

Abstract

“Temporary Agency Work” is a short term employment form which mainly aims to balance the demand and supply out of employment, in the free trade era, in the middle of variability of economic. The flexibility is a potential advantage of this employment form which brings about the entrepreneurs involved in and this causes a wide spread over procedures and businesses of manufacturers. In the fluctuated situation, the flexible is a factor facilitating the entrepreneurs to reduce a risk on undertaking the business whereby elastically increasing or decreasing the number of labor force without the concern on the expenses once the contract is terminated, likewise the employees according to the employment contract, including reducing the cost of employee’s welfare. In addition, this system also supports the workers to develop skill and improve work experience and roads skilled unemployment person to labor market. Hence, if Temporary Agency Work is abused, this is highly likely bringing about an unfair employment conditions and it would decrease the stability of working system of such workers in another way.

It has been seen that the abovementioned is two sides of the same coin in the system, which requiring a cautiousness of governmental policy on legal enforcement in order to manage such employment form with a consideration on economic circumstances and entire manufacture society, a competency of business competition on the stage of free trade era, a balance of demand and supply in the labor market and a right benefit of entrepreneur and proper protection to workers in the Temporary Agency Work system. However, the research on the ground of Temporary Agency Work of Labor Protection Act (No. 2) B.E. 2551, Article 11/1 found that the law is trying only to point down on who is a responsible person in the position of employer, which should be an entrepreneur in the context with the aim of assuring the worker’s right in accordance with the labor law, likewise the employees according to the employment contract. This reflects the intention of the law that aims to protect only the dimension of worker’s right and seem to ruins the Temporary Agency Work system to be vanished from the employment system in Thailand. If this happens, it not only affects the value of domestic

products or services to be increasing because entrepreneur shall carry high responsibility on management and labor cost. At the same time, this would cut the proficiency of domestic activities in competing against any other manufacture in world trade stage. This should bear in mind that the advantage of Temporary Agency Work system is a flexibility and cost reduction on labor force management, caused the lower cost to manufacture and low cost of product and services. The low cost of product is a crucial point which makes Thailand being the manufacturing hub and this is attracted to the international investment. In addition to this, the study on history and role of Temporary Agency Work in foreign countries found that it is widely applied in almost every country in the world. It has been seen that this employment form is utter an alternative for the balance and suitability. To keep this form is rather benefit the economic environment than to remove it from employment system.

According to the research on the foreign law in relevant to the Temporary Agency Work found that there are several measures of eliminating the difficulties on system itself usage. Apart from the measure on protect worker's right which has been used in Thailand system, there is the controlling measure on Temporary Agency Work business, which is a key concept to prevent the instable investor being a temporary work agency and illegally take a benefit of it. What's more, there is also the controlling measure on Temporary Agency Work agreement, which requires that the agreement between a temporary work agency and an entrepreneur should be framed with a limited situation and necessity. This means that temporary agency workers shall be used merely for the purpose of specified and temporary work, in order to prevent the use on core business or general activity which is a day to day operation of company. Additionally, such workers shall not be used for replace permanent employees, so the limitation on maximum duration of agreement and also the prohibition on continuous agreement should be placed. The reason is for temporary agency worker to realize on a certain termination of contract and to prevent the role of such contract to be seem as the employment contract.

This thesis is focusing on, firstly, with a consideration on balance and benefit every side, how the Temporary Agency Work system can be an alternative whereby to study and to analyze on the foreign measure of controlling the Temporary Agency business and agreement itself which is highly likely able to apply to Thai structure. Besides, this can be used as an additional measure on a current protection scheme on temporary agency worker's right. Secondly, the current protection scheme has been deeply clarified on definition in order to make the effectiveness of its usage and interpretation, as well as, prevent the distortion by making Temporary Agency Work contract in another similar form. Thirdly, to avoid the misunderstanding pertaining to legal relation of persons in Temporary Agency Work contract, this thesis analyze on unclear wording in Article 11/1 of Labor Protection Act (No. 2) B.E. 2551, especially some ambiguous wordings to show only that the entrepreneur but temporary work agency shall be merely responsible in the position of employer. Finally, according to the principle of non-discrimination in such article which requires the entrepreneur provides temporary agency workers with equal benefits and welfare as employees who perform work in the same manner as them, however, if bear in mind that, a) such workers are contract employee but the employees are direct employee under the employment contract, b) such principle is regulated in Labor Protection law which the concentration is on regulate minimum protection for all employees with the aim to protect only basic work conditions and c) including the fact that the employees according to the employment contract themselves are sometime entitled to obtain different benefits and welfare such as the employees of definite duration or indefinite duration of employment contract. Those all brings about a problematical legislation which should have been taken a consideration on what exactly fair conduct without discrimination according to this article is.