

Severance Pay for Foreign Teacher in Private School

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ABSTRACT

Among ASEAN countries, Thai education on foreign language, especially English, cannot compete with those of the neighboring countries. To study English as a secondary language, foreign teacher is the key to achieve this goal. Many foreigners entered Thai education system as an English teacher in both public and private school.

In private school, severance pay of both Thai and foreign teacher in Thailand is governed by the Regulation of Ministry of Education on Labor Protection of Headmaster and Teacher B.E. 2542 which is developed from principle of Labor Protection Act B.E. 2541. The school licensee has to pay severance pay to dismissed teacher according to the law. But after Regulation of Ministry of Education on Labor Protection of Headmaster and Teacher (2nd issue) B.E. 2547 became effective, it excluded the foreign teacher who work under fixed-term contract to receive severance pay from the licensee even he/she has worked continuously. The Regulation of Ministry of Education on Labor Protection of Headmaster and Teacher does not provide the benefit to the foreign teacher according to the standard of Labor Protection law given to Thai teacher.

From the research of labor law of United Kingdom, I found that the UK teachers, both UK and foreign teachers, are protected under Employment Right Act 1996 in the same way which is different from that of Thailand that has specific regulation. The UK law also provided measures to employer to offer employee an alternative job before lay-off. It takes many step before an employee is to be laid-off to reduce the dismissal rate.

In conclusion, the Labor Protection Act B.E. 2541 should be amended to set the specific time of renewal of fixed-term contract, calculation of severance pay and methods to be applied before contract termination to prevent the lawsuit between

* This article is a part of Independent Study of Graduate School of Law on the topic, "Severance Pay For Foreign Teacher In Private School," Graduate School of Law Assumption University, 2016.

employer and employee in the future. It can reduce the number of cases in the court and create win-win situation between employer and employee. Also, it would set the same standard between Thai and foreign teacher and protect them in same manner to provide true benefit for private school teachers.

Keywords: severance pay, severance package, foreign teacher, teacher, private school

บทคัดย่อ

ในหมู่ประเทศอาเซียน ประเทศไทยไม่สามารถแข่งขันในการศึกษาภาษาต่างประเทศ โดยเฉพาะภาษาอังกฤษกับประเทศเพื่อนบ้านได้ ครูชาวต่างชาติเป็นปัจจัยสำคัญอย่างยิ่งในการศึกษาภาษาอังกฤษเป็นภาษาที่สองอย่างมีประสิทธิภาพดังนั้นจึงมีครูชาวต่างชาติจำนวนมากเข้ามาในระบบการศึกษาของประเทศไทยไม่ว่าในโรงเรียนรัฐหรือโรงเรียนเอกชน

ค่าชดเชยสำหรับครูชาวไทยและครูชาวต่างชาติในโรงเรียนเอกชนนั้นได้ตกอยู่ภายใต้ระเบียบกระทรวงศึกษาธิการว่าด้วยการคุ้มครองการทำงานของครูใหญ่และครูโรงเรียนเอกชน พ.ศ. 2542 ซึ่งนำหลักการคุ้มครองแรงงานมาจากพระราชบัญญัติคุ้มครองแรงงาน พ.ศ. 2541 โดยผู้ได้รับใบอนุญาตให้จัดตั้งโรงเรียนต้องจ่ายค่าชดเชยให้แก่ครูในกรณีที่มีการเลิกจ้างตามกฎหมายแต่ภายหลังจากระเบียบกระทรวงศึกษาธิการว่าด้วยการคุ้มครองการทำงานของครูใหญ่และครูโรงเรียนเอกชน (ฉบับที่ 2) พ.ศ. 2547 ได้ออกมาบังคับใช้ระเบียบดังกล่าวยกเลิกสิทธิในการได้รับค่าชดเชยของครูชาวต่างชาติที่สัญญาจ้างแบบระบุระยะเวลาได้หมดอายุลงแม้ว่าครูชาวต่างชาติได้รับการต่อสัญญาจ้างแบบระบุระยะเวลาหลายสัญญาเป็นระยะเวลาต่อเนื่องกันซึ่งระเบียบกระทรวงศึกษาธิการดังกล่าวนี้ไม่คุ้มครองเรื่องค่าชดเชยของครูชาวต่างชาติให้เท่าเทียมกับครูชาวไทย

จากการศึกษากฎหมายแรงงานของสหราชอาณาจักร ได้พบว่าไม่ว่าผู้ใดจะผู้ประกอบการวิชาชีพครูในสหราชอาณาจักรย่อมได้รับความคุ้มครองภายใต้พระราชบัญญัติสิทธิในการจ้างแรงงานค.ศ. 1996 (Employment Right Act 1996) ฉบับเดียวโดยเท่าเทียมกันหมดซึ่งต่างจากประเทศไทยที่มีระเบียบของกระทรวงเฉพาะมาให้ความคุ้มครองแก่ครูในโรงเรียนเอกชน นอกจากนี้กฎหมายของสหราชอาณาจักรยังมีการระบุนุมาตรการก่อนเลิกจ้างแรงงานให้หางานทดแทนให้แก่ลูกจ้างด้วยเพื่อลดอัตราการเลิกจ้างอีกด้วย

โดยสรุปแล้ว พระราชบัญญัติคุ้มครองแรงงาน พ.ศ. 2541 ควรมีการแก้ไขเพื่อระบุจำนวนครั้งที่สามารถต่อสัญญาแบบกำหนดระยะเวลา, การคำนวณค่าชดเชยและขึ้นตอนก่อนเลิกจ้างเพื่อป้องกันการดำเนินคดีระหว่างลูกจ้าง-นายจ้างในอนาคตซึ่งสามารถลดคดีในศาลและก่อให้เกิด

สถานการณ์ที่ได้ประโยชน์ทั้งสองฝ่าย อีกทั้งควรให้ชาวต่างชาติมีสิทธิทัดเทียมชาวไทย เพื่อประโยชน์สำหรับครูชาวต่างชาติในโรงเรียนเอกชนที่เข้ามาพัฒนาการศึกษาไทย

คำสำคัญ : ค่าชดเชย ครูชาวต่างชาติ ครู โรงเรียนเอกชน

Introduction

Recently, English has become significantly important language for Thai citizen's daily life of ASEAN community in 2016 because of the ASEAN Charter has set English as a working language for ASEAN. However, statistic surprisingly shows that Thailand is not ready for ASEAN community because most of the population has low English proficiency. According to the English usage ranking from English Proficiency Index (EF EPI) (2015), Thailand is ranked 62 from 70 countries. Thailand has a lower ranking than Singapore, Malaysia, Vietnam and Indonesia which ranked 12, 14, 29 and 32 respectively. If the situation continues, Thailand might not be able to compete with others within community and gain less opportunities from ASEAN than expected. Although Thailand has encouraged their citizens to study foreign languages, especially English, by issuing policies to improve the language skill to students since 2003 but the result was totally poorer than estimated goal.

Due to the issue mentioned above, Thailand has considered and concerned about importance of English teaching methods in education systems. English can be taught by both local and foreign teachers. Local teachers are better to help students with grammatical difficulties, to prepare students for examinations but the disadvantages were the wrong pronunciation and outdated language use. Foreign teachers have been considered and they have entered Thai education system to teach Thai students because they have stronger language skills than local-English speaking teachers. Foreign teachers were good at teaching conversation class, providing perfect example of language and help students to speak. However, sometimes they were difficult to provide grammatical explanations. . Many foreigners have come to Thailand to be teachers in both private and public schools. These foreign teachers are the most important factor in teaching English to Thai students efficiently. Numerous

schools in Thailand, especially private schools, provide English Program (EP) for students. This program aims to make students become familiar to English with understanding such as listening, speaking, reading and writing with foreigners, not just memorizing grammars and verbs for an exam following a plan of Ministry of Education to increase Thai citizen's English proficiency (2005-2015).

Foreign teachers in private school are controlled by 3 laws as stated below;

1. Private School Act B.E. 2550
2. Regulation of Ministry of Education on Labor Protection of Headmaster and Teacher B.E. 2542
3. Regulation of Ministry of Education on Labor Protection of Headmaster and Teacher (2nd issue) B.E. 2547

Protection for working of foreign teachers in private school appears in the 6th part, protection of works, clause 86 stated that "School business does not fall under the law of labor protection, law of labor relation, law of social security and law of compensation payment but workers in private schools shall get benefits not less than what has been stated in law of labor protection. Regard to working protection, to establish work protection committee and minimum welfares of workers in private schools shall be in accordance with the regulation set by the committee."

The regulation mentioned above is the Regulation of Ministry of Education on Labor Protection of Headmaster and Teacher B.E. 2542. In clause 8, it specifies that employment contract between licensee and teachers cannot specify the period of work unless the teacher is foreigner.

According to the Labor Protection Act B.E. 2541, the employment contract that can specify period of time shall have characteristic described in section 118 third paragraph and last paragraph. This regulation is contradicted to section 118 of Labor Protection Act B.E. 2541. (Supreme Court Judgment 2190-2193/2545)

As the Regulation of Ministry of Education mentioned above, the licensee can set a period of time in employment contract of foreign teachers. Moreover, the Regulation of Ministry of Education on Labor Protection of Headmaster and Teacher (2nd issue) B.E. 2547 gives right to licensee not to pay the severance pay to foreign teachers whose contract become expired as provided in clause 8, first paragraph. The

foreign teachers who have fixed-term contract will not get any severance pay because Private School Act B.E. 2550 and these two regulations (Supreme Court Judgment 1014/2551 and 2215-2234/2551). These laws and regulations of Ministry of Education deprive foreign teachers right and when foreign teachers feel that they come to Thailand to develop English for Thai citizen but they do not have the right to get severance pay according to these laws, they might stop being teachers in Thailand because they feel unjust the laws. That may affect the figure of foreign teachers in the future. This may cause Thai Education system in foreign language failed to compete with ASEAN neighbor countries.

The Background, Meaning, General Principle and Concept of Severance pay

Severance pay is the compensation that an employer provides to an employee who has been laid off, whose job has been eliminated, who through mutual agreement has decided to leave the company, or who has parted ways with the company for other reasons.¹ Packages are most typically offered for employees who are laid off or retired. Severance pay was instituted to help protect the newly unemployed. Sometimes, they may be offered for people who resign, regardless of the circumstances; or are fired.² Severance pay is the sum of money that the employer shall pay by the law to the employee when the employer lay-offs the employee and the reason of laying-off does not come from the employee. The severance pay is the maintenance allowance for the employee while searching for new employment. The calculation of severance pay depends on the length of employment.

International Labor Organization (ILO) introduced the standard of Termination of Employment in C158 - Termination of Employment Convention, 1982 (No. 158) which the severance pay concept has been included in division e. severance allowance and other income protection, article 12 and Thailand, a member state of ILO adapted this concept to develop Labor Protection Act B.E. 2541.

¹ “Severance Pay” at <http://www.investopedia.com/terms/s/severancepay.asp> (last visited 4 November 2014)

² “Severance Package” at <http://www.investopedia.com/terms/s/severance-package.asp> (last visited 4 November 2014)

The meaning of severance pay under Thai law is stated in the Labor Protection Act B.E. 2541 in section 5 “Severance pay means the money, which the employer pays to an employee upon the termination of employment, in addition to other monies, which the employer agrees to pay the employee.”

The severance pay is the money that the employer has duty to pay to the employee when the employer lay-off the employee but if the employee quits out of his own reasons, leave the work or died the employer shall not pay the severance pay.³

Idea of severance pay come from when an employee is dismissed without cause, the employee is entitled to a payment from his/her employer for living while searching for a new job. Even though an employer gives notice to an employee prior the termination of employment contract, the qualifying employee still entitled to the severance pay.

For other money under different name that employer pays to employee different name does not intend to pay to the employee when the employment contract has become terminated, that money is not the severance pay. There are many sum of money that the employer pays to the employee when the employment contract is terminated such as pension, provident fund, aid fund, saving deposit, etc. Even these mentioned sum of money are paid when the employment contract become terminated but they do not have a similar purpose to severance pay even those amount are greater than severance pay. The principle is if the money given has a similar purpose to severance pay, it is severance pay. But if it is not, for example, the employer pays a sum of money to employee who retired, quitted or died, (not the case where the employer terminated the contract) it is not the severance pay. The Supreme Court Judgment No. 870/2524 held that the other sum of money which is not intended to be similar to severance pay then, they are not severance pay. The Supreme Court Judgment No. 1193/2524 also held similarly.

The Supreme Court Judgments which decided that the paid sum of money has a similar purpose to severance pay is severance pay are the decision No. 6696-6971/2542, No. 387/2524, No. 7766/2543, No. 482-483/2548, No. 6844/2548, No. 2476/2537 and No. 2499/2537.

³ Kasemsan Wilawan, Explanation of Labor Laws, Bangkok, Bangkok: Winyuchon Publication House, 2557 page 139.

Employee who is entitled to get the severance pay

According to the Labor Protection Act B.E. 2541, the employee who is lay-offed after have worked for the employer for 120 days as stated in section 19.⁴

Moreover, the employee who does not work consecutively because the employer intentionally does not want the employee get the severance pay, even the employer assigns any work to employee and for any period of time, such time that the employee had worked for the employer shall be calculated together to for the employee to claim severance pay from the employer.

Severance Pay rate

Labor Protection Act B.E. 2541, section 118 states that an employer shall pay severance pay to an employee whose employment is terminated, as follows.

“(1) An employee who has worked for at least one hundred and twenty consecutive days, but for less than one year shall be paid basic pay for not less than thirty days at the most recent rate of basic pay received by him or not less than the basic pay he received for work performed in the last thirty days in respect of an employee who is rewarded on the basis of his output;

(2) An employee who has worked continuously for at least one year but less than three years shall be paid basic pay for not less than ninety days at the most recent rate of basic pay received by him or not less than the basic pay for work performed in the last ninety days in respect of an employee who is rewarded on the basis of his output;

(3) An employee who has worked consecutively for at least three years but less than six years shall be paid basic pay for not less than one hundred and eighty days at the most recent rate of basic pay received by him or not less than the basic pay for work performed in the last one hundred and eighty days in respect of an employee who is rewarded on the basis of his output;

⁴ Sudasiri Wossawong, Labor Protection Law. Nitibannakarn Publishing House, 2543, page 353

(4) An employee who has worked consecutively for at least six years but less than ten years shall be paid basic pay for not less than two hundred and forty days at the most recent rate of basic pay received by him or not less than the basic pay for work performed in the last two hundred and forty days in respect of an employee who is rewarded on the basis of his output;

(5) An employee who has worked for more than ten years consecutively shall be paid basic pay for not less than three hundred days at the most recent rate of basic pay received by him or not less than the basic pay for work performed in the last three hundred days in respect of an employee who is rewarded on the basis of his output.”

From the section 118 above, it seems that the law set the severance pay to five rates. The employer who work for one hundred and twenty days and above consecutively will get severance pay. To calculate the severance pay, the law uses the last wage that the employee received before the lay-off.

To calculate the severance pay, when the employee acknowledged the last wage calculated per day, bring that amount multiply to 30, 90, 180, 240 or 300 accordance with the length of time the employee has worked for the employer.

To pay the severance pay, the law demands the employer to pay the severance pay to the employee when the employee got lay-off so the employer shall pay the severance pay to the employee on the lay-off day. If the employer refused, the employee has right to claim for 15% interest rate per year since the lay-off day and the employer shall have penalty according to section 144 which is imprisonment not more than 6 months or 100,000 Baht fine or both.

Exception of payment of severance pay

There are exceptions for the employer who does not have to pay severance pay to the employee according to the Labor Protection Act B.E. 2541, section 119 provides that “An employer is not required to pay severance pay to an employee whose employment has been terminated for any of the following reasons:

(1) Performing his or her duty dishonestly or intentionally committing a criminal offence against the Employer;

(2) Intentionally causing damage to the Employer;

(3) Causing serious damage to the Employer as a result of negligence;

(4) Violating work rules or regulations or Orders Of the Employer which are lawful and just, and after written warning has been given by the Employer, except in a serious case where the Employer is not required to give warning.

Such written warning shall be valid for not more than One year from the date of commission of the offence by the Employee;

(5) Neglecting his or her duty without justifiable reason for three consecutive Working Days regardless Of whether there is Holiday in between or not; or

(6) Being imprisoned by a final judgement of imprisonment with the except for offenses arising out of negligence or for petty offenses.”

Private School, Labor Protection Act B.E. 2541 and Private School Act B.E. 2550

Since almost all of business fall under Labor Protection Act B.E. 2541 but there are some businesses governed by specific law such as Private School.

Private School does not fall under the Labor Protection Act B.E. 2541 but it falls under the Private School Act B.E. 2550 as stated in section 86. However, the staff of the private school including the teachers shall receive benefits not less than what has stated in the Labor Laws.

Benefits of teachers and staffs are provided in Regulation of Ministry of Education on Labor Protection of Headmaster and Teachers B.E. 2542 and B.E. 2547.

The word “teacher” in Private School Act B.E. 2550 included the foreign teacher as well.

Does the private school have the character of a specific project or a provisional or seasonal work

The Labor Protection Act B.E. 2541 section 118 in the second and last paragraph mention about a contract with a specific time which result in employees do not have the right to severance pay. This must fall in one of the three characters which is a special project that is not a normal trade of the business and requires a

definite date to commence and end the work, occasional work or seasonal work which the employment is made during the season and such works shall be completed within two years.

The condition of the last paragraph of section 118 provide that “is not the regular business of the employer” therefore, if it is the normal business or trade of the employer, he shall pay the severance pay to the employee when the fixed-term contract is expired.

Thai labor law is not so clear on what work will be treated as normal business of the employer. The Supreme Court has to provide it on case by case basis in most cases. The condition to be considered is the condition to renew the contract under same work or similar work. So it is not the occasional work which has the definite date to commence and the end of the work that lead to the exception for severance pay. Therefore, if there is fixed-term condition in a contract, the teacher still be a permanent employer of the school because teaching in a school is not a provisional or seasonal work nor special project. The business of private school is teaching which is the most important matter to operate the school.

Private School Employment of Thai teacher

According to the Ministry of Education: Labor Protection of Headmaster and Teachers B.E. 2542 Clause 8, the school licensee cannot employ Thai teacher with fixed-term contract so Thai teachers will be employed only with indefinite contract.

Private School Employment of Foreign teacher

Foreign teachers who work in a private school in Thailand mostly are under a one-year contract specifying the exact period according to the calendar. The version submitted to the Ministry of Education is the one that attached in the Ministry of Education: Labor Protection of Headmaster and Teachers B.E. 2542 (No. 2) B.E. 2547. If he or she perform well, his or her employment shall be extended annually. If the work does not satisfy the set criteria, the school shall not renew the contract for the particular teacher.

Fixed-term contract foreign teachers and severance pay

Thai Supreme Court Judgment rules that in the case that the private school makes an annual contract with a teacher, it is a fixed term contract. When the employment contract expired, it means the school did not lay-off the teacher so the school does not have to pay severance pay. This is a judgment of old law that concerned on parties intention. However, the Labor Protection Act B.E. 2541 extends the meaning of lay-off to include the expiration of employment contract according to section 118 paragraph 2. Therefore, if the Labor Protection Act B.E. 2541 applies to the case of expiration of employment contract, it is assuming as lay-off so the school shall pay severance pay to the teacher.

Since the Regulation of Ministry of Education on Labor Protection of Headmaster and Teachers (2nd issue) B.E. 2547 Clause 35(2) said that the foreign teacher whose employment contract become expired, he does not have right to get severance pay because the employment ended by the contract, not lay-off. Comparing to the contract attached to the regulation in Clause 1, there is the start and termination date. But in Clause 8 set the condition to parties to notify another parties before terminate the contract so the contract is not a fixed term contract.

Severance pay and Special Severance pay under Regulation of Ministry of Education on Protection of Head Masters and Teachers

A. Severance pay

According to the Regulation of Ministry of Education on Protection of Head Masters and Teachers B.E. 2542 Clause 33 provides the circumstances which a teacher entitled to severance pay as following;

1. The school ceases its operation or the license is revoked.
2. Reducing the number of the classroom.
3. The school temporary ceased its operation.
4. The employment contract is terminated without cause.

B. Special Severance pay

There are 2 conditions which required the school to pay special severance pay to a teacher.

1. Relocation of the school

Clause 37 of this regulation has the same provision of the Labor Protection Act B.E. 2541 section 120.

2. A teacher gives information to a government officer

In fact, when a private school has dispute with the teacher and the teacher files a complain to the official, the teacher usually got fired. The regulation clause 38 provide a special severance pay to a teacher when he or she got fired within 6 months since he or she gave a complain to an official not less than 1 time of a normal severance pay according to clause 34.

Can teachers add up contracts to calculate the period of work

Thai Supreme Court had a judgment on this case that the private school hire teachers with annual contract. Even the fact showing that when the contract completed, the school still hire teachers with a new contract each year for 19 years. The teacher cannot add up all contract to calculate working period. This was an old ruling of old labor law.

However, the Regulation of Ministry of Education on Labor Protection of Headmaster and teachers B.E. 2542 Clause 33 second paragraph provided that teachers shall use the date since the date of employment to the date which the school is closed, temporary closed down or the employment is terminated to calculate the severance pay.

UK Laws regarding to Redundancy Payment (Severance Pay) of Foreign Teachers who work in a Private School

In the UK, they do not use the word “Severance pay” but they use “Redundancy payment”. Redundancy means a situation in which someone loses their job because their employer does not need them⁵. Redundancy pay will appear in the laws below;

1. Employment Rights Act [ERA], 1996 (c. 18) as amended, consolidated version dated October 1st, 2011. Date: 01 Oct 2011

2. The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order, 30 March 2012 (SI 2012/989), into force 6 April 2012, amending sec. 108(1) of the Employment Rights Act 1996 Date: 30 Mar 2012. Date: 28 Jun 2012

3. Trade Union and Labour Relations (Consolidation) Act [TULRCA], 1992 (c. 52) as amended. Consolidated version dated 1st February 2010. Date: 28 Jun 2012

4. Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations [FTER], 2002. Date: 30 Jul 2002

5. Employment Tribunal Acts [ETA], 1996 (c. 17) as amended. Consolidated version dated 15 December 2007. Date: 30 Mar 2012

6. The Employment Tribunals Act 1996 (Tribunal Composition) Order, 30 March 2012 into force 6 April 2012, amending the Employment Tribunals Act 1996. Date: 30 Mar 2012

Redundancy pay was firstly introduced under the Redundancy Payments Act 1965 as the first substantial statutory individual employment rights. The current law has been consolidated in Employment Right Act 1996. The original structure remains and provides a sum of payment to the employee over the period of time finding a new job after dismissal or redundancy.

There is no other law except the Employment Rights Act 1996 which has a provision of redundancy payment to the foreign teacher in a private school which is different from Thailand. In Thailand, there is other law except Labor Protection Act B.E. 2541 to protect the employment of foreign teacher in the school which is the Private School Act B.E. 2550.

A comparative analysis of Severance Pay for foreign teachers under Thai Law and the UK Employment Right Act

⁵ <http://dictionary.cambridge.org/dictionary/british/redundancy>

The character of private school is different from normal hire of work contract. Some of principle of Labor Protection Act B.E. 2541 are not suitable with the private school. Other reason is that some of teachers understood that they are not worker but they are venerable person, they should not be under the same law. The Private School Act and The Regulation of Ministry of Education on Labor Protection of Headmaster and teachers have provisions to operate the school effectively and they are designed to govern the private school business and fitted with Thai culture.

Rate of severance pay according with the Regulation of Ministry of Education on Labor Protection of Headmaster and teachers B.E. 2542 comes from the Labor Protection Act B.E. 2541 which is based on tenure of employment length by not depend on age of the employee; while the UK labor law, the age of employee effect to the calculation of severance pay.

When the employer would like to dismiss the employee, the employer usually offers the employee the alternative job. If the employee refuses the job offered, the employee loses his/her right to redundancy payment because it is assumed that the employer tried to remedy the employee but the employee refused to get the job offered. There is no similar provision in Thai labor law. It will be the great exit to the employer and the employee because the employer does not have to pay severance pay to the employee and the employee get a new job. However, the employer still has to pay severance pay to the employee if the job offered is not related or totally different from the previous job, it is a dismissal by the law.

In the UK, there is a provision of law to protect fixed-term contract employee who work continuously for 4 years. The renewal of next fixed term contracts will automatically create a permanent contract, to protect employer's right to terminate employment on reasonable notice for a good reason. This also put the employee to good financial position because they do not need to find a new job or make a financial plan every year while in Thailand, the foreign teachers shall work under fixed-term contract for indefinite time. This action causes the insecure in the job because the school can terminate the contract with the teachers without paying severance pay every year.

In the UK, to get redundancy payment, the employee shall work continuously

for 2 years which is quite long for the employee. In Thailand, the employee works for 120 days or about 3 months to get severance pay.

To calculate the redundancy payment, the age of employee will be affected the calculation. The employee who is under 22 years old will receive less redundancy payment than the employee who is older than 22 while they are working in the same tenure; while in Thailand the age of the employee will not affect the calculation of severance pay. The longer the employee works; the greater severance pay will be entitled.

Conclusion

The problem on paying severance pay to foreign teacher in private school come from the Regulation of the Ministry of Education on Labor Protection of Headmaster and Teachers (2nd issue) B.E. 2547 which deny the teacher's rights to receive severance pay when the fixed-term contract become expired, the teachers are not well explained to their rights from the employer and the precedent of Supreme Court Judgment opposes the principle of labor law.

Whereas the Regulation of the Ministry of Education on Labor Protection of Headmaster and Teachers B.E. 2542 is not the labor protection law because the Private School Act B.E. 2550 has objective to govern the operation of the private school to be standardized compared to modern countries. When there is a dispute among the employee and employer of the school on employment contract, it will be in power of Labor Court according to the Establishment of Labor Court Act B.E. 2552, section 8(1). Nevertheless, the Regulation of Ministry of Labor and Welfare B.E. 2541 exempt the employer who operate the private school business. Therefore, the Labor Court shall use the Regulation of Ministry of Education on Labor Protection of Headmaster and Teachers B.E. 2542 as long as it is not oppose the Labor Protection Act B.E. 2541.

After having analyzed the Regulation of Ministry of Education on Labor Protection of Headmaster and teachers B.E. 2542 amended by second issue B.E. 2547, I have the opinion, that first, the right to receive severance pay of foreign teacher does not different from Thai teacher. They are the same work but they have

different right. It is unfair to the foreign teacher so the clause 35(2) should be repealed.

Second, the Protection of headmaster and teachers should be enacted under the Labor Protection Act B.E. 2541 not the Private School Act so the law can be enforced effectively among Thais and foreign teachers. This would secure the teacher job for foreigner for the future to develop Thai education.

Third, employer usually use the loophole in Labor Protection Act B.E. 2541 to avoid paying severance pay to the employee by creating false fact to be in accordance with the exception of paying severance pay or use some minor mistake to accuse the employee that he/she broke the work regulation to dismiss without paying severance pay. If the employee would like to claim for the severance pay, he or she has to go to make a complaint to the Labor Court. This method hurts the employee badly; the employee has to find a new job while bringing legal action to the employer. The provision of severance pay is the compensation for the employee while he or she find a new job has no effect in practical way. The employee will only receive the severance pay when he or she won the case. Even the Labor Court has short procedure to protect the employee but at least the court procedure will take at least 6 months to get a judgment not including appealing to the Supreme Court. The employee not always win the case because there is witness testimony process which the employer can forge evidences to use in the case. The problem mentioned come from a high value of severance pay by Thai law as appear that the employee has to file a complaint to the court get severance pay. High severance pay does not guarantee that the employee will get better labor protection. To solve this problem, the severance pay should be paid appropriately to fort the expenses of the employee per month while he or she is searching for new job.

Fourth, when the foreign teacher cannot find a secure job, the teacher will find other accommodate and secure job to work so there should be a law to control limit of renewal of fixed-term contract at least 3-4 contracts like the UK labor law and then the fixed-term contract automatically become permanent contract. This can prevent the renewal of fixed-term contract indefinitely. It would protect and secure the teacher job for foreigners to perform his or her duty in a private school effectively.

Fifth, the Labor protection of head master and teacher should be rectified by

the cooperation of the private teachers, the government and the employers to develop the law to be an instrument to protect private school teachers and lead private education to greater success.

Lastly, the next Labor Protection Act should have a provision to force an employer to find an alternative job for an employee. The employee who refuse the job offer without the reasonable reason will lose his or her right to get severance pay. This will reduce the dismissal rate so that the employer does not have to pay severance pay.

Teacher is an important occupation for Thailand, a developing country. Moreover, the foreigners who come to Thailand to become a teacher are the ones who sacrifice his or herself to develop Thai education to compare with the modern world in the future so we should protect them similarly to Thai teachers.