an extension of up to 15 days by notifying a work permit official prior to the end of the initial 15 days' period.

Reporting obligations for employers

- For the first time, employers are legally required to notify a work permit official of a foreign employee's name, nationality and nature of work within 15 days from the employment date, as well as to notify the official when their employment ends within 15 days from the employment cessation date. Failure to comply with the reporting obligations may subject the employer to a maximum fine of Baht 20,000.
- Employers who have already employed foreigners holding a valid work permit before 28 March 2018 when the Amended Decree took effect **must notify a work permit official of foreigners' names, nationalities and nature of work within 60 days from 28 March 2018, i.e. by 26 May 2018.**
- However, details of notification methods and forms are yet to be issued.

Reporting obligations for foreign employees

- A foreign employee must notify a work permit official of their employer, workplaces and nature of their work within 15 days from the date they start their employment, and every time they change their employer. Failure to comply with the reporting obligations may subject the foreigner to a maximum fine of Baht 20,000.

Penalties have been significantly reduced by the Amended Decree as seen in the table below:

No.	Offenses	Previous Penalties	Current Penalties
1.	Foreigners working without a work permit or work outside of the permitted scope.	A maximum 5-year term of imprisonment and/or a fine from Baht 2,000 to Baht 100,000.	A fine from Baht 5,000 to Baht 50,000.
2.	Employing a foreigner without a work permit or to work outside of the permitted scope.	A fine from Baht 400,000 to Baht 800,000 per foreigner.	A fine from Baht 10,000 to Baht 100,000 per foreigner. Repeat offenders Should an employer repeat the offense, the employer may be subject to a maximum 1-year term of imprisonment and/or a fine from Baht 50,000 to Baht 200,000 per foreigner. The employer will also be prohibited from employing foreigners for a period of 3 years from the date of the final court judgment, i.e. blacklisted.
3.	Working on an urgent and necessary basis or task work without notifying officials.	A fine from Baht 20,000 to Baht 100,000	A maximum fine of Baht 50,000.

Moreover, to allow a grace period for operators to comply with the new requirements under the Amended Decree, the penalties for offenses in items 1, 2 and 3 above are currently suspended until 31 August 2018.

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