



VIETNAM

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1. GENERAL PRINCIPLES

Forums For Adjudicating Employment Disputes

A Labour Conciliation Council established within a company handles most employment disputes. The law also provides for District Conciliators appointed by the District Department of Labour, as well as Provincial Labour Arbitration Councils consisting of various activists or professionals, which conduct statutory conciliation of either individual or collective disputes before the disputes are brought to the specialised labour court of the People's Court. In certain disputes, parties may bring cases directly to the courts for settlement without conciliation.

Main Sources Of Employment Law

The main sources of employment law in Vietnam are the Labour Code (adopted by the National Assembly of Vietnam on 23 June 1994 as amended on 2 April 2002, 29 November 2006, and 2 April 2007), the Law on Sending Vietnamese Labourers to Work Overseas (adopted by the National Assembly of Vietnam on 29 November 2006), Government Decrees, Ministerial Circulars and Decisions, Provincial Decisions and guidelines, Collective Labour Agreements, Company rules, individual contracts, and the Supreme Court's annual judgment practice summaries and guidelines.

National Law And Employees Working For Foreign Companies

Vietnamese Labour law applies to all individuals physically working for Vietnam-based organizations or Vietnamese individuals regardless of their nationality. Basic contractual law and enterprise (i.e. corporate) law provisions may also govern certain matters.

National Law And Employees Of National Companies Working In Another Jurisdiction

Normally, Vietnamese Labour Law is applied when Vietnamese companies send their employees to work overseas. Technically, the employment contract does not need to specify this issue.

2. HIRING THE EMPLOYEE

Legal Requirements As To The Form Of Agreement

A labour contract must be in writing. Contracts for temporary jobs, which last less than three months or for domestic helper work do not need to be in writing and can be oral. There are statutory requirements as to the format and the main terms of a labour contract. A labour contract must be written in Vietnamese or both in Vietnamese and another foreign language which is applicable to the employee and employer.

Mandatory Requirements

- Trial Period

There is no compulsory obligation to provide trial periods, otherwise known as 'probationary periods', when engaging new employees, but it is common in practice to do so. A probationary period must not exceed sixty (60) days in respect of work which requires specialized or highly technical skills or thirty (30) days in respect of other types of work.

- Hours Of Work

The maximum working hours is eight (8) hours per day or forty eight (48) hours per week for normal working conditions. Daily working hours shall be reduced by one (1) or two (2) hours for the workers working in extremely heavy, dangerous or toxic working conditions.

- Earnings

There is a restriction prohibiting employees from earning below the minimum salary level (which is reviewed from time to time). There are different minimum levels depending on the working location of employees.

- Holidays/Rest Periods

There is a requirement that employees must take a rest period of a minimum of twenty four (24) consecutive hours per week. There are also various compulsory daily and weekly rest periods and/ or breaks which have to be observed.

- Minimum/Maximum Age

Normally, the minimum working age is fifteen (15) except in certain cases. There is no restriction on the maximum working age, however, daily working hours of senior workers (over sixty (60) for men or over fifty five (55) for women) should be reduced.

- Illness/Disability

Employees, who suffer from illness and/or disability or take leave in accordance with doctor's orders, shall receive an allowance paid by the social insurance fund, provided that they submit the relevant documentation evidencing their leave.

- Location Of Work/Mobility

An employee's place of work must be set out in the labour contract in order to comply with statutory requirements.. Mobility clauses can be included in employees' labour contract, if necessary. Where a job requires travel to other temporary locations, it is normal for employers to reimburse all reasonable travel expenses.

- Pension Plans

There is no scheme for pension plans under Vietnamese labour law. However, both employers and employees are required to contribute to the compulsory social insurance fund that shall pay a pension to employees when they retire.

- Parental Rights (Pregnancy/ Maternity/ Paternity/ Adoption)

Employers must allow pregnant workers to have their health checked regularly. Normally, female employees are entitled to take four (4) months maternity leave prior to and after giving birth. The maternity leave period may be increased to six (6) months for female employees who work in heavy, harmful working conditions or in remote locations.

- Compulsory Terms

The Labour Code of Vietnam requires a labour contract to include the following material terms: (i) work to be performed; (ii) working hours and rest hours; (iii) wages; (iv) working place/location; (v) duration of contract; (vi) conditions on occupational safety and hygiene; and (vii) social insurance for employee. In practice, statutory material terms are for standard labour contracts for simple works only.

- Non-Compulsory Terms

Employers and employees are free to agree any other terms in addition to the compulsory provisions, provided that these terms are no less favourable than certain statutory rights and must not be contrary to social morals.

Types Of Agreement

Under the Labour Code of Vietnam there are three types of labour contracts (i) an indefinite term labour contract; (ii) a fixed term labour contract with duration of twelve (12) to thirty six (36) months; and (iii) a labour contract for a specific or seasonal job of less than twelve (12) months.

Secrecy/Confidentiality

There is no specific statute in Vietnam governing secrecy and confidentiality. However, in general, an employee is required to protect trade secrets and/or confidential information of his/ her employers. If an employee fails to do this, the employee may be subject to a labour disciplinary hearing and disciplinary action.

Ownership of Inventions/Other Intellectual Property (IP) Rights

The ownership of inventions and other intellectual property rights shall belong to the employer except if there is an agreement which states otherwise between the employee and the employer.

Hiring Non-Nationals

In general, if an expatriate wants to work in Vietnam for three months or longer, he/she is required to obtain a work permit. Vietnamese employers are required to provide support and submit application documents for the work permit.

Hiring Specified Categories Of Individuals

Employers are prohibited from employing female employees, pregnant employees, child employees, and old employees for hazardous and hard work that may cause health problems.

Outsourcing And/ Or Sub-Contracting

There is no clear definition of outsourcing and/or sub-contracting under the Vietnamese Labour Code. The Labour Code has an inflexible article stating that a labour contract is required to be directly entered into by an employer and an employee. In addition, the tasks stipulated in the labour contract must be carried out by the employee under his/her labour contract and the transfer of such tasks to another person must be approved by the employer. In practice, if an employer wishes to use labour outsourcing service from a labour outsourcing service company, he/ she shall not enter into a direct labour contract with related workers, but he/ she shall enter into a labour outsourcing service agreement with such service providers instead.

3. MAINTAINING THE EMPLOYMENT RELATIONSHIP

Changes To The Contract

In general, under Vietnamese Labour Law, a labour contract must be made in writing and signed by both the employee and employer. Therefore, in theory, any change to the content of a labour contract must be also made in writing and signed by both parties. The change can be in the form of an appendix attached to the original labour contract and will form an integral part of the labour contract.

However, in practice there are certain changes which can be only made by employers which do not need the employee's consent such as salary increase and promotion. In these cases, employers just need to send a notice to employees notifying them of the change accordingly.

Change In Ownership Of The Business

Where there is a merger, consolidation, division, separation, or transfer of ownership, or change in the right to manage, or change in the right to use assets, succeeding employers shall be responsible for the continuous performance of all employees' labour contracts.

If all available employees are unable to be employed, there must be a plan for labour usage. This plan must be communicated with the Trade Union organization, if any, who will provide input where necessary. If a labour contract is terminated under these circumstances, an employee who is let go, but who has worked for the former employer for twelve (12) months or longer, shall be entitled to receive a job-loss allowance equalling one (1) month salary for each working year but no less than two-months salary.

Social Security Contributions

Employers and employees are required to make social insurance, medical and unemployment contributions to the social insurance fund. The social insurance fund shall pay allowances for sick leave, maternity leave, work-related accidents, occupational disease, and pensions to employees.

Accidents At Work

Under Vietnamese labour law, employers are required to provide employees with sufficient protective equipment, to ensure occupational safety and hygiene and to improve working conditions in the work place. Employees are also required to comply with occupational safety and hygiene regulations and internal labour rules of employers.

Under Vietnamese Labour Law, work-related accidents are defined as accidents which injure any bodily parts or functions of an employee, or cause the employee's death during the process of working and closely relate to work performance or labour activity. An employee who is injured in a work-related accident must be immediately treated and be fully attended to. The employer must take full responsibility for the occurrence of the work-related accident in accordance with the provisions of the law.

During the period in which an employee is absent from work for medical treatment in respect of a work-related accident or occupational disease, the employer must pay the employee his / her full salary and expenses for the treatment.

Discipline And Grievance

Under the labour law of Vietnam, depending on the seriousness of the breach of labour rules committed by an employee, he/ she may be subject to one of the three types of labour disciplinary measures which are (i) reprimand; (ii) extension of the period for wage increase by no more than six months or transfer to another position with a lower wage for a maximum period of six months, or removal from position or demotion; or (iii) dismissal. A number of procedures and steps must be followed. A hearing meeting must be organized and the employer is required to prove the employee's fault.

Harassment/Discrimination/Equal pay

Under Vietnam labour law, employees have the right to work without being discriminated against on the basis of their gender, nationality, social class, beliefs or religion. Moreover, employers are strictly prohibited from conducting discriminatory behaviour towards female employees or conduct that degrades female employees' dignity and honour. Employers must implement the principle of gender equality in respect of recruitment, utilization, wage and wage increase.

Compulsory Training Obligations

In general, there are no compulsory obligations regarding employees' training imposed on employers. However, in certain cases, such as reorganization and/or change of technology, employers are required to re-train employees.

Offsetting Earnings

It is possible for employers to make a deduction from an employee's salary/ wage. However, the employee must be aware of the reasons for the deduction before the deduction is made. Before making a deduction from an employee's wage/salary, employers are required to discuss such deduction(s) with the executive committee of the company's trade union. The aggregate amount deducted must not exceed thirty percent (30%) of the employee's monthly salary/ wage.

Payments For Maternity And Disability Leave

A female employee, who works in normal working conditions, when giving birth shall normally be entitled to take four (4) months maternity leave. If the female employee works in heavy and/or harmful working conditions or works in a remote location, she shall be entitled to take up to six (6) months maternity leave. Where an employee gives birth to more than one (1) child at one time, she shall be entitled to take an additional thirty (30) days leave for every additional child calculated from the second child onwards.

The employee will receive maternity allowance which is paid by the social insurance fund during maternity leave.

With regard to sick leave, an employee will be entitled to receive sick leave allowance (the amount of which is determined based on the employee's salary used for calculation of social insurance premium) paid by the social insurance fund. The maximum entitlement is thirty (30) days per year (if the employee

contributes to the social insurance fund for less than fifteen (15) years) or forty (40) days (if the employee contributes to the social insurance fund for between fifteen (15) and thirty (30) years) or sixty (60) days (if the employee contributes to the social insurance fund for more than 30 years).

During the period in which an employee is absent from work for medical treatment in respect of a work-related accident or occupational disease, the employer must pay full salary and expenses for the treatment. After the treatment, the employee shall, depending on the reduction of his/her ability to work due to a work-related accident or disease, be examined and classified into a category of injury in order to be entitled to a social insurance benefit paid as a lump sum or in monthly instalments by the social insurance fund.

Compulsory Insurance

Compulsory Social Insurance shall apply to enterprises, entities and organizations which employ employees under indefinite term labour contracts or under definite term labour contracts with a duration of three months or more. Both employees and employers are required to contribute to the social insurance fund at statutory rates.

Absence For Military Or Public Service Duties

Employees are entitled to suspend performing their duties under labour contracts if they are required to carry out military service or other public civic obligations. Employers are required to re-employ the employees at the end of the suspension period.

Works Councils or Trade Unions

A Company's Trade Union should be established within a company within six (6) months after the company is set up and put into operation. The obligation for establishing a trade union organization within a company (employer) falls on the local trade union or industry trade union, not the employer.

Employers are required to facilitate the establishment of a trade union organization within their company. Any act which obstructs the establishment and activities of an enterprise's trade union is strictly prohibited.

The main function of a trade union organization is to represent and protect employees' legal rights and interests. Therefore, most decisions relating to employee benefits should involve the trade union representative, such as execution of the collective labour agreement, decisions regarding labour disciplinary, termination of labour contracts, etc.

Employees' Right To Strike

Employees may voluntarily go on strike. However, strikes must be organized and led by the executive committee of the company's trade union or representatives of employees. Statutory procedures and steps for organization of strikes must be followed.

Strikes are prohibited at enterprises which supply certain types of products and services and at enterprises which are essential for the national economy or for national defence and security.

Employees On Strike

Employers are not required to pay salary or other benefits to employees who participate in a strike. However, employers are prohibited from terminating labour contracts or applying labour disciplinary penalties to employees or to organizers of strikes or transferring employees or strike organizers to do other jobs or to work at another location because of their participation in or preparation for a strike.

Employers' Responsibility For Actions Of Their Employees

Employers are responsible for the acts of their employees, except where employees act wholly outside the course of their employment.

4. FIRING THE EMPLOYEE

Procedures For Terminating the Agreement

There must be proper legal grounds for an employer to terminate a labour contract with an employee, such as performance issues, prolonged illness, a force majeure event or winding up of the company. Employers are required to follow a number of statutory steps such as sending a warning letter to employees and/or sending advance written notice regarding the termination of employment to employees within a statutory time limit.

If an employer fails to prove that there are legal grounds for the termination or fail to follow the proper statutory procedure, a termination may be declared wrongful and if so, employers may be required to reinstate the employee, pay their salary for the period that they were not allowed to work and pay two months of the employee's salary as a penalty for the wrongful termination.

Instant Dismissal

Under Vietnamese Labour Law, dismissal is the severest labour disciplinary measure. Employees may be dismissed when they commit an act of gross misconduct such as theft, embezzlement, disclosure of business or technology secrets, or repeatedly commit acts in violation of the employers' work rules or policies. A disciplinary hearing meeting must be held and a number of statutory procedures must be followed.

Employee's Resignation

An employee may resign from his / her job without giving any legitimate reason. However, such an employee is required to give advance notice to the employer. An employee is required to give an employer a minimum statutory notice period of thirty (30) working days for termination of a fixed term labour contracts or forty-five (45) working days for indefinite labour contracts.

Termination On Notice

An employer may terminate a labour contract by serving advance notice of thirty (30) working days for termination of a fixed term labour contract or forty-five (45) working days for indefinite labour contracts. However, employers must have proper legal grounds for termination (see the procedures for terminating the agreement section above).

Termination By Reason Of The Employee's Age

There are no specific provisions governing the termination of labour contracts based on an employee's ages. However, under Vietnamese Labour Law, normal retirement age is sixty (60) for men and fifty five (55) for women. A retired person will receive his/her pension and/or allowance from the social insurance fund.

The Vietnamese Labour Code allows employers to extend labour contracts or enter into a new labour contract with a retired employee.

Automatic Termination In Cases Of Force Majeure

Force majeure is one of the legal grounds for employers to terminate labour contracts with employees. However, employers are required to send advance notice to employees and a number of procedures should be followed. Employers are also required to pay severance to their employees due to the employment termination.

Termination By Parties' Mutual Agreement

The parties are entirely free to agree termination on any grounds they desire.

Where the parties agree to terminate employment, they are not required to give advance notice. The parties may also waive any procedures. However, all the related issues such as employment termination, severance payments, personal income tax, social insurance, etc., should be finalized and addressed in a document and should be signed by both parties.

Directors Or Other Senior Officers

In addition to labour law, certain high-ranking employees, such as general directors and members of the board, are subject to Vietnam Investment Law and Enterprise Law, as well as the company's chapter (Articles of Association). The term for the above positions shall not exceed five (5) years, but it is renewable.

A director or senior officer may have their job description set out in the labour contract. However, the functions, duties, obligations, rights, and authority of such employees may also be provided for by the relevant law and the company charter and/or decisions assigned by general shareholding meetings, members council, and boards, etc.

Special Rules For Categories Of Employee

There are no categories of employees to whom special rules apply, but certain categories (e.g. pregnant women or women with child of less than twelve (12) months old, junior employees, senior employees, disable employees) benefit from more generous protection from discrimination.

Specific Rules For Companies in Financial Difficulties

There are special rules which apply if a company is in financial difficulty. If a company goes into liquidation then an employer has legal grounds to unilaterally terminate all employees' labour contracts. However, the employers are required to send an advance notice, subject to the statutory minimum, to employees.

If the employer is bankrupt, the employees shall become unsecured creditors. However, the employees' interests (salary, allowance, social insurance, and other contractual benefits) will be given priority over other unsecured creditors.

Restricting Future Activities

In Vietnam, people have a right to work, to freely choose their type of work and only competent courts have the right to prohibit certain people from doing certain jobs. Therefore, generally, clauses that attempt to restrict the future activities of an employee are unenforceable in Vietnam.

In practice, certain employers wish to include "unfair competition" clause in labour contracts to prevent their former employees from working for their competitors in a certain period of time after termination. But the enforceability in reality will depend on the voluntary compliance of employees.

Severance Payments

Vietnamese labour law requires employers to pay severance to employees who have been continually working for the employer for twelve (12) months or more. There are certain cases in which employers are exempted from paying severance, such as dismissal or retirement. If employees have made contributions to the unemployment insurance fund, employers are not required to pay severance for the duration of time that the employees paid their unemployment insurance premium.

Special Tax Provisions And Severance Payments

In Vietnam, any income earned by an employee under the form of salary, wage, allowance, and bonus shall be subject to personal income tax ("PIT"). Employers, as income paying organizations are required to withhold and pay PIT to taxation authorities.

Severance payment at the minimum statutory level shall not be subject to PIT. However, any extra payments beyond the minimum required level shall be subject to PIT.

Allowances Payable To Employees After Termination

Employers are not required to contribute to any allowances that are payable to employees after termination, unless otherwise agreed by the parties in the labour contract, provided that all required severance payments up to the date of termination were fully paid.

Time Limits For Claims Following Termination

In terms of a claim arising from the disciplinary measures resulting in dismissal, or a dispute arising from a unilateral termination of the labour contract or disputes relating to payment of compensation for loss and damage or payment of allowances, the limitation period for an individual labour dispute is one (1) year from the date of occurrence of conduct which any disputing party claims breached its rights or benefits.

5. GENERAL

Specific Matters Which Are Important Or Unique To This Jurisdiction

There are no specific matters which are important or unique to this jurisdiction.

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