

Legal Brief - What You May **Not** Know About Thailand's **Work Permit** (Less-Known Relaxations of Thailand's Work Permit System)



IN THIS LEGAL BRIEF

Even if most foreign residents in Thailand are well aware that to legally work in Thailand a foreigner requires to obtain a work authorization from a Thai government agency (the Department of Employment, Ministry of Labor (the "DOE")) in form of a work permit, certain interesting aspects of Thailand's work permit system remain unfamiliar to many foreign residents and their employers. This legal brief aims to highlight and clarify new and lesser-known features of the country's work permit system to enhance understanding.

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Backgrounds

To protect local workers from foreign competition, the Thai government has introduced multiple iterations of work permit law over the years. The work permit law has undergone numerous changes. The list below outlines key pieces of legislation governing work permits in chronological order, highlighting the frequent updates in recent years.

1. Announcement of National Executive Council No. 322 dated December 13, B.E. 2515 (1972). (Introducing large-scale restrictions on foreign labor and granting an exemption in form of a life time work permit to largely long term Chinese residents.)
2. The Working of Alien Act, B.E. 2521 (1978).
3. The Working of Alien Act, B.E. 2551 (2008).
4. The Emergency Decree on Managing the Working of Alien, B.E. 2560 (2017) (the "Emergency Decree").



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Background (Continued)

5. The Emergency Decree on Managing the Working of Alien No. 2, B.E. 2561 (2018) (the "Emergency Decree No. 2"), which has introduced the amendments to the Emergency Decree.

1. **Narrow Definition of Work (Essentially Excluding Unpaid Work/Jobs from the Work Permit Requirement)**

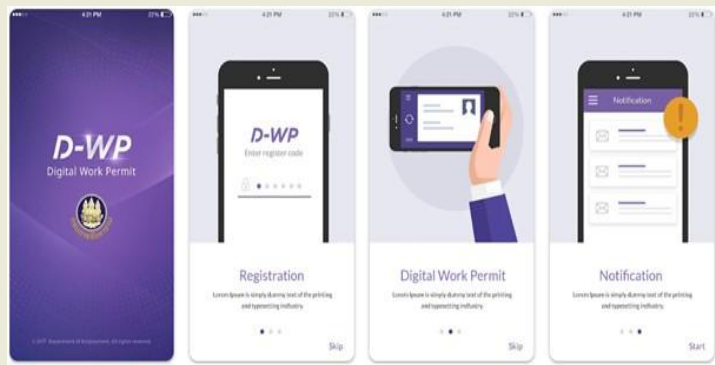
The Emergency Decree (as amended by Emergency Decree No. 2) significantly narrows the definition of "work" subject to a work permit requirement. While an original definition of "work" under the Emergency Decree included all types of activities regardless of whether any wage/compensation was paid to a foreigner or not, the Emergency Decree (as amended by Emergency Decree No. 2) excludes any unpaid work/activities/jobs from this definition of "work" (and from the work permit requirement).

Only activities compensated with cash or nonmonetary benefits fall under the new definition of "work" the Emergency Decree (as amended by the Emergency Decree No. 2). Consequently, the Council of State, government's official legal advisor, has ruled that volunteer work is not considered "work" under the Emergency Decree (as amended by the Emergency Decree No. 2) and



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therefore (the volunteer work) does not require a work permit. This ruling clarifies that a foreigner performing voluntary activities without receiving any wage or other form of compensation, whether monetary or nonmonetary, is not engaging in "work" as defined in Section 5 of the Emergency Decree (as amended by the Emergency Decree No. 2) and thus is not subject to a work permit requirement.

The Council of State recognized that even if such unpaid volunteer worker might receive some free meals or free housing from a charity organization, such unpaid volunteer worker is still not deemed to work under the Emergency Decree (as amended by the Emergency Decree No. 2) insofar as such unpaid volunteer work does not draw any salary, any wage or any other form of compensation (i.e. nonmonetary compensation).

Although Council of State's interpretation only applies to the volunteer worker, the narrower definition of "work" should apply to any other unpaid activities of a foreigner as well.

The following roles that a foreigner serves or works is likely to be the non-work without a need to apply any work permit.

1. A chairman or a committee member of a juristic condominium or a juristic housing estate.
2. A committee member of a foundation or an association (insofar as it is not a full time job and no pay).
3. A volunteer at kids' school.

2. Work Permit Holder's Extreme Flexibility to Engage in Any Nonprohibited Occupations/Work (Free to Engage in any Occupations/Work Except for those Prohibited Occupations in the List)

The good news is that the Emergency Decree No. 2 has offered an unprecedented degree of flexibility to a work permit holder (skilled worker) in term of types of work that the holder may engage in.

In DOE's 2018 letter to the Police Commissioner, DOE's Director General states that the Emergency Decree No. 2 has revised how the working of aliens is regulated by specifying a criterion that a worker permit holder is entitled to engage in any types of work that he is permitted and that such work permit holder may engage in any work that is not specified in the list of prohibited occupations under Section 7 of the Emergency Decree.

Effectively, if any police officer finds out that any work permit holder engages in any type of work that is different from a type of work specified in the work permit, such action is no longer a criminal offence under the Emergency Decree (as amended by the Emergency Decree No. 2).



(Picture taken from BMA guideline.)

Regardless of what type of work is listed in one's work permit, a work permit holder may engage in either:

- (i) such specified work; or
- (ii) any other work under the below conditions.
 - A. Such other work is with the same employer.
 - B. Such other work does not fall under the list of prohibited occupations under Section 7 of the Emergency Decree. (A link to this list (English and Thai) is furnished here below.)
 - C. A work permit holder may even engage in such other work without a need to notify the DOE. (A failure to notify the DOE is no longer a criminal offence under the Emergency Decree (as amended by the Emergency Decree No. 2).)

List of Prohibited Occupations for Foreigners (Section 7 of the Emergency Decree)

English

https://www.doe.go.th/prd/assets/upload/files/alien_en/6e4d2d43525d215fa74a42f2a69f3f25.pdf

Thai

https://www.doe.go.th/prd/assets/upload/files/legal_th/68c9bf9be8ce0073681f327e8455e35f.pdf

Any this flexibility must be used with care. For certain types of work permit holders, a condition in an investment certificate specified by the Board of Investment must be complied with and the immigration law must be complied with.

3. Changing the Job Site or Adding the New Job Site Without Any Need to Notify the DOE any More

Under the Emergency Decree (as amended by the Emergency Decree No. 2) a work permit holder may change his job site or add his new job site without a need to notify the DOE insofar as he works with the same employer. In DOE's 2018 circular letter to DOE officials nationwide and provincial governors, its Director General notified and confirmed this interpretation.

4. No Need to Carry the Work Permit with You All the Times or Leave the Work Permit at Office

A legal requirement to carry a work permit at all the times or to leave the work permit in the office no only applies to a worker permit holder. Now under revised Section 68 of the Emergency Decree, a work permit holder is only required to present a work permit to an official or the Registrar within a reasonable period of time.

Section 68 of the Emergency Decree (Pre-Emergency Decree No. 2) *"The person granted permission for working must have a work permit with himself or at the working place during working hours in order to enable the same to be shown to the competent official or the Registrar at all times."*

Section 120 of the Emergency Decree (Pre-Emergency Decree No. 2) *"Any person granted permission for working who fails to comply with section 68 shall be liable to a fine not exceeding Baht 10,000."*

Section 68 of the Emergency Decree (as amended by the Emergency Decree No. 2) *"The person granted permission for working must be able to show the work permit to the competent official or the Registrar with a reasonable period of time."*

Section 120 of the Emergency Decree (as amended by the Emergency Decree No. 2) *"Any person granted permission for working who fails to comply with section 68 shall be liable to a fine not exceeding Baht 5,000."*

5. Recent Update - Migration from Paper-Based Application to Online Application

Since 2025, the Department of Employment, Ministry of Labor (the "DOE") has moved an entire application process from paper-based to online. So, there will be no paper application any more.

6. Director/Representative of Company with the Foreign Business License (FBL) Being Exempt from the Work Permit Requirement (FBL Company Director Exemption Not Applying to Director of a US Treaty Protected Company or a FTA Protected Company)

Any Director of a company holding a foreign business license is exempt from the applications of the Emergency Decree (as amended by the Emergency Decree No. 2) and therefore is exempt from the worker permit requirement. In one DOE ruling, the DOE concludes that this work permit exemption only applies to a Director of a company with a foreign business license only and does not apply to any company that is certified under the Foreign Business Act, B.E. 2542 (1999) to be US Treaty of Amity protected or FTA protected.

For further details or assistance, please do not hesitate to contact us.