

Client Alert

July 2017

New Urgent Duty Work Permits' Rules and Criteria Under a New Legal Regime

It has long been legally established that in order for non-Thai nationals to work in Thailand, they must obtain work permits first before commencing the work. This requirement has always been recognized and specified within all of the previous legislations including the old Alien's Work Act B.E. 2521 (1978) and the most recent legislation i.e. the Alien's Work Act B.E. 2551 (2008) ("**Old Act**"), which has just been revoked by a new Emergency Decree on Managing the Work of Aliens B.E. 2560 (2017) ("**Decree**").

If the work to be done by the foreigners is considered necessary and urgent, and the duration of the work is within 15 days, the foreigners can notify the work permit officials and obtain urgent duty work permits instead of normal work permits. Under the Old Act, the urgent duty work permits were granted based on urgency, necessity and suitability, and therefore, the foreigners or the Thai companies had to provide justifications for applying for these work permits to the work permit official when notifying them e.g. details of the works to be done in Thailand, duration, why the works are considered as necessary and urgent that the foreigners must carry them out. Even though it is only a notification process where foreigners/companies simply notify the work permit officials by submitting a notification form for an urgent duty work permit without needing their approval, in practice, most foreigners/companies still wait for the officials to review the said form and its details to consider, among others, whether the justifications were acceptable and whether the foreigners are eligible for an urgent duty work permit. If the officials agree that the foreigners are eligible for an urgent duty work permit, they will then affix an acknowledge of receipt stamp into the submitted form. In that case, the foreigners/companies would use that affixed form as evidence of an urgent duty work permit. Thus, in a way, the work permit officials still have certain discretion as to whether the justifications were acceptable and whether the urgent duty work permit should be granted to the applicants or not.

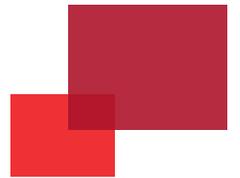
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On 29 June 2017, the Department of Employment has issued a Notification Re: Prescribing Types of Works which are Necessary and Urgent (the "**Notification**") under a new Decree. Under the Notification, if a foreigner will be engaging in any of the following works in Thailand where such work will be completed within 15 days, it will automatically be considered as a necessary and urgent work - for which an urgent duty work permit would be granted.

1. organizing meetings, trainings or seminars work;
2. special academic lectures work;
3. aviation management work;
4. internal audits work from time to time;
5. follow-up and solving of technical problems work;
6. product or goods quality inspection work;
7. manufacturing process inspection or improvement work;
8. machinery and electric generator equipment system inspection or repair work;



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9. machinery repair or installation work;
10. electricity vehicle system technician work;
11. aircraft or aircraft equipment technician work;
12. machinery repair or machinery controller system consultancy work;
13. machinery demonstration and testing work;
14. filming motion pictures and still photography work;
15. selecting recruitment persons for sending workers to work overseas; and
16. testing skills of technicians for sending them to work overseas.

As a result of this Notification, from now on, when applying for an urgent duty work permit, it is no longer necessary to justify to the work permit official how the work is urgent and necessary, but instead, the applicant must justify that

(1) the work that they are requesting for an urgent duty work permit is one of the 16 types of works specified within the Notification, and

(2) that the work can be completed within 15 days.

This should at least reduce the work permit official's discretion in connection with this urgent duty work permit which should better facilitate the application of urgent duty work permit for foreigners coming to work in Thailand for a short period. However, it still remains unclear as to how effective this Notification would be. Moreover, it is still possible the work permit official will ultimately have some discretions in deciding whether the present case qualifies for the urgent duty work permit e.g. whether the work falls under the 16 types under the Notification, and whether the work can actually be completed within 15 days which requires justification from the applicants. It is important to know that foreigners who engage in these necessary and urgent works without having obtained the urgent duty work permits shall be liable to a fine from Baht 20,000 - 100,000, which is temporarily suspended until 1 January 2018 pursuant to the Order Number 33/2560 of the National Council for Peace and Order.