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Marijuana in the Workplace

Effective from 9th June 2022, Thailand has removed marijuana from the narcotics list (except for extracts that contain over 0.2% of tetrahydrocannabinol (THC) by weight) under the narcotics law. This change has created challenges for many Thai employers who want to prevent consumption of marijuana in their workplaces. Many employers consider revising their work rules to impose disciplinary actions against employees who get high from marijuana at work or during the working hours, if not dismissing them.

Since marijuana is no longer narcotics, the work rules preventing employees from using it or subjecting them to disciplinary actions for consuming it may no longer be feasible, although employers may, in the work rules, prohibit the marijuana consumption in the workplace in much the same way they currently prohibit drinking of alcohol. In particular, employers may prohibit the consumption of marijuana at work or during working hours and prohibit employees from attending work while getting high. The major question is whether employers can legally enforce these prohibitions in their work rules.

The Supreme Court has ruled in several cases that the employer could dismiss an employee without pay if the employee was found to be drunk at work, as being drunk at work constituted a serious breach of the work rules of the employer, a ground of termination without severance pay under Section 119(4) of the Labour Protection Act B.E. 2541 (1998) ("**LPA**"). When the Supreme Court ruled that the employers could terminate the employees without severance pay in these cases, the Court took into consideration:

- the employee's work position;
- the level of drunkenness;
- the employer's practice in the workplace towards alcohol use; and
- the harm caused to the employee himself/herself, the employer and the third-parties.

For example, if the employee's work was the office work rather than the production line work or the work with machines, and if the employee was not very drunk or did not cause any damage to the employer, the Court ruled that the employer could not terminate the employee without severance pay (Judgement No. No. 6524/2545). On the contrary, in another case the employee was a truck driver performing his work while being drunk, although there was no harm caused by him, the Court ruled that the employer could terminate him without severance pay (Judgement No. 13581/2556).

Whether the Supreme Court will apply the principles of these precedents to the consumption of marijuana by employees is the matter to wait and see. For now, merely the fact that an employee is found to have consumed marijuana may not always constituter a ground of termination. If the work rules of an employer do not have a provision against marijuana consumption at work or during the working hours, the employer may not be able to rely on Section 119(4) of the LPA alone for terminating the employee who consumes marijuana without giving a warning notice and paying the required severance pay.

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