

Wage Payment and Labour Rights Violation in Fishery Work



Human Rights and Development Foundation: HRDF



Fact Sheet No. 3 “Wage Payment and Labour Rights Violation in Fishery Work” aims to shed light on the issues and complication of the wage payment methods used with migrant workers in fishery sector. The authors explore the payment methods used in reality and compared them in an analysis of laws concerning wage payment. It serves as an observation and offers recommendations to concerned individuals regarding the enforcement of the law and the policy makers for the promotion and protection of labour rights in Thailand’s fishery sector.

Information in this document has been made possible with Human Rights and Development Foundation (HRDF)¹ work to provide legal assistance to migrant workers, our visits to educate them about laws and from our documentation of workers in the Andaman and Gulf of Thailand coastal provinces.

According to Fact Sheet No.2 “Wage Deduction in Fishery Work”², it explains about the issues of wage deduction, debt bondage, and debt burden among migrant workers in fishery sector. It was clear that one of the major causes of such debt burden stems from how the fishers have not been paid in the full amount as promised, or have not been paid on time as indicated in the contract, or such payment has not been made in accordance with the law. Such debt burden has then forced the workers to continue working there causing them to lose their bargaining power and becoming an obstacle for them to change job. It has inevitably led to the irresistible condition or possibly forced labour.³

¹ A civil society organization, the Human Rights and Development Foundation (HRDF) has been offering migrant workers legal assistance through the implementation of the Ship to Shore Rights Project funded by the International Labour Organization (ILO) to raise their awareness and offer them legal assistance, legal representation and advocacies for policies concerning migrant workers in fishery sector and downstream industries in coastal provinces in Thailand.

² Ms. Phenpiccha Jankomol and Polish Subsisunjai, “Fact Sheet No.2 “Wage deductions of in fishery work” (Human Rights and Development Foundation, 20 October 2023) https://hrdfoundation.org/wp-content/uploads/2023/10/th-Fact-Sheet-double-page_s.pdf retrieved on 20 December 2023

³ International Labour Office Department of Statistics. Guidelines concerning the measurement of force labour. https://www.ilo.org/wcmsp5/groups/public/---dgreports/--stat/documents/meetingdocument/wcms_648619.pdf

Exploring the issues: The complicated payment methods in fishery sector

The Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2565 (2022)'s Clause 2 defines the meaning of "wage" as a wage defined in the labour protection law including shared profits in which an employer has agreed to pay according to the value of the aquatic animals being caught. For the two types of wage, the employer is required to make the monetary payment only. Such wages can be called otherwise, not just wage, i.e., at-sea commission, or any payment made as remuneration shall be accounted for as wage. However, for the payment the employer made to their employee to assist them or their families, or as an incentive to encourage them to work better, such as bonus, board and lodging allowance, food allowance, this shall neither be considered a part of wage nor being included in the wage.⁴

In fishery sector, the employer is required to act in compliance with the Labour Protection Act's Section 90. Therefore, an employee in sea fishery sector shall be paid a minimum wage according to the Wage Committee's Notifications. Each province has its unique wage rate as indicated in the "Notification of the Wage Committee on minimum wage (no. 12)."⁵ If the employer pays a fisher less than the wage required by law, they can be held accountable for violating the labour protection law.

Nonetheless, there are still many practical problems regarding wage payment in fishery sector in Thailand. In certain areas, workers have been found to get paid less than the minimum wage. Otherwise, complicated wage payment methods, or payment methods not conforming with law are adopted, i.e., the payment schedule shall vary according to the arrival or departure times of the fishing vessel causing the schedule to be uncertain. Otherwise, payment slips have been made up not consistent with the actual payment making it not possible to verify such wage payment. From our implementation, HRDF has encountered the following case studies;



⁴ Department of Labour Protection and Welfare, Ministry of Labour, Commentary on the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2022's Clause 2 (February 2015) https://legal.labour.go.th/images/law/fishing/fishing_018.pdf retrieved on 20 December 2023

⁵ Notification of the Wages Committee on minimum wage (no. 12), Government Gazette, Vol 140, Special Section 328 Ngor (28 December 2023): 1-2.



The case of fishers being paid in cash via brokers and not paid in full

Two Myanmar migrant workers work as fishing crew with help from a broker (Mr. Ko, pseudonym) to recruit them and supervise their work. Both worked for about 10 months, from March 2022 until January 2023, after which they complained with the Provincial Office of Labour Protection and Welfare that their employer still owed them their wage.

After investigating the case, the labour inspector found that the employer owed the employees their wage as complained and therefore instructed the employer to pay the employees all the outstanding wage. In this case, it appeared various employment forms were used and various payment methods adopted. This can be divided into two periods including before the preparation of employment contracts between the employer and the employees and when such contracts were put in place as follows;

① Before the preparation of the employment contracts between the employer and the employees (16 March-24 April 2022), the evidence from each party appears as follows;

The employees claim

that they were not clearly aware as to how the payment was made, although they received it via Mr. Ko periodically, 200 baht/person at a time, altogether nine times, during 17 March-26 April 2022. Altogether, each employee was paid 1,800 baht. They were asked to sew fishing nets at the pier of the employer, six days a week, with Friday as their day-off, and working from 8.00 – 17.00 with lunch break for one hour.

The employer claims

that during the time, an application was being made to acquire work permits for the workers and the matter was put under the charge of Mr. Ko while the employer did not ask them to do any particular jobs. He has no idea where Mr. Ko asked the employee to work. The initial employment contracts were only made between the employer and the employees on 25 April 2022.

Mr. Ko claims

that he did ask the employees to sew fishing nets for the employer and an agreement was made for them to get paid 150 baht/day, and the payment was made on a weekly basis, and they did not sign in the pay slips.

Based on such evidence, the labour inspector came to a conclusion that during the period, they actually engaged in the work since the employees worked for the employer. The employer was therefore obliged to pay them according to the law. The minimum wage in the area was 310 baht/day and the period lasted for 34 days. Therefore, the employer owed the employees 10,624 baht each. Deducted with the amount received by employees at 1,800 baht, the outstanding wage should be 8,842 baht/person plus late interest rate at 15% per annum.

2 When the documentation has been prepared including employment contracts (25 April 2022-26 January 2023), the evidence from each party appears as follows;

- The employment contracts of workers in sea fishery sector between the employer and the employees dated 25 April 2022 indicated that the employees engaged in menial work and the employer shall pay them each 10,000 baht/month via bank transfer at the end of each month. Supposing their working period was from 25 April 2022 to 26 January 2023, the employees should be receiving altogether 90,666,67 baht per person.

The employees claim

that during their work, they received the pay in cash via Mr. Ko every time. Both employees recorded the receipt of the pay each time, and in the record, it indicates that;

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Employee no. 1

already received 46,450 baht including (1) first payment when starting to work at 2,500 baht, (2) received the money and asked Mr. Ko to send it to their families 750 baht, and (3) received during “Big Week”⁶ and “Small Week”, altogether 43,200 baht

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Employee no. 2

already received 43,200 baht including (1) receiving “Big Week” and “Small Week” for 43,200 baht, (2) received the money and asked Mr. Ko to send it to their families 750 baht

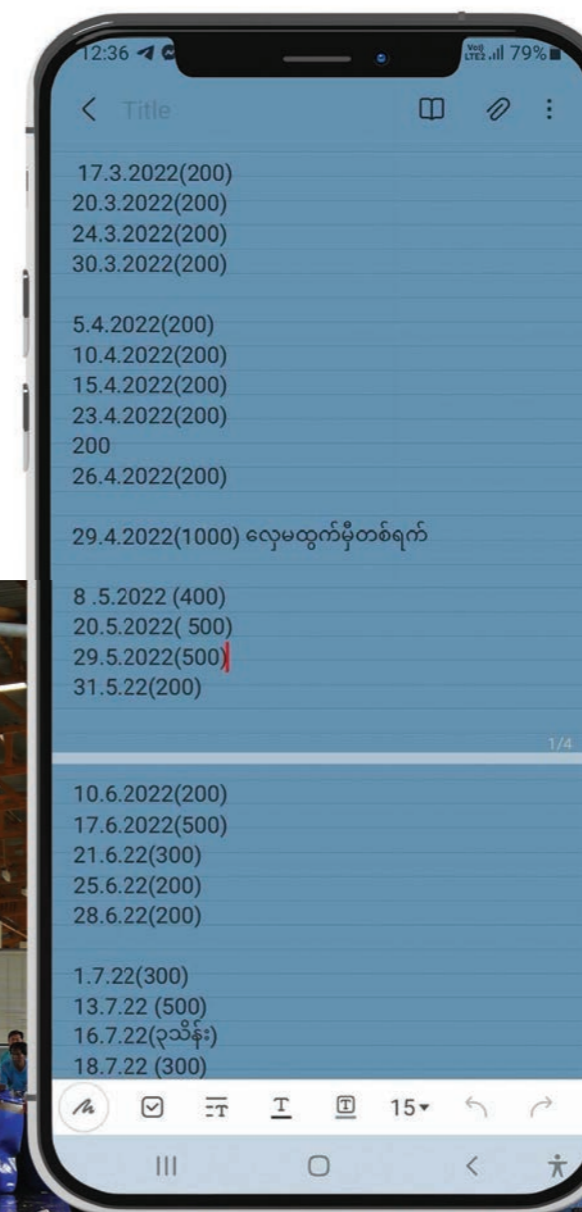
The employer claims

that he made the payment via Mr. Ko and it was made in two types including “Small Week” whereby the payment is made every time the vessel runs ashore and after the selling of the catch, and “Big Week” whereby the payment is made every two months. The employer has no idea how much Mr. Ko had actually paid the employees. In addition, the employer would transfer to the Bangkok Bank’s accounts of each of the employees at the end of each month and has kept the transfer slips for inspection by the labour inspector. After transferring money to all the employees’ accounts, he would withdraw it and paid in cash to Mr. Ko.

Mr. Ko claims

that he has been asked by the vessel clerk to recruit Myanmar migrant workers to work on the vessel. Upon their arrival in Thailand, he would inform the employees of detail of their work and what they have to do, i.e., loading ice, sewing nets, packing nets on car, and all other detail about how to work on board the fishing vessel. He would inform the crew members that they each shall receive 9,500 baht/month for wage and it can be paid on installments as requested for by each of the employees. When money is withdrawn each time, the employees are not required to sign their names, although Mr. Ko would put into his personal journal the amount of money withdrawn by each employee as a record to show to the employees and as a record to show to the employer. It was Mr. Ko who told the vessel clerk to make the payment of the crew members’ wage to him to make it convenient for him to look after the employees. Mr. Ko would pay the money to the employees himself and it is not necessary for the employees to have to visit the bank. The wage is composed of the wage per time or “Small Week” which is paid 200-1,500 baht to the employers and the “Big Week” for which Mr. Ko cannot recall how much he has paid to the employees.

Based on the evidence, the labour inspector held that even though the employer had transferred the employees’ wage to their bank accounts and then withdrawn it from the employees’ bank accounts and paid to Mr. Ko, but the employees have still not received their pay as agreed in the employment contracts. Therefore, such acts are incompatible with the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 and the employer is obliged to pay the rest of the wage he owes to the employees as requested by them plus the interest at the rate of 15% from the day the failure to pay happened.



< A screen captured image of the receipt of pay by the two Myanmar crew members



⁶ “Week” refers the payment interval. It varies according to what is agreed between the employer and the employee regarding the payment interval, or how the pay shall be made.



The case of fishing crew members who have received partial pay and been denied pay during sick leave

The incidence happened in February 2023 while the two employees were working on board a fishing vessel in Pattani. They did not receive their pay in full from their employer as agreed and were denied their pay during their sick leave. They have thus complained with the Provincial Office of Labour Protection and Welfare in Pattani.

After investigation, the labour inspector has found the employer admitted to paying the two employees in cash by transferring it to the employees' bank accounts and then withdrew it and handed it to the employees.

The payment schedule was made in various timing as the employees might request for advance pay, and might want to request for money at different times, i.e., requesting for pay after each fishing trip, requesting for pay every "Week" of work, requesting for pay before departure from port, and requesting for monthly pay.

As to the pay records, the workers only signed their names upon receiving their monthly pay and advance pay.

After viewing concerned evidence, the labour inspector has reached the conclusion that the acts of the employer were incompatible with the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E. 2557, amended by the Ministerial Regulation concerning Labour Protection in Sea Fishery Work (no. 2) B.E. 2561's Clause 10/2 which requires that an employer shall pay wages and holiday pay to their employee by transferring money to the latter's bank account. Therefore, since there is no clear proof that the employer has paid the wage in full to the employees, it was deemed that the employees and the complainants who could produce the payment records had not received all the wage from the employer as mutually agreed and as required by law. The employees therefore are entitled to receiving the rest of the wage from the employer according to the amount mutually agreed.

As to the sick leave pay, based on the evidence, the labour inspector deems that both employees were actually sick as claimed. And since it appears the employer owes them their wage according to their complaint, it can be assumed that the employer has also failed to provide them their sick leave pay. Such act is in violation of the Ministerial Regulation concerning Labour Protection in Sea Fishery Work which provides that an employee has the right to sick leave as long as they actually fall ill. And the employer is required to pay the employee during their sick leave at the same rate as their normal working days during their leave, but not more than 30 working days per a calendar year. Therefore, both employees are entitled to receiving the sick leave pay commensurate to the number of days they actually fell ill.

In addition to the two case studies, during July 2022-January 2024, HRDF has offered assistance and counseling to workers in fishery sector and its downstream industries and found at least ten cases involving the wage payment methods which are incompatible with the law and are so complicated that it could constitute a violation of labour rights with detail in the following table.

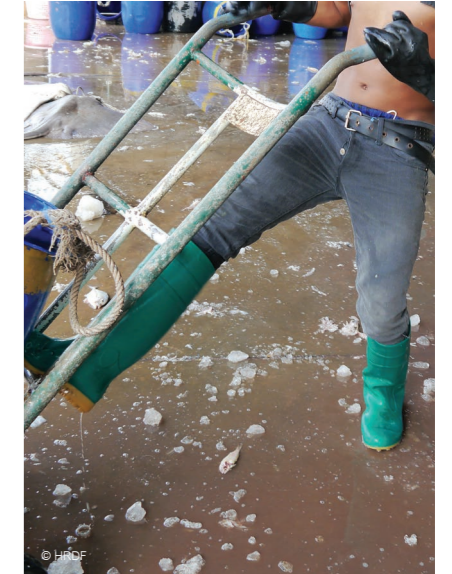


Table: Basic information of the case studies

Case study	Province	Amount of wage	Payment Schedule	Payment methods	Pay slips	Violation of labor rights
1 นาย K (fisher)	Pattani	9,500 baht/month lower than the law	Once a month	Cash via broker	Without pay slip	- Unpaid wage - Personal document retention
2 Mr. T (fisher)	Chumphon	7,500-8,500 baht/month lower than the law	Once a month	Cash	Without pay slip (Employee unaware about having bank account and never visiting bank)	- Intimidation/assault - Personal document retention
3 Mr. S (fisher)	Phuket	10,700 baht/month	Once a month	Cash Employee used to request for advance pay	Just signed name in a piece of paper	- Unfair termination of employment and denial of severance pay - Personal document retention
4 Four fishers	Phuket	10,100 baht/month lower than the law	Once a month	Cash Employee used to request for advance pay	Without pay slip (Employer took them to open bank accounts and kept bank books with themselves including ATM cards)	- Personal document retention
5 Mr. M (fisher)	Ranong	12,000 baht/month	Once a month, albeit with no exact date	Cash	Record of request for pay and employee signing as recipient of money	- Intimidation - Personal document retention
6 Mr. M (fisher)	Chumphon	Employee cannot indicate the amount	Once a month, albeit with no exact date depending on the port-in or port-out day	Cash	Having receipts	- Personal document retention

Case study	Province	Amount of wage	Payment Schedule	Payment methods	Pay slips	Violation of labor rights
7 Two fishers	Pattani	10,000 baht/month	Multiple times a month, variable payment schedule and amount	Cash via broker	Employees could produce their pay records (Authorities believe in the employees' documents)	- Victims of trafficking in person and forced labour
8 Two fishers	Pattani	13,000 baht/month	Once a month	Cash Employee used to request for advance pay	Records of transfer to employees' bank accounts and employer withdrawing cash and handing it to employees. Employer having records of payment and advance pay	- Physical abuse - Personal document retention - Unpaid wage
9 Mr. H (downstream industries)	Phuket	354 baht/day	2 times/month Every fifth and twentieth days of month	Cash	Signing pay slips No work time stamp No employment contract	- Suspended from work indefinitely
10 Mrs. S and another individual (downstream industries)	Samut Sakhon	270-280 baht/day lower than the law	2 times/month Every sixteenth and end of month	Cash	No signing of pay slips	Unpaid wage



Based on the aforementioned case studies, key issues concerning payment in fishery sector can be summarized as follows;

① Lower payment than legal minimum wage

Based on the above information, there are still cases of employers who make the payment lower than the legal minimum wage. And even though it is legally required for the preparation of a written employment contract between the employer and the employee in fishery sector, but in reality, there are cases whereby the actual pay is lower than the mutually agreed pay indicated in the written contract and the payment has been made via the broker. In addition, there has been a lack of clarity in terms of the inspection of the duration of overtime work and the overtime pay or holiday pay since in fishery work, the working hours are inconsistent depending on the hard to control natural factors such as high tide and low tide, the volume of aquatic animals caught, or the periods during which fishing is permitted. In addition, the nature of work can involve various forms of labour including the use of labour in fishing vessel, fish sorting, nets mending, fixing of fishing gears, aquatic animal transportation, loading into ice boxes, cleaning vessels, and even work on shore such as sorting and transportation of aquatic animals, repairment of fishing gears, etc. It is therefore difficult to make the inspection of the duration of working hours, overtime work, or holiday work.

② Uncertain payment schedule

From the case studies, it has been found that the payment schedule in fishery work may vary according to what is mutually agreed between the employer and the employee. It has been found that what is mutually agreed among the employer, the employee and the broker or the supervisor is often the “intermittent withdrawal” of pay. Basically, the employee can withdraw the money at the different times as agreed and the employer shall keep all the pay and prepare the document to keep tab of the withdrawals made by the employee. For example, the employee can request for several withdrawals of small cash when the vessel runs ashore to cover their spending while on shore. Otherwise, such small cash can be withdrawn for particular purposes such as for medical expense. Then, there is a big withdrawal whereby the employee requests for a cash advance clearance, or when they want to send a remittance to their family in the country of origin. In certain instances, such big clearance or cash advance clearance may happen once a couple of months. Such method has both pros and cons. For example, the worker may feel they are receiving more money after leaving their pay to pile up for several months and then send it as a remittance to their family in the country of origin. Some workers may find this method useful to help regulate their spending while running ashore and make it not necessary to spend money when on board the vessel making it easier to save up money. Nonetheless, one major drawback of such method is a lack of clarity of payment and receipt records as in several instances, the employees tend to not keep the pay slips with themselves, otherwise, there is a mismatch between the pay slips or documents proving the receipt of the employee and those of the employer.

When a dispute arises between the employer and the employee, it is hard to acquire the proof and evidence to ascertain the actual outstanding balance of the pay between the employer and the employee.



3 Cash payment

According to the documentation of fishers in various areas, it has been found that most fishers have been paid in cash, even though it is required by law for the payment to be made only through the transfer to the employee's bank account.

In most cases, the employer often transfers the money to the employee's bank account, and then withdraws from the account by using the employee's ATM card kept by the employer. The transfer has thus been made simply to acquire a transaction proof which can be shown to the authorities during the inspection. But in actuality, the payment has been made in cash to the employee, or via the broker.

While some workers are aware that their employers have opened for them a bank accounts, although the bank books and the ATM cards are kept by the employers, others have no idea they have their bank accounts. In addition, there is an impediment of access to ATM kiosk since it might be located far away, or the worker does not know how to withdraw cash from the kiosk.

Such phenomenon also illustrates how legal requirement for the payment to be via bank transfer has not been effectively enforced. It could also involve a financial corrupt practice such as the illegal use of ATM card that belongs to another person, or the fabrication of false document to conceal facts about wage payment. Moreover, such acts may also make it more complicated when an attempt is made to verify the actual payment made to the employee and the outstanding balance.

4 Advance pay

The employment of fisher is often made based on an agreement between the employer and the employee and to allow advance pay before the commencement of work, or before the departure from port. On one hand, such practice could incentivize the employee to work on board a fishing vessel since they will receive cash which they can use while working in the fishing vessel and can pay it back later. But on the other hand, it may give rise to a debt bondage. Such debt stemming from advance pay coupled with debt from the preparation of work documents can even increase such debt bondage and it may be related to the illegal practice of wage deductions. In addition, such advance pay may cause confusion when it is necessary to calculate the wage during the later dispute between the employer and the employee.

5 Mismatch between pay slip and actual payment and mismatch between receipt records of the employee and the employer

Even though an employer is required to make the payment to the employee engaged in work in fishing vessel via their bank account, but in reality, the employer tends to evade the law by transferring money to the employee's bank account and then withdraws it to pay the employee in cash. The transfer slips are therefore not the actual records of the payment.

As to the evidence kept by the employees, it has been found that some employees do take note of the receipt of their pay and in most cases, they took it in their own language while others do not keep a record of such receipt. When a dispute arises between the employer and the employee, it is quite a challenge to verify authenticity of the evidence from both parties.

6 Payment not made in full, denial of holiday pay, and wage deduction

Related to the issues aforementioned, the issues of payment not made in full and wage deduction usually happen when the employee owes the employer money from, i.e., advance pay, travel from the country of origin, expense for application of work permit and personal document, etc. For the cases of illegal wage deduction, they have been presented in examples and through discussion in the Fact Sheet No.2 "Wage deductions of workers in fishery sector".⁷ Apart from the issues, wage deduction on holidays is another common instance often found in the aforementioned case studies.

⁷ Ms. Phenpiccha Jankomol and Polwish Subsisunjai, "Fact Sheet No.2 "Wage deductions of in fishery work" (Human Rights and Development Foundation, 20 October 2023) https://hrdfoundation.org/wp-content/uploads/2023/10/th-Fact-Sheet-double-page_s.pdf retrieved on 20 December 2023



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Legal frameworks concerning wage payment in fishery work

Labour Protection Act B.E. 2541

Section 22 Agricultural work, sea fishing work, the work of conveying or loading and unloading goods by sea-going vessels, home work, transportation work and other work as prescribed in royal decrees may be prescribed in ministerial regulations as having labour protection that differs from that provided in this Act.

Section 70 An employer shall pay wages, overtime pay, holiday pay and holiday overtime pay correctly and in accordance with the following deadlines:

(1) When wages are calculated on a weekly, daily, hourly or on the basis of some other period of time which is not more than one month, or in accordance with work calculated at a piece rate, payment shall be made not less than once a month, unless there is an agreement otherwise which is to the benefit of the employee.

(2) When wages are calculated other than in Sub-section (1), payment shall be made in accordance with the deadline agreed on between the employer and the employee.

(3) Overtime pay, holiday pay and holiday overtime pay shall be paid not less than once a month.

When a employer terminates the employment of an employee, the employer shall pay the wages, overtime pay, holiday pay and holiday overtime pay which the employee is entitled to receive to the employee within three days from the date of termination of employment.

Labour Protection in Fishing Work Act B.E. 2562

Section 76 A employer shall not deduct wages, overtime pay, holiday pay and holiday overtime pay unless it is a deduction for the purpose of

(1) paying income tax in the amount which has to be paid by the employee or paying other monies as provided for by law,

(2) paying trade union dues under the articles of the trade union,

(3) paying the debts of a savings cooperative or some other cooperative which has the same characteristics of those of a savings cooperative, or debts which are for the beneficial welfare of the employees solely, wherein consent has been obtained in advance from the employees,

(4) providing guarantee money under Article 10 or compensation to the employer for damages which had been caused by the employee deliberately or due to gross negligence, wherein consent has been obtained from the employee,

(5) depositing money for the employee in a savings fund under an agreement with the employee regarding such a fund.

With regard to deductions under Subsections (2) to (5), in each case deductions of more than ten percent are prohibited and the total deductions may not be more than one fifth of the money which the employee is entitled to receive on the date for payment under Article 70, unless consent has been obtained from the employee.

Section 11 In the case where service fees and costs are chargeable in the procurement of jobs for fishing labourers, the job procurer shall demand payment from the vessel owner and the vessel owner has the duty to pay such service fees and costs.



Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565

Clause 7

The employer shall prepare a written employment contract with two copies of identical contents and gives one copy to the employee, and keep one copy with themselves for inspection by the labour inspector.

The employment contract under paragraph one shall be made compatible with the format determined by the Director General, and it must be made available in both Thai language and the language understood by the employee who is an alien.



Commentary:

The employer shall prepare two copies of the employment contract and keeps one copy with themselves and gives another to the employee. It must be made available in both Thai language and the language understood by the employee.

Pursuant to the Notification of the Department of Labour Protection and Welfare on the determination of the format of employment contract in sea fishery work,⁸ It requires the indication of the wage payment to the employee in detail including the bank account of the employee or their family member, based on the PMI Form available in Thai, English, Myanmar, Lao, and Cambodian.

Observation:

Workers in fishery sector have often signed and used to see the employment contract in the language understood by them, although no one has ever explained to them detail in the employment contract. In some instances, they may get to sign a blank paper without any detail about their salary. As to the employment contract after being signed, it is not usually handed to the fisher to keep. In most cases, the employer would keep both copies with themselves.

Clause 10

An employer shall prepare a document concerning wage payment and holiday pay in the format according to the Notification issued by the Director General and it must be at least made available in Thai language and the language understood by the employee who is an alien and it shall be kept at a workplace of the employer and the employee for inspection by labour inspector.

The document thereof shall contain at least the following particulars;
(1) Name and surname of each employee
(2) Position and duty in sea fishery work
(3) Rate and amount of wage, holiday pay that an employer has agreed to pay to each employee.

When wage or holiday pay is paid to an employee, an employer shall prepare document under paragraph one to be signed by an employee as evidence.

An employer shall retain the document under paragraph one for at least two years from the date of payment.

Commentary:

According to Clause 10, an employer is required to prepare a document concerning wage payment and holiday pay with detail as per PM3 Form in the Notification of the Department of Labour Protection and Welfare on the formatting of documents concerning wage payment and holiday pay.⁹ The form is available in Thai, English, Myanmar, Lao, and Cambodian.

Observation:

When asked about pay slips among workers in fishery sector in the area, most of them admitted to not receiving such monthly pay slips or other relevant documents. Some workers took note of the pay in their own journals while most of them did not do that. According to the workers, most of such pay records are kept by the employers in which case some workers are asked to sign in the employers' notebook upon receiving the pay.

⁸ Department of Labour Protection and Welfare, Ministry of Labour, Notification of the Department of Labour Protection and Welfare on the formatting of employment contract for sea fishery work, <https://protection.labour.go.th/attachments/article/415/1509.pdf> retrieved on 22 December 2023

⁹ Notification of the Department of Labour Protection and Welfare on the formatting of documents concerning wage payment and holiday pay, Government Gazette Vol.139, Special Section 235 Ngor (3 October 2022).

Clause 12

An employer shall pay wage, holiday pay, or other money the employer is required to pay pursuant to this Ministerial Regulation. This shall be done correctly and timely according to the mutually agreement, although the payment shall be made at least once a month.

For shared profits in which an employer has agreed to pay according to the value of the aquatic animals being caught, it shall be paid according to mutually agreed payment schedule, but the payment frequency shall not be less frequent than once every three months.



Commentary:

An employer is required to pay the fishing employee at least once a month, although the payment schedule could be shorter as mutually agreed. It is prohibited, however, to make the payment longer than one month, i.e., every two months.

For shared profits, if they are included in the agreement, they shall be paid at least every three months.

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Observation:

Even though the employment contracts requires that the payment be made on a monthly basis, but in reality, most employers only calculate the wage based on the number of days their employees engage in work and make a deduction during sick leave (for more detail, please read the case studies). According to the law, an employer is prohibited from making such deductions. In addition, workers in fishery sector do not have regular holidays due to the nature of their work coupled with the unpredictability of the seasons making it difficult for inspection. According to some workers we interviewed, even though their vessel runs ashore, they still cannot rest and have to continue working on the pier including doing fish sorting, mending nets, or cleaning vessel. Therefore, in order to determine their holidays, the labour inspector needs to acquire more evidence and delve deeper into the case.



Clause 13

An employer shall pay wages to an employee on a monthly basis which is not less than daily minimum wage rate, as prescribed by the Wage Committee, multiplied by 30."

Commentary:

According to the latest Notification of Wage Committee concerning minimum wage (no. 12), fishery work is among the occupations for which an employer is required to pay their employee based on the minimum wage as provided by law.

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Employees in fishery sector do not include just fishers working on board a fishing vessel, but rather other workers working on the pier or working at home such as those engaging in downstream industries, many of whom are spouses of the crew members in the fishing vessel. In various areas, such workers tend to have irregular employment and it is difficult to pin down their exact working time. They often have no employment contracts, have no access to benefits and often receive pay lower than the minimum wage. They are vulnerable to labour rights violation and have no access to labour inspection by the public authorities.

Clause 14

An employer shall pay wages and holiday pay to an employee via the bank accounts of the employee whereas the employer shall pay for the fee to make the transfer to the employee's bank accounts.

If the employee wants the employer to make the transfer under paragraph one via their family member, the employer shall act in compliance of the request as provided for in the employment contract and the employer shall pay for the fee to make such transfer. And upon receiving the pay via transfer, it shall be assumed the employer has already paid wage and holiday pay to the employee.

Family members according to paragraph two may include their ascendant, their descendant, spouse, or adopted child.



Commentary:

According to the previous regulation, the monthly payment shall be made according to the methods employed by the employer. But according to the new regulation, an employer is required to pay a worker in sea fishery sector on a monthly basis and at least not lower than the minimum daily wage multiplied by 30. It is also required to be paid via bank transfer to ensure transparency of wage payment and verification to prevent unfair wage deduction and to address failure to make the payment on time and the payment of partial wage. And if the employee wants the employer to make the transfer via their family member, the employer has to do so and has to cover the bank transfer fees.

Observation:

Regarding the transfer via a family member, for such migrant workers, they may not have clear personal statuses since most of them do not register their marriages. In addition, if a migrant worker wants the transfer to be made to their families in their country of origin, can it be transferred via the broker? What kind of documents are needed, and how credible is the broker? Is it possible to verify if the broker has actually transferred the money to their families?

The payment made via bank transfer remains a key challenge since both the employer and the employee deem that the payment made via bank transfer makes it more complicated for the employee themselves, i.e. ATM kiosks are located far from their accommodation while some workers do not know how to use ATM cards. Nonetheless, the payment made via bank transfer helps to increase transparency and serves the purposes of the law. Without a safe and verifiable payment method, a fisher can be vulnerable to wage deductions and debt bondage, both of which are illegal.¹⁰

¹⁰ Statement of civil society on Thailand's Fishery Sector at a Critical Juncture (15 October 2023) https://ejfoundation.org/resources/downloads/CSO-Joint-Statement-Critical-Crossroads_TH.pdf retrieved on 7 February 2024

Conclusion

Based on the case studies and legal framework in this factsheet, it has been found that the existing wage payment in sea fishery work may give rise to the violation of labour rights. The case studies demonstrate the different problems in various forms of payment such as payment made lower than the legal minimum wage, irregular payment schedule, avoidance of acting in compliance with payment law, advance cash pay, fabrication of pay slip, payment not made in full, denial of pay on leave days, and illegal wage deduction.

There are several laws for the protection of payment in fishery work including the Labour Protection Act B.E.2541, the Labour Protection in Fishing Work Act B.E. 2562, and the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565. According to the laws, Thailand has made an attempt to ensure the formalization of fishery work by including provisions in the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 such as the requirement to prepare a written employment contract, documents concerning wage payment, monthly payment, transfer of payment via bank account, etc. Nonetheless, in reality, there are still blatant challenge to ensure the enforcement of the law. It could be said that the attempt to formalize the highly informal work such as sea fishery work in Thailand continues to face an impediment from the law enforcement officials and the lax enforcement of the law. The patterns of wage payment are one of the prime examples of how the law has been ineffectively enforced and a legal interpretation contrary to the spirit of the law is still allowed to persist. Such lack of clarity in the law enforcement can make it even more challenging to verify relevant evidence when a dispute arises between the employer and the employee.

Based on the three Factsheets including “Personal document retention among migrant worker employed on fishing vessels”¹¹, “Wage deductions of workers in fishery sector”¹², and this factsheet concerning wage payment illustrate a fundamental problem which may give rise to the use of forced labour in the fishing industry which still persists in the current employment of migrant workers in Thailand’s fishery sector.

¹¹ Ms. Phenpiccha Jankomol and Polwish Subsrinunjai, “Fact Sheet No.1 “Personal document retention among migrant worker employed on fishing vessels” (Human Rights and Development Foundation, 28 February 2023) <https://hrdfoundation.wordpress.com/2024/03/20/factsheet-no1-alt/> retrieved on 20 December 2023

¹² Ms. Phenpiccha Jankomol and Polwish Subsrinunjai, “Fact Sheet No.2 “Wage deductions of in fishery work” (Human Rights and Development Foundation, 20 October 2023) https://hrdfoundation.org/wp-content/uploads/2023/10/th-Fact-Sheet-double-page_s.pdf retrieved on 20 December 2023





Recommendations

- 1 Recommendations for the Provincial Office of Labour Protection and Welfare
 - a. Make an effort to regulate, inspect and prosecute cases of illegal wage payment practices such as cash payment for employees working on board fishing vessels given an attempt to conceal the transaction and the fabrication of pay slip. The perpetrators must be brought to justice to prevent the recommission of the crime and to prevent it from being prevalent in the fishery industry.
 - b. The case reported to the inquiry official must proceed through the criminal justice procedure to hold to account an employer who has violated the Ministerial Regulation concerning Labour Protection in Sea Fishery Work B.E.2565 regarding working hours and holidays and day off.
 - c. Prosecution should be initiated against an employer who has violated Section 11 of the Labour Protection in Fishing Work Act B.E. 2562 regarding deduction in employment.
 - d. Protection should be extended to workers engaged in downstream industries and women workers in fishery sector by ensuring authorities carrying out inspection in such workplaces more often to ensure they receive the same protection similar to those working in fishing vessel.
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- 2 Recommendations for the Department of Employment
 - a. Criminal actions should be initiated against an employer instantly for breaking Section 131 of the Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560 and its amendments regarding document retention.
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- 3 Recommendations for the multidisciplinary team to screen victims of trafficking in person or forced labour and labour inspection
 - a. Concerned authorities should carry out an investigation of any illegal wage payment practices and debt bondage which may cause a worker to lose bargaining power and impede their chance to change employer or broker, the environment that forces employees to work.
 - b. During the inspection of vessel and fisher at the port-in and port-out procedure by labour inspector, employment office official, and multidisciplinary team, an effort should be made to stringently investigate the issues recommended to the Department of Employment and the Department of Labour Protection and Welfare.

Fact Sheet No.3

April 2024

Wage Payment and Labour Rights Violation in Fishery Work

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